



AGENDA

SAN RAFAEL CITY COUNCIL – MONDAY, MARCH 15, 2021

CORONAVIRUS (COVID-19) ADVISORY NOTICE

In response to Executive Order N-29-20, the City of San Rafael will no longer offer an in-person meeting location for the public to attend. This meeting will be streamed through YouTube Live at www.youtube.com/cityofsanrafael. Comments submitted via YouTube Live must be submitted according to the directions located on the YouTube video description. The City is not responsible for any interrupted service. To ensure the City Council receives your comments, submit written comments to the City Clerk prior to the meeting. For more information regarding real-time public comments, please visit our Live Commenting Pilot page at <https://www.cityofsanrafael.org/live-commenting-pilot/>.

Want to listen to the meeting and comment in real-time over the phone? Call the telephone number listed on this agenda and dial the Meeting ID when prompted. Feel free to contact the City Clerk's office at 415-485-3066 or by email to lindsay.lara@cityofsanrafael.org if you have any questions.

Any member of the public who needs accommodations should contact the City Clerk (email lindsay.lara@cityofsanrafael.org or phone at 415-485-3066) who will use their best efforts to provide reasonable accommodations to provide as much accessibility as possible while also maintaining public safety in accordance with the City procedure for resolving reasonable accommodation requests.

REGULAR MEETING AT 7:00 P.M.

Watch on Webinar: <https://tinyurl.com/cc-2021-03-15>

Watch on YouTube: www.youtube.com/cityofsanrafael

Listen by phone: (669) 900-9128,

ID: 899-2635-9885#

OPEN SESSION

1. None.

CLOSED SESSION

2. Closed Session: - None.

OPEN TIME FOR PUBLIC EXPRESSION

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:

COUNCILMEMBER REPORTS:

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

4. Councilmember Reports:

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.

5. Consent Calendar Items:

a. **Approval of Minutes**

Approve Minutes of City Council / Successor Agency Regular Meeting of Monday, March 1, 2021 and Special Meeting of Tuesday, March 2, 2021 (CC)

Recommended Action – Approve minutes as submitted

b. **Opportunity Zone Renter Protections**

Second Introduction and Final Adoption of Ordinance 1992: An Ordinance of the City of San Rafael City Council Adding Chapter 10.111 to the San Rafael Municipal Code, Entitled "Relocation Assistance in Opportunity Zones" (CD)

Recommended Action – Final Adoption of Ordinance 1992

c. **Opportunity Zone Renter Relocation Payment Amounts**

Resolution Establishing Relocation Assistance Payment Amounts Pursuant to San Rafael Municipal Code Chapter 10.111 – Relocation Assistance in Opportunity Zones (CD)

Recommended Action – Adopt Resolution

d. **Recreation Program Software Agreement**

Resolution Authorizing the City Manager to Execute a Product and Services Agreement with Active Network, LLC for Software as a Service to Support Recreation Program Administration In An Amount Not to Exceed \$310,000 Over Three Years (LR)

Recommended Action – Adopt Resolution

e. **Age-Friendly San Rafael Strategic Action Plan**

Accept the Age-Friendly San Rafael Strategic Action Plan 2020-2023 (LR)

Recommended Action – Accept report

f. **Smith Ranch Road and Lucas Valley Road Resurfacing**

Accept Completion of the Smith Ranch Road and Lucas Valley Road Resurfacing Project (City Project No. 11336), and Authorize the City Clerk to File the Notice of Completion (PW)

Recommended Action – Accept completion

SPECIAL PRESENTATION

6. Special Presentation:

- a. Administer Oath of Office to Police Chief David Spiller
- b. Presentation by Marin Municipal Water District on Drought and Water Conservation
- c. Informational Update by Caltrans on the 101 NB Central San Rafael Off-Ramp Bridge Replacement Project and Traffic Impacts to San Rafael

OTHER AGENDA ITEMS

7. Other Agenda Items:

- a. **Community Development Block Grant (CDBG)**
Resolution Recommending Community Development Block Grant (CDBG) Project Funding for Fiscal Year 2021-22 to the Marin County Board of Supervisors (ED)
Recommended Action – Adopt Resolution
- b. **Amendment of Agreement to Negotiate Exclusively with Goldstone Management, Inc.**
Resolution Approving and Authorizing the City Manager to Sign an Amendment No. 2 to Extend the Agreement to Negotiate Exclusively with Goldstone Management, Inc. Regarding Redevelopment of 1009 and 1001 Fourth Street, 924-926 Third Street, and the Third Street and Lootens Plaza Parking Garage (ED)
Recommended Action – Adopt Resolution

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None

ADJOURNMENT:

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



MINUTES

SAN RAFAEL CITY COUNCIL – MONDAY, MARCH 1, 2021

CORONAVIRUS (COVID-19) ADVISORY NOTICE

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Present: Mayor Kate
Vice Mayor Bushey
Councilmember Hill
Councilmember Kertz
Councilmember Llorens Gulati

Absent: None

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

CLOSED SESSION AT 5:30 P.M.
Listen by phone: (669) 900-9128,
ID: 818-8015-7718#

Public Comment in Open Session at 5:30 P.M. <https://tinyurl.com/Closed-2021-03-01>

OPEN SESSION

1. Mayor Kate to announce Closed Session item.

CLOSED SESSION

2. Closed Session:
 - a. Conference with Labor Negotiators - Government Code Section 54957.6
Lead Negotiators: Timothy L. Davis and Stephanie Vollmer (Burke, Williams & Sorensen)
Agency Designated Representatives: Jim Schutz, Cristine Alilovich, Nadine Hade, Thomas Wong,

Carmen Valdez and Sylvia Gonzalez

Employee Organization: SEIU - Childcare; San Rafael Police Mid-Management Association; Public Employee Union, Local 1; San Rafael Firefighters' Association; San Rafael Police Association; SEIU Local 1021; Western Council of Engineers; San Rafael Fire Chief Officers' Association; Unrepresented Mid-Management; Unrepresented Executive Management

REGULAR MEETING AT 7:00 P.M.

Watch on Webinar: <https://tinyurl.com/cc-2021-03-01>

Watch on YouTube: www.youtube.com/cityofsanrafael

Listen by phone: (669) 900-9128,

ID: 817-3692-0337#

Mayor Kate called the meeting to order at 7:03 p.m. and invited City Clerk Lindsay Lara to call the roll. All members of the City Council were present.

City Attorney Robert Epstein announced that no reportable action was taken in the Closed Session held prior to the meeting.

Mayor Kate provided opening remarks, which included COVID-19, Dining Under the Lights and a land acknowledgement.

City Clerk Lindsay Lara informed the community that the meeting would be streamed live to YouTube and members of the public would provide public comment either on the telephone or through Zoom or YouTube live chat. She explained the process for community participation on the telephone, Zoom and YouTube.

OPEN TIME FOR PUBLIC EXPRESSION

Mayor Kate invited public comment.

Correspondence in real-time through YouTube, Zoom or telephone

- Salamah Locks, Commission on Aging, announced an upcoming meeting on March 4 on safety and healthy living at home for older adults.

CITY MANAGER'S REPORT:

3. City Manager's Report:

City Manager Jim Schutz announced the Employee Recognition 2020 City Awards:

Innovation Award:

- Vinh Pham, Gaby Farias, Michelle Ginn and Nick Giusti

Social Responsibility Award:

- Public Safety, Ana Santiago, Mireya Renteria

Dean Allison Award:

- Catherine Quffa, Lindsay Lara, Thomas Wong, Sylvia Gonzalez-Shelton

Also, he provided a COVID-19 update.

COUNCILMEMBER REPORTS:

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

4. Councilmember Reports:

- Councilmember Bushey reported on a San Rafael Library Foundation meeting.
- Councilmember Hill reported on City/School Liaison Committee, Micro Grid Task Force, and MCCMC meetings.
- Councilmember Llorens Gulati reported on Marin Clean Energy and MCCMC for Climate Action Committee meetings.
- Councilmember Kertz reported on Marin Wildfire Prevention Authority, MCCMC Legislative Committee, and MCCMC Homeless Committee meetings.
- Mayor Kate reported on Marin Transit, TAM, and MCCMC Economic Recovery meetings.

CONSENT CALENDAR:

City Clerk Lindsay Lara noted a clerical error in Item 5.b language on the Agenda.

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

Councilmember Kertz and staff clarified her vote on the Consent Calendar, regarding Item 5.b.

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

5. Consent Calendar Items:

a. **Approval of Minutes**

Approve Minutes of City Council / Successor Agency Regular Meeting of Tuesday, February 16, 2021 and Special Meeting of Wednesday, February 17, 2021 (CC)

Approved minutes as submitted

b. **Housing Development Policies and Permitting**

Second Introduction and Final Adoption of Ordinance 1990: An Ordinance Amending Title 14 of the San Rafael Municipal Code (Zoning) to Amend Section 14.04.040 (Property Development Standards (DR, MR, HR)), Section 14.05.030 (Property Development Standards (GC, NC, O, C/O, R/O, FBWC)), Section 14.12.040 (Exceptions to Property Development Standards), Section 14.16.030 (Affordable Housing), Section 14.16.190 (Height Bonus), Section 14.16.300 (Small Lots), and Section 14.28.040 (Public Notice And Hearing) (CC)

Final Adoption of Ordinance 1990

c. **Public Art Projects**

Second Introduction of Final Adoption of Ordinance 1991: An Ordinance of the City Council of the City of San Rafael Amending San Rafael Municipal Code (SRMC) Section 14.25.040 Exempting from Environmental and Design Review Any Public Art Projects that Undergo Review Through a Separate Review Process Established by the City for that Purpose (CD)

d. **Interim Financial Update and Budget Amendments to Reflect Operational Activity; Mid-Year Personnel Changes**

- i. **First Fiscal Year 2020-2021 Interim Financial Update**
- ii. **Resolution Adopting Amendments to the 2020-2021 Budget**
- iii. **Mid-Year Personnel Changes**

Resolution 14893 - Adopting Amendments to the 2020-2021 Budget

e. **Fire Stations 54 & 55 Contractor Prequalification Procedures - Essential Facilities Projects**

Resolution Approving Use of a Prequalification Process and Authorizing the City Manager and Assistant City Manager to Act as the Prequalification Appeals Panel for the Fire Station 54 and Fire Station 55 Projects (PW)

Resolution 14894 - Resolution Approving Use of a Prequalification Process and Authorizing the City Manager and Assistant City Manager to Act as the Prequalification Appeals Panel for the Fire Station 54 and Fire Station 55 Projects

AYES: Councilmembers: Bushey, Hill, Kertz, Llorens Gulati & Mayor Kate
NOES: Councilmembers: None
ABSENT: Councilmembers: None

OTHER AGENDA ITEMS:

6. Other Agenda Items:

- a. [**Age-Friendly San Rafael Strategic Action Plan**](#)
Informational Report on the Age-Friendly San Rafael Strategic Action Plan 2020-2023 (LR)

Susan Andrade-Wax, Library and Recreation Director presented the Staff Report.

The San Rafael Age-Friendly Task Force, comprised of Sparkie Spaeth, Diana Lopez, Caran Cuneo, Suzie Pollak, Rafi Nazarians and Linda Jackson, gave a presentation.

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment.

Speaker: John Reynolds

Staff responded to public comment.

Councilmembers provided comments.

Councilmember Kertz moved and Councilmember Llorens Gulati moved to accept the report.

AYES: Councilmembers: Bushey, Hill, Kertz, Llorens Gulati & Mayor Kate
NOES: Councilmembers: None
ABSENT: Councilmembers: None

Accepted report

PUBLIC HEARINGS:

7. Public Hearings:

a. **Opportunity Zone Renter Protections**

First Introduction of An Ordinance of the City of San Rafael City Council Adding Chapter 10.111 to the San Rafael Municipal Code, Entitled "Relocation Assistance in Opportunity Zones" (CD)

Ethan Guy, Principal Analyst presented the Staff Report.

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment.

Speakers: John Reynolds, Alex Khalfin, California Apartment Association and Romeo Arrieta, Marin Association of Realtors

Staff responded to public comment.

Councilmembers provided comments.

Staff responded to further questions from Councilmembers.

Councilmember Bushey moved and Councilmember Hill moved to pass the Ordinance to print.

AYES: Councilmembers: Bushey, Hill, Kertz, Llorens Gulati & Mayor Kate
NOES: Councilmembers: None
ABSENT: Councilmembers: None

Passed Ordinance No. 1992 to print

OTHER AGENDA ITEMS (continued):

8. Other Agenda Items:

a. **City Council Appointments to Committees**

Approve Revised City Council Appointments to Committees 2021 (CC)

Lindsay Lara, City Clerk introduced this item.

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

Councilmember Hill moved and Councilmember Kertz moved to approve the appointments.

AYES: Councilmembers: Bushey, Hill, Kertz, Llorens Gulati & Mayor Kate
NOES: Councilmembers: None
ABSENT: Councilmembers: None

Approved Appointments

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None

ADJOURNMENT:

City Attorney Rob Epstein concluded the meeting in memory of Jill Goodall. Mayor Kate adjourned the meeting at 9:28 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2021

KATE COLIN, Mayor

Minutes subject to approval at the meeting of March 15, 2021

MINUTES



**SAN RAFAEL CITY COUNCIL SPECIAL MEETING
CITY COUNCIL RETREAT
TUESDAY, MARCH 2, 2021 AT 12:00 P.M.**

Community Participation:

Conference Call: (669) 900-9128

Meeting ID: 886-2429-3682#

Password: 2021

Present: Mayor Kate
Vice Mayor Bushey
Councilmember Hill
Councilmember Kertz
Councilmember Llorens Gulati

Absent: None

Also Present: City Manager Jim Schutz
City Clerk Lindsay Lara

Mayor Kate called the session to order at 12:20 p.m. and invited City Clerk Lindsay Lara to call the roll. All members of the City Council were present.

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

- a. **Public Comment on Agenda Items**
- b. **City Council Discussion on Work Styles and Team Approach**

ADJOURNMENT:

Mayor Kate adjourned the meeting at 4:07 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2021

Kate Colin, Mayor

ORDINANCE NO. 1992

**AN ORDINANCE OF THE CITY OF SAN RAFAEL CITY COUNCIL ADDING
CHAPTER 10.111 TO THE SAN RAFAEL MUNICIPAL CODE, ENTITLED
“RELOCATION ASSISTANCE IN OPPORTUNITY ZONES”**

Section 1. Findings.

WHEREAS, the Marin Housing Authority estimates there is a shortage of 9,465 affordable rental homes to accommodate low-income renters in Marin County; and

WHEREAS, the Marin Housing Authority estimates that rents in Marin County have been steadily increasing since 2009; and

WHEREAS, increasing rents combined with a housing shortage places substantial pressure on residents of the City of San Rafael who rent housing; and

WHEREAS, there are 23,929ⁱ residential units in San Rafael. Of those, approximately forty-eight percent (48%) are owner occupied and fifty percent (50%) are renter occupied; and

WHEREAS, a portion of San Rafael is located in U.S. Census Tract 1122.01, which is the sole U.S. Census Tract designated a “Qualified Opportunity Zone” by the 2017 Tax Cuts and Jobs Act (the “Act”), within Marin County; and

WHEREAS, in San Rafael’s Qualified Opportunity Zone, there are approximately 1,813ⁱⁱ residential units. Of those, eight percent (8%) are owner occupied and ninety-two percent (92%) are tenant occupied; and

WHEREAS, the estimated median gross monthly income of residents living in Census Tract 1121.01 is \$3,533ⁱⁱⁱ; and

WHEREAS, Census Tract 1122.01 has been identified as a High Segregation and Poverty opportunity category (<https://belonging.berkeley.edu/2021-tcac-opportunity-map>); and

WHEREAS, the Healthy Places Index (HPI), developed by the Public Health Alliance of Southern California, tracks 25 separate indicators of community health and wellbeing, including five indicators related to housing; and

WHEREAS, according to the HPI, Census Tract 1122.01 is in the bottom 10th percentile of census tracts statewide in terms of renters who spend more than 50% of their income on housing costs, while the City of San Rafael as a whole is in the 29th percentile; and

WHEREAS, Qualified Opportunity Zones are designed to spur economic development in distressed communities throughout the country and U.S. possessions by providing tax benefits to investors who invest eligible capital into opportunity zones; and

WHEREAS, in order for taxpayers to defer tax on eligible capital gains under the Act, taxpayers must own and substantially improve property in a Qualified Opportunity Zone; and

WHEREAS, sale of residential properties in San Rafael's Qualified Opportunity Zone and substantial improvements to said properties are likely to result in displacement of residential tenants in the Canal neighborhood due to no fault terminations; and

WHEREAS, the residents living in San Rafael's Qualified Opportunity Zone therefore face a high risk of displacement which displacement could have severe health, safety and economic impacts on these residents; and

WHEREAS, tenants who do not have adequate funds to move and who are forced to move pursuant to a no-fault eviction notice face displacement and great hardship; and

WHEREAS, tenants who find acceptable new housing commonly find themselves required to pay substantial costs related to new housing including, but not limited to, move-in costs to a new home, moving costs, new utility hook-ups, payments for temporary housing, lost work time seeking housing, and increased rent; and

WHEREAS, tenants who find acceptable new housing commonly find themselves required to pay substantial move-in costs of first and last month's rent plus a security deposit equal to one month's rent; and

WHEREAS, tenants evicted in San Rafael are forced to incur substantial costs related to new housing including, but not limited to, move-in costs to a new home, moving costs, new utility hook-ups, payments for temporary housing, and lost work time seeking housing;

WHEREAS, mothers who are evicted experience higher levels of material hardship and parenting stress and are more likely to suffer from depression and to report their health and that of their children as being poor, and the impacts of eviction can endure for years with research showing in some families at least two years after their eviction mothers experienced significantly higher rates of material hardship and depression than their peers^{iv}; and

WHEREAS, evictions of long-term residents can lead to significant decreased credit scores for individuals ages 65 years or older compared to their counterparts who are able to stay, with an average credit score 14.6 points lower^v; and

WHEREAS, by 2035, the number of older households with a disability nationwide will increase by 76 percent to reach 31.2 million, placing tremendous pressure on the supply of ADA-compliant rental housing, making it increasingly difficult for renters with disabilities to find suitable housing after a no-fault eviction^{vi}; and

WHEREAS, numerous California jurisdictions have recognized the impacts of these no-fault evictions are particularly significant on elderly, disabled, and low-income tenants and tenants with minor children, justifying additional payments for households with these tenants; and

WHEREAS, this action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15061 (b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning); and

WHEREAS, this Ordinance is expressly authorized by State law because the Ordinance provides for higher relocation assistance amounts than section 1946.2 of the California Civil Code, which was adopted pursuant to the Tenant Protection Act of 2019 and is therefore more protective than the Act, and because this Ordinance provides tenant protections that are neither prohibited by nor established by other provisions of applicable law;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

Section 2: Addition of Chapter 10.111 to the San Rafael Municipal Code.

Title 10 of the San Rafael Municipal Code, entitled "Businesses, Professions, Occupations, Industries and Trades" is hereby amended by adding a new Chapter, 10.111 entitled "Relocation Assistance in Opportunity Zones" to read in its entirety as follows:

10.111.010 Purpose and Intent

It is the purpose and intent of this chapter to help mitigate the adverse health, safety and economic impacts experienced by residents of rental housing who are displaced from their residences due to no fault terminations of their tenancies. This chapter requires a property owner to mitigate the impact on these residents by providing relocation assistance benefits to residents located within U.S. Census Tract 1122.01, which has been designated a "Qualified Opportunity Zone" by the 2017 Tax Cuts and Jobs Act.

10.111.020. Definitions

For purposes of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section shall either have the meanings set forth in section 10.105.030 of this Code, or below, as applicable:

- A. "Disabled" means a person with a disability, as defined in Section 12955.3 of the Government Code.
- B. "Elderly" means a person sixty-two (62) years or older.
- C. "Lease" means any contract between a tenant household and a landlord or property owner for a specified time, in return for a periodic payment.
- D. "Minor child(ren)" means a person(s) who is eighteen (18) years or younger at the time the Notice of Relocation Assistance is provided to the tenant household.
- E. "No fault termination" shall have the meaning set forth in section 10.105.040(C) of this Code.
- F. "Relocation assistance" means the payment issued to a tenant household which household will be evicted from a dwelling unit pursuant to a "no fault termination."
- G. "Tenancy" means the use or occupancy of a dwelling unit by a tenant.

10.111.030 Eligibility for Relocation Assistance

- A. A tenant household shall be eligible for Relocation Assistance pursuant to this Chapter if:
 - (1) The tenant household has continually occupied a dwelling unit for a period of thirty (30) days or more; and
 - (2) The tenant household occupies a dwelling unit located within U.S. Census Tract 1122.01, and shown in the shaded areas of Map 10.111.030.

Map 10.111.030



B. A tenant household shall not be eligible to receive relocation assistance pursuant to this Chapter if the tenant household is subject to a “for cause termination” pursuant to subsection (B) of section 10.105.040 of this Code.

C. A tenant household that is eligible to receive relocation assistance pursuant to this Chapter shall not be eligible to receive relocation assistance pursuant to the provisions of section 14.16.279 of this Code.

10.111.040 Requirement to Provide Relocation Assistance

If the termination of a tenancy subject to this Chapter qualifies as a “no fault termination” pursuant to subsection (C) of section 10.105.040 of this Code, the landlord of the dwelling unit subject to the no fault termination shall, regardless of the tenant household’s income, provide relocation assistance in accordance with the provisions of this Chapter.

10.111.050 Relocation Assistance Calculation and Procedures

Relocation assistance shall be subject to the following:

A. Calculation of Relocation Assistance

A tenant household that is eligible to receive relocation assistance pursuant to this Chapter shall be entitled to a relocation assistance payment equal to the sum of the following:

(1) First and Last Month’s Rent. Payment for first and last month’s rent shall be equal to two times the greater of (1) the rent established by a lease between the landlord and the tenant household, or (2) the current Fair Market Rent published annually by the U.S. Department of Housing and Urban Development for the San Francisco, CA HUD Metro FMR Area, corresponding to the number of bedrooms in the subject dwelling unit; and

(2) Security Deposit. Payment for a security deposit shall be established by City Council Resolution and based upon the number of bedrooms in the property; and

(3) Moving Expenses. Payment for moving expenses shall be established by City Council Resolution and based on the number of bedrooms in the property; and

(4) Per Diem. A per diem payment for each day remaining in the calendar month in which the tenancy is terminated. The per diem amount shall be established by City Council Resolution, to compensate for costs such as short-term rental accommodations, meals, and other related costs, and based upon tenant household size; and

(5) Supplemental Payments. Tenant households that qualify for the Supplemental Payment Categories set forth in this subsection shall receive up to one supplemental payment. Supplemental payments shall be equal to one month’s rent calculated using the greater of (1) the monthly rent established by a lease between the landlord and the tenant household; or (2) the current Fair Market Rent published

annually by the U.S. Department of Housing and Urban Development for the San Francisco, CA HUD Metro FMR Area, corresponding to the number of bedrooms in the subject dwelling unit.

Supplemental Payment Categories include:

- a. Tenant households with Minor Child(ren). Households with at least one minor child(ren).
- b. Tenant households with Elderly Individual. Households with at least one elderly individual.
- c. Tenant households with Disabled Individual. Households with at least one disabled individual.

B. Notice of Relocation Assistance

(1) Not less than sixty (60) days before a tenancy is terminated pursuant to subsection (C) of section 10.105.040, the landlord shall provide a Notice of Relocation Assistance to the tenant household whose tenancy will be terminated.

(2) The Notice of Relocation Assistance may be provided along with or incorporated within the Notice of Termination required pursuant to section 10.105.050.

(3) The Notice of Relocation Assistance shall be in the same language and/or dialect as the rental agreement was negotiated.

(4) The Notice of Relocation Assistance shall contain the following:

a. the amount of the relocation assistance payment itemized in the manner set forth in subsections (1) through (4) of subsection (A) of section 10.111.050 regarding calculation of relocation assistance;

b. a statement informing the tenant household that it may submit evidence of eligibility for a Supplemental Payment pursuant to subsection (5) of subsection (A) of section 10.111.050 of this Code within twenty-one (21) days of receipt of the Notice of Relocation Assistance.

c. the date by which the relocation assistance payment will be delivered to the tenant household; and

d. a copy of San Rafael Municipal Code Chapter 10.111.

C. Certification of Relocation Assistance and Administrative Fee

Within ten (10) days of issuance of a Notice of Relocation Assistance pursuant to subsection (B) of section 10.111.050 of this Chapter, the landlord shall submit to the City's Community Development Department, a completed Certification of Relocation Assistance on a form approved by the City along with an administrative fee in an amount set forth by separate resolution of the City Council, which fee shall offset the costs in administering this Chapter.

The Certification of Relocation Assistance shall include the following information:

- (1) The address of each dwelling unit in the rental property that is subject to the no-fault termination;
- (2) The monthly rent for each of those dwelling units; and
- (3) The name of every person the landlord considers to be a resident under an oral lease, written lease, or other rental agreement.

D. Payment of Relocation Assistance

(1) Not less than thirty (30) days before the final date of the terminated tenancy, the landlord shall deliver, via certified mail or personal service, to the address of the terminated tenancy, the relocation assistance required by this Chapter.

(2) The relocation assistance payment shall be equal to the sum of the amounts required by subsections (1) through (4) of subsection (A) of section 10.111.050, and shall include the amount set forth in subsection (5) of subsection (A) of section 10.111.050 if the tenant household has provided timely evidence of eligibility for a supplemental payment. The owner must keep all such evidence and documents submitted by the tenant household confidential.

(3) Relocation assistance shall be paid per tenant household, not per tenant.

(4) Relocation assistance shall be paid via check or cashier's check made out to the person(s) who are named on the lease for the terminated tenancy.

E. Verification of Payment of Relocation Assistance.

Before issuance of demolition permits, building permits or other City permits and/or entitlements that would result in No Fault Termination subject to Chapter 10.105 of this Code, the City must receive verification from the landlord of the property seeking said permits and/or entitlements that all relocation assistance required pursuant to this Chapter has been paid. This verification shall be submitted in a form approved by the Community Development Department.

10.111.060 Notices.

Whenever any notice or other communication is required by this Chapter to be served on, provided, given or delivered to, or filed with, any person, that notice or communication may be communicated by personal delivery, certified mail, first class mail, e-mail, or any other similar method that will provide a written record of the notice or communication.

10.111.080 Failure to Comply – Private Right of Action.

Any attempt to recover possession of a rental unit in violation of this Chapter shall render a landlord liable to the tenant for damages permitted by law in a civil action for wrongful eviction. A tenant may also seek injunctive relief and money damages for wrongful eviction and/or failure to pay relocation assistance, including failure to pay a supplemental payment where the tenant household has timely submitted evidence of

eligibility for a supplemental payment pursuant to subsection (5) of subsection (A) of section 10.111.050 of this Code. The prevailing party in an action for wrongful eviction shall recover costs and reasonable attorneys' fees.

10.111.090 Expiration on Termination of Federal Opportunity Zone Designation

This Chapter is intended to provide assistance to renters experiencing higher risks of displacement and renters affected by the Opportunity Zone designation authorized by the 2017 Tax Cuts and Jobs Act. At such time as the Opportunity Zone designation is lifted from Census Tract 1122.01 or the Act is amended so as to not provide its stated tax benefits to investments within Census Tract 1122.01, the provisions of this Chapter shall expire and become null and void. The City Council shall repeal this Chapter should it expire by the terms of this section.

Section 3. Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 4. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, because it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment, and pursuant to CEQA Guidelines section 15183 (consistent with the general plan and zoning).

Section 5. Publication; Effective Date. A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of the Councilmembers voting for or against same, in the Marin Independent Journal, a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of 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 along with the names of those Councilmembers voting for and against the Ordinance.



Kate Colin, Mayor

ATTEST:



LINDSAY LARA, City Clerk

The foregoing Ordinance No. 1992 was read and introduced at a regular meeting of the City Council of the City of San Rafael on Monday, the 1st day of March 2021, and was ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Bushey, Hill, Kertz, Llorens Gulati & Mayor Kate

NOES: Councilmembers: None

ABSENT: Councilmembers: None

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 15th day of March, 2021.



LINDSAY LARA, City Clerk

ⁱ Total Housing Units (+/-235 Margin of Error)(Occupied - +/-542 Margin of Error)

ⁱⁱ Total Housing Units (+/-117 Margin of Error)

ⁱⁱⁱ ACS 2018 5-year

^{iv} Desmond, Matthew & Kimbro, Rachel. (2015). Eviction's Fallout: Housing, Hardship, and Health. *Social Forces*. 94. 10.1093/sf/sov044.

^v Ding, L., & Hwang, J. (2016). The Consequences of Gentrification: A Focus on Residents' Financial Health in Philadelphia. *Cityscape*, 18(3), 27-56.

^{vi} Joint Center for Housing Studies of Harvard University. (2016). Projections and Implications for Housing a Growing Population: Older Households 2015-2035. <https://www.jchs.harvard.edu/research-areas/reports/projections-and-implications-housing-growing-population-older-households-2015>

SUMMARY OF ORDINANCE NO. 1992

AN ORDINANCE OF THE CITY OF SAN RAFAEL CITY COUNCIL ADDING CHAPTER 10.111 TO THE SAN RAFAEL MUNICIPAL CODE, ENTITLED “RELOCATION ASSISTANCE IN OPPORTUNITY ZONES”

This Summary concerns a proposed ordinance of the City Council of the City of San Rafael, designated as Ordinance No. 1982, which will amend the San Rafael Municipal Code to add a new Chapter 10.111 concerning relocation assistance for certain evicted tenants in U.S. Census Tract 1122.01, which has been designated by federal law as an “Opportunity Zone”. Ordinance No. 1982 is scheduled for adoption by the San Rafael City Council at its regular meeting of March 15, 2021. The City Clerk has been directed to publish this Summary pursuant to City Charter and California Government Code section 36933(c)(1).

SUMMARY OF AMENDMENT TO MUNICIPAL CODE

A portion of the Canal neighborhood in San Rafael is located in U.S. Census Tract 1122.01, which is the sole U.S. Census Tract within Marin County that has been designated as a “Qualified Opportunity Zone” by the federal 2017 Tax Cuts and Jobs Act. Qualified Opportunity Zones are designed to spur economic development in distressed communities by providing tax benefits to investors who invest eligible capital into opportunity zones. In order for taxpayers to defer tax on eligible capital gains under the Act, taxpayers must own and substantially improve property in a Qualified Opportunity Zone.

In this Qualified Opportunity Zone, there are approximately 1,813 residential units, the vast majority of which are rental units. Data shows that the estimated median gross monthly income of residents living San Rafael’s Qualified Opportunity Zone is \$3,533 and that this Census Tract is in the bottom 10th percentile of census tracts statewide in terms of renters who spend more than 50% of their income on housing costs, while the City of San Rafael as a whole is in the 29th percentile. Due to the tax benefits of investing in this Qualified Opportunity Zone, it is anticipated that sales of residential properties and substantial improvements to those properties will occur, and are likely to result in displacement of residential tenants, who are at risk of adverse health, safety and economic impacts.

Based on these and other data and findings, the San Rafael City Council has adopted San Rafael Municipal Code Chapter 10.111 which imposes certain requirements on landlords to provide relocation assistance payments to tenant households in the Qualified Opportunity Zone who are displaced by no-fault evictions. The payments are intended to provide displaced tenant households with monetary assistance towards costs they will incur in relocating to a new rental, such as first and last month’s rent, security deposit, and moving expenses.

Copies of Ordinance No. 1982 will be available for public review as of Thursday, March 11, 2021 the City’s website: <https://www.cityofsanrafael.org>. You may also

contact Alicia Giudice, Planning Manager, at (415) 485-3092 or
Alicia.giudice@cityofsanrafael.org for information.

LINDSAY LARA
San Rafael City Clerk
Dated:




Agenda Item No: 5.c
Meeting Date: March 15, 2021

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Prepared by: Paul Jensen (EG)
Director

City Manager Approval: _____ 

TOPIC: OPPORTUNITY ZONE RENTER RELOCATION PAYMENT AMOUNTS

SUBJECT: RESOLUTION ESTABLISHING RELOCATION ASSISTANCE PAYMENT AMOUNTS PURSUANT TO SAN RAFAEL MUNICIPAL CODE CHAPTER 10.111 – RELOCATION ASSISTANCE IN OPPORTUNITY ZONES

RECOMMENDATION: Adopt Resolution.

BACKGROUND: On [March 1, 2021](#), the City Council passed to print Ordinance No. 1992, adding Chapter 10.111 to the San Rafael Municipal Code entitled “Relocation Assistance in the Opportunity Zone.” Final adoption of the ordinance is on the City’s consent agenda at this meeting and, with approval, the ordinance will go into effect in 30 days. Ordinance No. 1992 expands renter relocation assistance for tenants displaced because of a no-fault eviction within the City of San Rafael’s federally designated Opportunity Zone, U.S. Census Tract No. 1122.01.

Ordinance No. 1992 provides that the tenant household being evicted must be provided with relocation assistance to compensate the tenant household for the costs of moving to a new rental unit, including payments for first and last month’s rent, a security deposit, moving expenses, and, for households evicted prior to the end of a calendar month, a per diem payment for each day between the eviction date and the start of the next calendar month, when a new tenancy is assumed to begin, to compensate for temporary housing during that period. In addition, some tenant households may be entitled to a supplemental payment based upon household characteristics, including households having a minor child or children, an elderly individual, or a person with a disability.

Ordinance No. 1992 provides that the amount of the security deposit, moving expense, and per diem payments shall be set by City Council resolution.

ANALYSIS: The proposed resolution would set relocation assistance payment amounts for the following categories and levels:

FOR CITY CLERK ONLY

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Disposition: _____

1. Security Deposit: equal to one month's rent in the existing tenancy. Under Chapter 10.111, rent is defined as the higher of the leased rent amount or the annual HUD defined Fair Market Rent.¹
2. Moving Expenses: moving expense payments are set at \$500 for studio and 1-bedroom apartments, \$750 for 2-bedroom apartments, \$1,000 for 3-bedroom apartments, and \$1,500 for 4-bedroom apartments; and
3. Per diem for Temporary Housing: \$150 per diem payment to households who are displaced before the end of the month. Payment would be equal to \$150 for every day between the eviction and the start of the next month. This payment would be intended to cover temporary housing costs related to a partial month move.

The resolution provides that for purposes of the above payments, the "rent" shall be calculated as the highest monthly rental amount paid to the landlord by the tenant household within the year prior to issuance of a Notice of Relocation Assistance.

In addition to setting relocation assistance payment amounts, the proposed resolution also requires periodic, but at least annual public reports from the Community Development on pending Opportunity Zone projects. Where possible, these updates and reports will use publicly available information, including but not limited to:

1. Planning and Building Applications for residential development projects which may trigger a no-fault eviction;
2. Number of "Notice of Relocation Assistance" filings;
3. Number of "Certification of Relocation Assistance" filings;
4. Renter Relocation Assistance Administrative fee payments; and,
5. Requests for Supplemental Renter Relocation Assistance.

FISCAL IMPACT: There is no direct fiscal impact to the City for adopting this resolution. In the event of a renter relocation assistance payment under Chapter 10.111, the landlord would be required to pay an administrative fee equal to between 10% to 20% of the renter relocation assistance payment to the Tenant. As discussed early, these funds would be used to cover costs associated with implementation of the program including hiring a third-party to provide administration services on behalf of the City.

OPTIONS:

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

1. Adopt resolution as presented.
2. Adopt resolutions with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt resolution.

ATTACHMENTS:

Resolution

¹ The proposed resolution corrects an incorrect description in the March 1, 2021 staff report which is correct in the Ordinance and does not change the relocation assistance amount. The staff report's description showed payments as including first month's rent (1 x rent) and a security deposit payment equal to two times the first month's rent (2 x rent). Ordinance No. 1992 actually requires separate payments for first and last month's rent (2 x rent) and a security deposit payment equal to one month's rent (1 x rent).

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
ESTABLISHING RELOCATION ASSISTANCE PAYMENT AMOUNTS PURSUANT
TO SAN RAFAEL MUNICIPAL CODE CHAPTER 10.111 – RELOCATION
ASSISTANCE IN OPPORTUNITY ZONES**

WHEREAS, on March 15, 2021, the City Council adopted Ordinance No. 1992, adding Chapter 10.111 – Relocation Assistance in Opportunity Zones to the San Rafael Municipal Code (“SRMC”); and

WHEREAS, in adopting Ordinance No. 1992, the City Council made numerous findings regarding the disproportionate impacts that no-fault evictions have on older adults, disabled, and low-income tenants and tenants with minor children, justifying additional payments for households with these tenants; and

WHEREAS, each of the findings and recitals set forth in Ordinance No. 1992 is incorporated herein by this reference; and

WHEREAS, Ordinance No. 1992 establishes the calculation for relocation assistance payments and requires that the relocation assistance required by the Ordinance include payments for security deposit, moving expenses, and per diem; and

WHEREAS, this Resolution establishes the payment amounts for security deposit, moving expenses, and per diem; and

WHEREAS, the City Council finds that property owners generally require an incoming tenant to make a security deposit payment equal to one month’s rent upon execution of a rental lease agreement, therefore the relocation assistance should include an amount to compensate tenants for this cost; and

WHEREAS, the City Council finds that: rental lease agreements generally commence on the first day of the month following their execution, and tenants often must find temporary housing for the period between the date the new lease agreement is executed and the date on which the tenancy commences; and the November 2019 Marin County Visitor’s Bureau’s State of the Visitor Industry in Marin County Economic Report found that visitors to Marin County spend on average \$147 when they stay overnight; therefore the relocation assistance should include an amount to compensate tenants for this cost; and

WHEREAS, the City Council finds that a 2019 Zillow research study found that the average moving cost: for a 1-bedroom apartment ranged from \$200 to \$500; for a 2-bedroom apartment ranged from \$400 to \$700; for a 3-bedroom apartment ranged from \$560 to \$1,000; and for a 4-bedroom apartment ranged from \$800 to more than \$2,000; and

WHEREAS, the City Council finds and declares that without robust reporting requirements in the Tax Cuts and Jobs Act, the City Council, staff, and community at large have no means to track or be notified of pending Opportunity Zone projects; and

WHEREAS, the City Council declares it is in the best interest of the City to understand when Opportunity Zone projects are implemented within the City because these projects may increase the likelihood of no-fault evictions leading to the displacement of marginalized tenants; and

WHEREAS, in order to ensure the City is better apprised of the implementation of Opportunity Zone projects, the City Council desires to receive periodic updates and reports on pending Opportunity Zone projects;

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of San Rafael hereby adopts the following relocation assistance payment amounts and reporting requirements:

SECTION 1. SECURITY DEPOSIT

A tenant household shall be entitled to a security deposit payment in an amount equal to the greater of (1) the monthly rent established by the lease between the landlord and the tenant household as defined in SRMC Chapter 10.111, or (2) the current Fair Market Rent published annually by the U.S. Department of Housing and Urban Development for the San Francisco, CA HUD Metro FMR Area, corresponding to the number of bedrooms in the subject dwelling unit.

SECTION 2. MOVING EXPENSES

A tenant household shall be entitled to the following moving expense payment:

	Studio	1-Bedroom	2-Bedroom	3-Bedroom	4-Bedroom
Moving Expenses	\$ 500	\$ 500	\$ 750	\$ 1,000	\$ 1,500

SECTION 3. PER DIEM

A tenant household shall be entitled to a per diem equal to one hundred fifty dollars (\$150) for every day between the eviction date and the start of the next calendar month.

SECTION 4. MONTHLY RENT. Where this Resolution and Ordinance No. 1992 refer to “rent established by the lease between the landlord and the tenant household,” said “rent” shall be calculated as the highest monthly rental amount paid to the landlord by the tenant household within the year prior to issuance of a Notice of Relocation Assistance.

SECTION 5. REPORTING

1. Not less than annually, the Community Development Department shall provide an update and report to the City Council on pending Opportunity Zone projects. Where possible, these updates and reports shall use publicly available information, including but not limited to Planning and Building Applications for residential development projects which may trigger a no-fault eviction;
2. Number of "Notice of Relocation Assistance" filings;
3. Number of "Certification of Relocation Assistance" filings;
4. Renter Relocation Assistance Administrative fee payments; and,
5. Requests for Supplemental Renter Relocation Assistance.

SECTION 6. AMENDMENT

This Resolution and the amounts set forth in this Resolution may be amended by the City Council in their sole discretion and at any time to ensure that the Resolution and the amounts set forth herein are appropriate and effective.

I, **LINDSAY LARA**, City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City held on the 15th day of March 2021, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Lindsay Lara, City Clerk



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Library and Recreation

**Prepared by: Catherine Quffa,
Assistant Library & Recreation Director**

City Manager Approval: _____

TOPIC: RECREATION PROGRAM SOFTWARE AGREEMENT

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PRODUCT AND SERVICES AGREEMENT WITH ACTIVE NETWORK, LLC FOR SOFTWARE AS A SERVICE TO SUPPORT RECREATION PROGRAM ADMINISTRATION IN AN AMOUNT NOT TO EXCEED \$310,000 OVER THREE YEARS

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to execute a product and services agreement with Active Network, LLC for software as a service to support recreation program administration in an amount not to exceed \$310,000 over three years.

BACKGROUND:

For decades, the City has used software systems to manage the recreation programming, including administering contract and staff-led classes, camps, and programs; pool memberships and passes; park, field, and facility rentals; and all customer-based recreation transactions. In 2016, the City moved from CLASS (Computerized Leisure Activity Software System) to PerfectMind, Inc. The goal of transitioning from CLASS to PerfectMind was to modernize the current platform, meet mobility expectations of customers, automate communications and notifications, and improve the backend administration process such as reporting and analytics.

The City's five-year agreement with PerfectMind expires in December 2021 and City staff launched an RFP process in September 2020 to explore alternative recreation software options. The goal of this process was to determine if there were alternative vendors that would be able to meet the needs of the department and the community.

ANALYSIS:

The City launched the recreation software RFP on September 1, 2020 posting it to the City's website and proactively sharing the RFP with 17 prospective recreation software vendors. The City received proposals from five vendors and invited four of them, including the City's current vendor (PerfectMind), to provide product demonstrations for a cross-departmental team of staff from the Library and Recreation, Finance,

FOR CITY CLERK ONLY

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Council Meeting: _____

Disposition: _____

and Digital Service departments. Staff followed up with specific vendors for additional demonstrations on financial processes and reporting as well as the different recreation management modules.

During the review process, staff determined that Active Network provided the most streamlined and easy-to-use customer interface that would provide the greatest benefit to our community. Active Network also had the most comprehensive and robust financial reporting that would best integrate into the City's financial systems and processes. Additionally, Active Network's backend interface was intuitive, and recreation staff concluded it provided the best administrative functionality, saving staff time and capacity.

Active Network also provided pricing that was competitive with the other vendors. The below table provides a cost breakdown of the recreation software vendors invited to present to the City as well as the average amount spent in the first four year of the PerfectMind contract. The table includes an estimate of the credit card processing fees based on average department revenue.

Vendor	Annual Subscription	Processing Fee Estimate	Estimated Processing Fee %	Annual Total	Set Up Fee
PerfectMind - Current ¹	\$40,000	\$57,000	1.8-3%	\$97,000	\$199,002
Active Network	\$30,000	\$52,710	2.5%	\$82,710	\$48,000
CivicRec	\$30,000	\$63,252	3%	\$93,252	\$10,883
PerfectMind - Proposed	\$37,148	\$42,168	2% ²	\$79,316	N/A
Vermont Systems	\$15,000	\$63,252	3%	\$78,252	\$15,710

In evaluating the cost differences between the vendors, Active Network offers a unique model in which they are also the credit card processor. All other vendors outsource credit card processing to third party payment processors. Having these services bundled into one provider avoids accounting discrepancies that can result from connection errors between the recreation software and the credit card processing systems.

Third-party credit card processors charge a variable rate for processing payments based on credit card type, bank, and more. Processing fees are difficult to predict but, on average, credit card processors charge approximately 3% per transaction. PerfectMind does offer the option of using Elavon, Inc. for payment processing, which currently has a State contract that allows it to provide reduced rates to government agencies (approximately 1.8-2% per transaction). It is important to note that Elavon's contract with the State expires in May 2022 and it is not clear if local governments will continue to have access to these reduced rates beyond that time.

While Active Network's set up fee is greater than the alternative vendors, they also provide a greater level of support and management of the system development and implementation process. When considering the benefits that the hands-on support and the system overall will provide to the City and our community in the long-term, this one-time cost is justified.

Through Council's approval, the City will enter into a three-year agreement with Active Network, with an option to extend for an additional three years, at a cost not to exceed \$310,000 for the first term of the

¹ In 2016 when the City selected PerfectMind as a vendor, there were fewer recreation software vendors, and the market was not as competitive as it is today. At the time, PerfectMind offered the most affordable services. Additionally, the City's current agreement with PerfectMind includes approximately \$40,000 annually for Childcare registration software. The City has determined that our Childcare programs will be utilizing EZCare for program registration moving forward.

² As the City does not know if the Elavon contract will be extended past May 2022 at the current rates, staff estimated that the processing fees may increase slightly with a new contract.

agreement. A cross-departmental team of staff will work with Active Network to build and migrate from the current PerfectMind platform prior to the contract expiration in December 2021.

FISCAL IMPACT:

Active Network uses a Software as a Service (SaaS) pricing model where the support and maintenance of the product are built into the annual subscription cost. Software updates, technical support, and maintenance services are included in the platform fee.

The total cost of the three-year agreement with Active Network, including one-time charges for platform development, migration, and training is:

Annual Subscription x 3 years:	\$94,575 ³
Estimated Payment Processing Fees x 3 years:	\$158,130
One-Time Set Up Fee:	<u>\$48,000</u>
Total over the 3-year term:	\$300,705 not to exceed \$310,000

The one-time set up fee will be funded through the technology replacement fund. Both the annual subscription and the payment processing fees will be funded through the Recreation Revolving Fund (222). The Recreation Revolving Fund annual budget includes sufficient funds in both software licensing and credit card processing to cover these expenses without additional appropriations.

OPTIONS:

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

1. Adopt the resolution as proposed, approving the agreement with Active Network, LLC.
2. Adopt resolution with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt a resolution authorizing the City Manager to execute a product and services agreement with Active Network, LLC for software as a service to support recreation program administration in an amount not to exceed \$310,000 over three years.

ATTACHMENTS:

1. Resolution
2. Active Network, LLC Product and Services Agreement

³ The Active Network contract allows for an annual subscription increase not to exceed 5% annually. Active Network has informed the City that typically the annual increase is less than the 5%. For budgeting purposes, staff have assumed a 5% annual increase.

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A PRODUCT AND SERVICES AGREEMENT WITH ACTIVE NETWORK, LLC FOR SOFTWARE AS A SERVICE TO SUPPORT RECREATION PROGRAM ADMINISTRATION IN AN AMOUNT NOT TO EXCEED \$310,000 OVER THREE YEARS

WHEREAS, the Library and Recreation department relies on software for recreation program registration and management, and facility scheduling and management; and

WHEREAS, the Library and Recreation department has utilized PerfectMind recreation software since 2016; and

WHEREAS, the Library and Recreation, Finance, and Digital Service departments conducted a solicitation, review, selection and negotiation process to identify a recreation software product that would provide improved services over the current platform; and

WHEREAS, Active Network, LLC was selected as the vendor that would best meet the City's criteria for a recreation software platform while providing a competitive price; and

WHEREAS, the Library and Recreation, Finance, and Digital departments along with the City Attorney successfully negotiated an Agreement between the City of San Rafael and Active Network, LLC for a three-year term of design, installation, services, and maintenance;

NOW, THEREFORE BE IT RESOLVED, that the City Council hereby authorizes the City Manager to execute a product and services agreement with Active Network, LLC for software as a service to support the recreation division program administration in an amount not to exceed \$310,000 over three years, in the form included with the staff report for this resolution, 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 the City of San Rafael, held on Monday, the 15th day of March 2021, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Lindsay Lara, City Clerk

PRODUCT AND SERVICES AGREEMENT

CLIENT INFORMATION			
ORGANIZATION FULL LEGAL NAME:	City of San Rafael	ADDRESS:	618 B Street, San Rafael, CA 94901
CONTACT NAME:	Catherine Quffa	TELEPHONE:	415-485-3078
EMAIL:	catherine.quffa@cityofsanrafael.org		

OVERVIEW OF AGREEMENT
This Agreement consists of this cover page, the Schedule, the General Terms, and the following Product Attachments:
Recreation Management Product Attachment

NOTE: If Client is tax exempt, certificate must be provided along with signed contract.

In consideration of the mutual promises and covenants contained in this Agreement, Client and Active hereby agree to be bound by this Agreement. By signing below, Client acknowledges and confirms that it has read this Agreement.

CLIENT	ACTIVE NETWORK, LLC
Signature: _____	Signature: <u>Randy L Skemp</u>
Name: _____	Name: <u>Randy L. Skemp</u>
Title: _____	Title: <u>VP of Sales</u>
Date: _____	Date: <u>3-1-2021</u>

Active Network, LLC
 717 N Harwood Street, Suite 2500, Dallas, TX 75201
 Telephone: (469) 291-0300

Products and Services General Terms

Your relationship with Active and your use of Active's products and services (including your licensing of Active's SaaS and/or Desktop Software, your use of Services, and/or your purchase or leasing of Hardware) are subject to the terms and conditions set forth herein and are between you and Active. Capitalized terms are defined in [Section 7](#) below, unless otherwise defined within the body of this Agreement, the applicable Product Attachment, or Schedule. In order to use the Products, you (referred to herein as "**Client**") must first agree to this Agreement. You represent and warrant that you have the necessary and full right, power, authority, and capability to accept this Agreement, to bind your organization, and to perform your obligations hereunder. You can accept this Agreement by: (a) clicking to accept or agree to this Agreement, where this option is made available to you by Active in the user interface for any Product; (b) where a link to this Agreement appears in an order form, Schedule, or other document provided to you by Active, by signing such document; (c) by signing this Agreement, if there is a designated area to sign; or (d) by actually using the Products. In the case of (d), you understand and agree that Active will treat your use of the Products as acceptance of this Agreement from that point onwards. You may not use the Products and may not accept this Agreement if (i) you are not of legal age to form a binding contract with Active, or (ii) you are a person barred from receiving the Products under the laws of the United States or other countries, including the country in which you are a resident or from which you use the Products. You may not use the Products if you do not accept this Agreement. By accepting this Agreement, you agree as follows:

1. AGREEMENT STRUCTURE AND SCOPE.

1.1. General Terms and Incorporation of Product Terms. This Agreement establishes the general terms and conditions to which the parties have agreed to in order to facilitate the licensing of Software and the provision of Products. Additional Product-specific terms and conditions are set forth in one or more documents referenced in the applicable Schedule, each of which is incorporated herein (each, a "**Product Attachment**"). All references to the "**General Terms**" mean this document, exclusive of Product Attachments and Schedules.

1.2. Incorporation of Schedules. The parties may enter into new Schedules from time to time. Each Schedule incorporates the terms of these General Terms and the applicable Product Attachment.

1.3. Incorporation of EULAs. Client's use of any Third Party Products hereunder may be subject to, and Client will comply with, this Agreement and any applicable Third Party EULA(s).

1.4. Affiliates. Client's Affiliates may order Products from Active (or one of Active's Affiliates) by entering into a Schedule. In the event that a Client Affiliate enters into a Schedule with Active (or an Affiliate of Active), reference in this Agreement to "**Client**" and "**Active**" will mean the respective entity that accepts (as described in the Preamble) the applicable Schedule. Each such Schedule will be deemed to be a separate agreement.

2. FINANCIAL TERMS.

2.1. Fees; Payment Terms; Currency. Fees, currency, and payment terms are specified in the applicable Schedule. Unless otherwise specified in the Schedule, all amounts owed by Client that are not directly collected by Active are due from Client within 30 days from either (a) the end of the remittance cycle during which the fees accrued (if related to registrations or transaction processing), or (b) the date of the applicable invoice. Past due fees will accrue interest at the lesser of the annual rate of 10% per annum or the maximum amount permitted by applicable law. In the event of any non-payment or delay in paying a fee, Client agrees to reimburse Active for any fees and expenses incurred in its collection efforts. Payment of fees is under no circumstances subject to or conditioned upon the delivery of future Products or functionality. Except as otherwise provided in a Schedule, Active may modify the subscription fees once per calendar year upon 30 days' notice, provided that any such increase will not exceed 5% over the then-current subscription fees.

2.2. Taxes. The prices in this Agreement do not include Taxes. Client is responsible for and agrees to pay any and all Taxes. If Client is tax-exempt, Client will send Active a copy of its valid tax-exempt certificate (or, as applicable, its reseller's certificate) prior to execution of any Schedule. Client is solely responsible for determining which, if any, Taxes apply to Client's use of the Products and for collecting, remitting, and reporting the correct amounts of all such Taxes to the applicable governmental authorities, even if Active provides Client with tools that assist Client in doing so. In the event that a governmental authority requires Active to pay any Taxes attributable to Client's use of the Products, Client agrees to defend, indemnify, and hold Active harmless from all such Taxes and all costs and expenses related thereto.

3. LIMITED RIGHTS AND OWNERSHIP; INDEMNIFICATION.

3.1. Reservation of Rights. All rights not expressly granted in this Agreement are reserved by Active and its licensors. Client acknowledges that: (a) all Protected Materials are licensed and not sold; (b) Client acquires only the right to use the Products in accordance with this Agreement, and Active and/or its licensors will retain sole and exclusive ownership of and all rights, title, and interests in the Products, including the following: (i) all Intellectual Property embodied or associated with the Products, (ii) all deliverables and work product associated with the Products, and (iii) all copies and derivative works thereof; and (c) the Products, including the source and object codes, logic, and structure, contain and constitute valuable trade secrets of Active and its licensors.

3.2. Restrictions. Unless otherwise set forth in a EULA, Product Attachment, or Schedule, Client will not itself, or through any Affiliate, employee, consultant, contractor, agent, or other third party: (a) sell, resell, distribute, host, lease, rent, license, or sublicense, in whole or in part, the Protected Materials; (b) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer, or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure, or other elements of the Products in whole or in part, for competitive purposes or otherwise; (c) allow access to, provide, divulge, or make available the Protected Materials to any user other than those who are licensed to have such access; (d) write or develop any derivative works based upon the Products; (e) modify, adapt, translate, or otherwise make any changes to the Products or any part thereof; (f) use the Protected Materials to provide processing services to third parties, or otherwise use the same on a service bureau basis; (g) disclose or publish, without Active's prior written consent, (i) performance or capacity statistics, or the results of any benchmark test performed on the Products, or (ii) the terms (but not the existence) of this Agreement or other valuable trade secrets of Active or its licensors; (h) without Active's prior written consent, perform or disclose or cause to be performed or disclosed any information related to any security penetration or similar tests; (i) disclose or otherwise use or copy the Protected Materials except as expressly permitted herein; (j) remove from any Products identification, patent, copyright, trademark, or other notices or circumvent or disable any security devices' functionality or features; (k) contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or Intellectual Property rights, title, or interests of Active in and to any Products; (l) use the Products for other than authorized and legal purposes, consistent with all applicable laws, regulations, and the rights of others; (m) take any steps to avoid or defeat the purpose of security

measures associated with the Products, such as sharing of login and password information, or attempt to circumvent any use restrictions; or (n) except as expressly permitted by this Agreement, use the Protected Materials for hosting purposes.

3.3. Enforcement. Client will (a) ensure that all users of Products comply with the terms and conditions of this Agreement; (b) promptly notify Active of any actual or suspected violation thereof; and (c) cooperate with Active with respect to any investigation and enforcement of this Agreement.

3.4. Intellectual Property Indemnification. Active agrees to defend, settle, and pay damages (including reasonable attorneys' fees) relating to any third party claim, demand, cause of action, or proceedings (whether threatened, asserted, or filed) ("**Claims**") against Client to the extent that such Claim is based upon Active's proprietary Products (excluding Third Party Products) directly infringing a United States patent, registered United States copyright, or registered United States trademark, provided that the Products are used in compliance with this Agreement.

4. DISCLAIMERS AND LIMITATION OF LIABILITY.

4.1 EXCEPT AS OTHERWISE SET FORTH HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU ACKNOWLEDGE AND AGREE THAT THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE WARRANTIES, IF ANY, SET FORTH HEREIN AND IN THE PRODUCT ATTACHMENTS ARE LIMITED TO THEIR EXPRESS TERMS AND ARE IN LIEU OF, AND ACTIVE, ITS LICENSORS, AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY (a) WARRANTY THAT THE PRODUCTS ARE ERROR-FREE OR "BUG"-FREE, ACCURATE, SECURE, OR RELIABLE; (b) WARRANTY THAT THE PRODUCTS WILL OPERATE WITHOUT INTERRUPTION; (c) WARRANTY THAT ALL ERRORS WILL BE CORRECTED OR THAT THE PRODUCTS WILL COMPLY WITH ANY LAW, RULE, OR REGULATION; (d) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT; (e) IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE; AND (f) WARRANTY THAT THE PRODUCTS WILL MEET CLIENT'S REQUIREMENTS. ACTIVE WILL NOT BE LIABLE FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT, STATUTE, TORT, OR OTHERWISE), INCLUDING DAMAGES FOR LOST PROFITS, LOST SAVINGS, COST OF REPLACEMENT SERVICES, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, WHETHER OR NOT ACTIVE HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HOWEVER, SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION ONLY APPLIES WHERE ALLOWED. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ACTIVE'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO (I) THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT AS CONSIDERATION FOR THE SPECIFIC PRODUCT UNDER THE APPLICABLE SCHEDULE GIVING RISE TO SUCH CLAIMS DURING THE 12 MONTH PERIOD PRECEDING THE DATE ON WHICH THE FIRST CAUSE OF ACTION AROSE, OR (II) IF NO SUCH PAYMENTS HAVE BEEN MADE OR SUCH AMOUNTS CANNOT BE CALCULATED, 10,000 U.S. DOLLARS (OR THE EQUIVALENT THERETO AS DETERMINED BY THE APPLICABLE COUNTRY'S CURRENCY), AS APPLICABLE. NOTWITHSTANDING THE ABOVE, IF YOU RESIDE OUTSIDE OF THE U.S., THIS DOES NOT AFFECT ACTIVE'S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ITS NEGLIGENCE, NOR FOR FRAUDULENT MISREPRESENTATION, MISREPRESENTATION AS TO A FUNDAMENTAL MATTER, OR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

4.2 TO THE EXTENT THIS AGREEMENT IS GOVERNED BY ENGLISH LAW, THE FOLLOWING APPLIES: ACTIVE IS LIABLE UNDER APPLICABLE STATUTORY PROVISIONS FOR INTENT AND GROSS NEGLIGENCE. THE SAME APPLIES TO ASSUMPTIONS OF GUARANTEES, STRICT LIABILITY, OR INJURY TO LIFE, LIMB, OR HEALTH. ACTIVE IS LIABLE FOR ANY NEGLIGENT BREACHES OF ESSENTIAL CONTRACTUAL OBLIGATIONS BY ACTIVE BUT THE AMOUNT SHALL BE LIMITED TO THE TYPICALLY OCCURRING FORESEEABLE DAMAGE. ANY ADDITIONAL LIABILITY OF ACTIVE IS EXCLUDED.

4.3 TO THE EXTENT THIS AGREEMENT IS GOVERNED BY AUSTRALIAN LAW, THE FOLLOWING APPLIES: EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND EXCEPT FOR ANY CONDITION OR WARRANTY THE EXCLUSION OF WHICH COULD BE VOID OR OTHERWISE CONTRAVENE THE TRADE PRACTICES ACT 1974 (CTH) OR ANY OTHER APPLICABLE LAW ("NON EXCLUDABLE CONDITION"), ALL SOFTWARE AND SERVICES OF ACTIVE ARE PROVIDED TO YOU ON AN "AS-IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR ANY NON-EXCLUDABLE CONDITION OR OTHERWISE AS CONTAINED IN THIS AGREEMENT, ACTIVE EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE USE OF ITS SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE SPECIFICATIONS WILL MEET YOUR REQUIREMENTS. WHERE LEGISLATION IMPLIES INTO THIS AGREEMENT ANY NON-EXCLUDABLE CONDITION, ACTIVE'S LIABILITY FOR ANY BREACH OF SUCH NON-EXCLUDABLE CONDITION WILL BE LIMITED AT ACTIVE'S SOLE DISCRETION TO ONE OR MORE OF THE FOLLOWING: (1) IN THE CASE OF GOODS, ANY ONE OR MORE OF THE FOLLOWING: (I) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; (II) THE REPAIR OF THE GOODS; (III) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR (IV) THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; (2) IN THE CASE OF SERVICES: (I) THE SUPPLYING OF THE SERVICES AGAIN; OR (II) THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN. (B) ACTIVE SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFIT, LOSS OF GOODWILL, WORK STOPPAGE, DATA LOSS, ANTICIPATED SAVINGS OR COMPUTER FAILURE WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF ACTIVE OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH LOSS OUGHT REASONABLY TO HAVE BEEN IN THE CONTEMPLATION OF THE PARTIES AT THE AGREEMENT DATE. DESPITE ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, ACTIVE'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY YOU AS CONSIDERATION FOR THE SOFTWARE AND SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

4.4 FOR THE PURPOSES OF THIS SECTION 4 AND ANY INDEMNIFICATION PROTECTING ACTIVE UNDER THIS AGREEMENT, REFERENCE TO ACTIVE WILL ALSO INCLUDE ITS SUPPLIERS AND LICENSORS.

5. TERM AND TERMINATION.

5.1. Term. The term of this Agreement will be set forth in the applicable Product Attachment.

5.2. Termination. Either party may terminate this Agreement, including any or all Product Attachments and Schedules executed hereunder, immediately upon written notice: (a) in the event that the other party commits a non-remediable material breach of this Agreement and/or the applicable Product Attachment or Schedule, or if

the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within 30 days of being notified in writing of such breach, except for breach of Section 2 of these General Terms which will have a 10 day cure period; or (b) in the event of institution of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against either party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within 30 days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by either party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code. Where a party has the right to terminate this Agreement, such party may at its discretion either terminate the entire Agreement or the applicable Product Attachment or Schedule; provided however, that termination of a Product Attachment will automatically terminate all Schedules entered into pursuant to such Product Attachment. Product Attachments and Schedules that are not terminated will continue in full force and effect under the terms of these General Terms. Following termination of this Agreement or a Product Attachment (for whatever reason), if requested by Active, Client will certify that it has returned or destroyed all copies of the applicable Protected Materials and acknowledges that its rights to use the same are relinquished. Termination for any reason will not excuse Client's obligation to pay in full any and all amounts due, nor will termination by Active result in a refund of fees paid.

6. GENERAL PROVISIONS.

6.1. U.S. Government Restricted Rights. The Products are provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (b)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The Manufacturer is Active Network, LLC or one of its Affiliates or subsidiaries.

6.2. Suspension. Active will be entitled to suspend any or all Services or deactivate Client's account, including suspending its performance and obligation to remit payments hereunder, upon 10 days' written notice to Client in the event Active reasonably believes that Client is in breach of this Agreement.

6.3. Force Majeure. Neither party will incur any liability to the other party on account of any loss, claim, damage, or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement, if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without any negligence on the part of the party seeking protection under this subsection, including internet service provider or third party payment delays or failures, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire, or explosions. Dates by which performance obligations are scheduled to be met will be extended for a time equal to the time lost due to the delay so caused.

6.4. Assignment. Active may assign this Agreement and any or all of its rights and obligations herein without Client's approval. Except as provided in an applicable Product Attachment, Client may not assign or transfer this Agreement without the prior written consent of Active.

6.5. Export; Anti-Bribery. The Products may include encryption software or other encryption technologies that may be controlled for import, transfer, export, or other purposes under Export Laws. Client may not export, re-export, transfer, or re-transfer or assist or facilitate in any manner the export, re-export, transfer, or re-transfer of or provide access to any portion of the Products in violation of Export Laws, as determined by the laws under which Client operates, including: (a) to any country on Canada's Area Control List; (b) to any country subject to U.N. Security Council embargo or action; (c) contrary to Canada's Export Control List Item 5505; (d) to countries subject to U.S. economic sanctions and embargoes; and (e) to persons or entities prohibited from receiving U.S. exports or U.S.-origin items, including, to any person or entity appearing on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List; the Bureau of Industry and Security's Denied Persons List, Entity List, or Unverified List; or the Department of State Debarred List. Client hereby represents and covenants that: (i) Client is eligible to access the Products under Export laws and all other applicable laws; and (ii) Client will import, export, re-export, transfer, or re-transfer the Products to, or use or access the Products in, any country or territory only in accordance with Export Laws and all other applicable laws. Furthermore, Client hereby represents and covenants that, in connection with its respective activities conducted under this Agreement, it will comply with the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act of 2010, as amended, and the Convention on Combating Bribery of Foreign Public Officials and has not and will not make or receive, directly or indirectly, any payments or gifts, or offers or promises of payments or gifts or things of value in exchange for anything that may arise out of this Agreement in a manner that would violate these laws and rules or any other applicable anti-corruption or anti-bribery laws or regulations.

6.6. Notices. Any notices required to be given under this Agreement will be in writing sent to the address on file with Active for Client or, in the case of Active, to the address set forth in Section 7 of these General Terms to the attention of Legal Department. Notices will be deemed received the next day if sent via overnight mail or courier with confirmation of receipt, or 3 days after deposited in the mail sent certified or registered.

6.7. Relationship. This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

6.8. Severability. If any part or provision of this Agreement is held to be unenforceable, illegal, or invalid by a court of competent jurisdiction for any reason whatsoever, (a) the validity, legality, and enforceability of the remaining provisions of this Agreement (including all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) will not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the unenforceable, illegal, or invalid provision will be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable, illegal, or invalid provision and this Agreement will be deemed amended accordingly.

6.9. Survival. The following provisions will survive any termination, cancellation, or expiration of this Agreement: Sections 1, 2, 3.2, 4, 5.2, 6, and 7 of these General Terms, and such other provisions that should reasonably survive termination, cancellation, or expiration hereof.

6.10. Amendments; No Waiver. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing and signed by the party against which it is sought to be enforced.

6.11. Entire Agreement. This Agreement constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, agreements, requests for proposals, proposals, conditions, representations, and warranties, or other communication between the parties relating to its subject matter as well as any prior contractual agreements between the parties. No modification to this Agreement will be binding unless it is in writing and includes a signature by an authorized representative of each party. All pre-printed terms of any Client purchase order, business processing document, or

on-line terms will have no effect. There have been no material representations or statements by any person or party to this Agreement as an inducement for a party hereto to accept this Agreement other than what is expressly set forth in writing herein.

6.12. No Third Party Beneficiaries. This Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party, including any employee of a party, any client of a party, or any employee of a client of a party. Notwithstanding the above, the parties acknowledge that all rights and benefits afforded to Active under this Agreement will apply equally to its licensors and suppliers, and the owner of the Third Party Products with respect to the Third Party Products, and such third parties are intended third party beneficiaries of this Agreement, with respect to the Third Party Products as applicable.

6.13 Governing Law and Venue. Except as set forth below, this Agreement will be governed by the laws of the State of Texas, without giving effect to the conflict of law provisions thereof. The parties irrevocably agree that any legal action or proceeding relating to this Agreement will be instituted only in any state or federal court in Dallas County, Texas. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act will apply to this Agreement. THE PARTIES HERETO IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. Notwithstanding the above, for purposes of this Agreement, certain of the terms and conditions will vary depending on the location of the Client. If a country or term is not specified below, then the Governing Law and Venue set forth above shall apply.

If your principal place of business is in:	The governing law is:	The courts having exclusive jurisdiction are:
Canada	Province of British Columbia	Province of British Columbia
United Kingdom, Ireland, Germany, France, or Austria	England	England
Singapore	Singapore	Singapore
New Zealand	England	England
Hong Kong	Hong Kong	Hong Kong
Australia	New South Wales	Sydney, New South Wales
Switzerland	England	England
Denmark	England	England
Netherlands	England	England
Spain	England	England
Sweden	England	England

6.14 Order of Precedence. To the extent any terms and conditions of these General Terms conflict with the terms and conditions of any Product Attachment, the provisions of the Product Attachment will control. To the extent any provision of these General Terms or any Product Attachment conflict with the provisions of a Third Party EULA, the Third Party EULA will control. In the event of a conflict between a Schedule and these General Terms or the applicable Product Attachment, the General Terms or the applicable Product Attachment (as applicable) will control, provided, however, that such standard variable terms such as price, quantity, license scope, payment terms, shipping instructions, and the like will be specified on each Schedule.

6.15 Interpretation. Any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time. The headings and pronouns contained herein are for convenience and ease of reference only and will not affect the construction or interpretation of this Agreement. The word "including" in this Agreement means "including, without limitation." All references to days means calendar days. This Agreement will not be construed in favor of or against a party based on the author of the document.

6.16 Counterparts. These General Terms and each Product Attachment, Schedule, and any exhibits thereto may be executed in one or more counterparts, each of which will constitute an enforceable original of this Agreement, and the parties agree that electronic or digital signatures, as well as pdf scanned copies of signatures, will be as effective and binding as original signatures.

6.17 Remedies Cumulative; Injunctive Relief. All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Furthermore, in the event of a breach or threatened breach of the intellectual property obligations in this Agreement, Active, in addition to any and all other rights (at law or in equity) which may be available, will have the right of injunctive relief and other appropriate equitable remedies to restrain any such breach or threatened breach, without the requirement of posting a bond.

7. DEFINITIONS.

"**Active**" means Active Network, LLC, with a principal place of business at 717 N. Harwood St., Suite 2500, Dallas, TX, 75201, together with its Affiliates, or, if your principal place of business is in Canada, Active Network Ltd., with a principal place of business at 2925 Virtual Way, Unit 310, Vancouver BC V5M 4X5.

"**Affiliates**" of a designated corporation, company, partnership, or other entity means all entities which control, are controlled by, or are under common control with the named entity, whether directly or through one or more intermediaries. For purposes of this definition "controlled" and "control" mean ownership of more than 50% of the voting capital stock or other interest having voting rights with respect to the election of the board of directors or similar governing authority.

"**Agreement**" means these General Terms, together with all Product Attachments and Schedules accepted by the parties (as described in the Preamble).

"**Client**" means the individual who accepts this Agreement (as described in the Preamble) and any business entity on behalf of which such individual accepts this Agreement.

"**Desktop Software**" means each Active-developed and/or Active-owned software product in machine readable object code (not source code) that is installed on desktop(s) or server(s) controlled by Client, the Documentation for such product, and any Updates and Upgrades thereto.

- "Documentation"** means the user instructions, release notes, manuals, or on-line help files in the form generally made available by Active, regarding the use of the applicable Software or Services, as updated by Active from time to time.
- "Effective Date"** means the date that Client accepts this Agreement (as described in the Preamble).
- "Export Laws"** means export control laws and regulations of the countries and/or territories in which Active operates or in which the Products are used, accessed, or from which the Products are provided.
- "Hardware"** means computer hardware, equipment, and/or utilities supplied by Active pursuant to a Schedule.
- "Intellectual Property"** means any and all intellectual property and proprietary rights (in whole or in part) recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed, or recorded, including inventions, technology, patent rights (including patent applications, divisions, and disclosures), copyrights and all works of authorship (whether or not copyrightable), moral rights, trade secrets, trademarks and other indicators of source (and the goodwill associated therewith), service marks, trade dress, logos, methodologies, procedures, processes, know-how, tools, utilities, techniques, protocols, various concepts, ideas, methods, models, templates, software, source code, algorithms, tools, utilities, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, layouts, general purpose consulting and software tools, utilities and routines, and logic, coherence and methods of operation of systems, training methodology and materials, which Active has created, acquired, or otherwise has rights in, and may, in connection with the Products or the performance of Services hereunder, create, employ, provide, modify, create, acquire, or otherwise obtain rights in, and in each case includes any derivative works, alterations, and other modifications using, incorporating, based on, or derived from the foregoing.
- "Maintenance Services"** means the provision of Updates and Upgrades related to the Software all as more particularly set out in the applicable Product Attachment and/or Schedule.
- "Preamble"** means the first paragraph of these General Terms.
- "Products"** means, collectively, SaaS, Desktop Software, Services, Hardware, and all other services, products, or materials provided by Active to Client under the terms of this Agreement.
- "Professional Services"** means the implementation, site planning, configuration, integration, and deployment of the Software or SaaS, training, project management, and other consulting services.
- "Protected Materials"** means Products, except for Hardware.
- "SaaS"** means (a) the software as a service which is hosted by Active or its hosting providers and which is accessed by Client and its users via the internet; (b) Active's web sites; and (c) associated services, as more fully described in the applicable [Product](#) Attachment. SaaS functionality is subject to change from time to time at Active's sole discretion.
- "Services"** means, collectively, (a) Professional Services; (b) Maintenance Services; (c) Support Services; and (d) any other services set forth in a Schedule.
- "Schedule"** means the document, schedule, quote, pricing form, web page, order form, or similar document and the terms and conditions contained therein "accepted" (as described in the Preamble) by the parties that describes order-specific information, such as a description of Products ordered, features, options, license details, and fees.
- "Software"** means the SaaS and the Desktop Software, collectively.
- "Support Services"** means the provision of technical assistance for Software or Hardware as further described in an applicable Product Attachment and/or Schedule.
- "Taxes"** means any and all applicable taxes, including sales, use, excise, withholding, assessments, stamp, transfer, value-added, duties, tariffs, export charges, import charges, and other taxes or assessments (however designated) imposed by any foreign, federal, provincial, state, or local governmental authority upon or applicable to Products arising out of this Agreement, other than those based on Active's net income.
- "Third Party EULA"** means the end user license agreement, if any, that accompanies the Third Party Products, which governs the use of or access by Client to the applicable Third Party Products.
- "Third Party Products"** means those hardware, firmware and/or software products, including updates and enhancements thereto, if any, owned by third parties, together with all user manuals and other documents accompanying the delivery of the Third Party Products.
- "Updates"** means bug fixes, patches, error corrections, minor releases, or modifications or revisions that enhance existing performance of the Software that are provided as part of Maintenance Services. Updates exclude Upgrades.
- "Upgrades"** means a new Software release that contains major functionality enhancements or improvements; and which is designated by an incremental increase in the release number to the left of the decimal point (by way of example only, release 5.0 designates an Upgrade from release 4.x). Upgrades exclude new products, modules or functionality for which Active generally charges a separate fee.

Recreation and Membership Management Product Attachment

This document is a "Product Attachment" as defined in the General Terms entered into by Client and Active and is subject to and incorporates by reference the provisions of the General Terms. This Product Attachment is effective as of the date it is "accepted" (in accordance with the Preamble to the General Terms). Any capitalized terms not defined herein have the meaning ascribed to them in the General Terms.

1. SERVICES. Active will provide Services related to events, camps, licenses, classes, tickets, contests, permits, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "**Events**"), including without limitation access to its SaaS. Client agrees to cooperate with Active and to provide Active with certain information relating to Client's organization as necessary for Active to provide the Services and SaaS. SaaS provided hereunder are deemed delivered when access is made available to Client.

2. LICENSE TO INTELLECTUAL PROPERTY/PROMOTION.

2.1. Active hereby grants to Client a limited, non-exclusive, non-transferable, non-sublicensable license during the term of this Product Attachment (a) to use the SaaS for the purposes of offering, promoting, managing, tracking, and collecting fees in connection with Client's Event(s) solely in accordance with the Agreement and the Schedule, which for purposes hereof will include the support and maintenance handbook applicable to the Products, as may be updated from time to time, such handbook being available for review in the Client portal, and (b) to display, reproduce, distribute, and transmit in digital form Active's name and logo solely for the purposes set forth in this Section 2. Client hereby grants to Active a limited license to use information provided by Client relating to Client's organization and Event, which may include content regarding the Event, Client's organization's name, trademarks, service marks, and logo, in connection with the promotion of Client's organization or Events and the Services that Active provides.

2.2. Client will make reasonable efforts to promote and encourage the use and availability of the SaaS in connection with the promotion of Events. During the term of this Product Attachment, Active will be the sole and exclusive provider of registration software and other services similar to the Software and Services provided to Client hereunder for all of Client's Events for which registration begins during the term of this Product Attachment until the Event occurs. Client expressly understands and agrees that the exclusivity set forth in this Section 2.2 is consideration in exchange for the pricing and other benefits being provided to Client hereunder.

2.3. Active may present commerce offers to users who register for, sign up, or otherwise use the SaaS in connection with the Events ("**End Users**"). Any such End Users may opt in to receive information, items, or promotions/deals from Active or third parties, in which case, Active or such third party will be responsible for fulfillment and providing customer service for any such offers. Client will not present any competing offers to End Users.

2.4. Client will: (a) not use the SaaS to transmit, publish, or distribute any material or information: (i) for which Client does not have all necessary rights and licenses, including any material or information that infringes, violates, or misappropriates the intellectual property rights of any third party; (ii) that contains a computer virus or other code, files, or programs designed to disrupt or interfere with the functioning of the SaaS; (iii) that is inaccurate or misleading; (iv) that is or that may reasonably be perceived as being harmful, threatening, offensive, obscene, or otherwise objectionable; (v) that contains a virus or malicious code; or (vi) that includes the private information of another without express permission, including but not limited to contact information, social security numbers, credit card numbers or other information which a reasonable person would consider private in nature; (b) not attempt to gain access to any systems or networks that connect to the Services and SaaS except for the express purpose of using the SaaS for their intended use; (c) not engage in any activity that interferes with or disrupts the SaaS; (d) not use the SaaS in violation of the CAN-SPAM Act, Canadian Anti-Spam Legislation, or any other applicable laws pertaining to unsolicited email, SMS, text messaging or other electronic communications.

3. INFORMATION COLLECTION.

3.1. Active collects certain information from End Users (collectively, "**Participant Information**"). Client may login to Active's data management system to access the Participant Information. Client is responsible for the security of its login information and for the use or misuse of such information. Client will immediately disable a user's access who is using the SaaS on its behalf or notify Active in writing if any such user is no longer authorized or is using such information without Client's consent. Active may rely, without independent verification, on such notice, and Client, inclusive of Client's parent, subsidiaries, and affiliated entities, as applicable, and each of their respective officers, directors, managers, shareholders, owners, agents, employees, contractors, and representatives covenant not to sue and agree to defend, indemnify, and hold harmless Active from any claims arising from Active providing, denying, suspending, or modifying access to or use of the SaaS and Services of any individual as directed by Client or by someone who Active reasonably, under the circumstances, believes is authorized to act on behalf of Client. In the event of any dispute between two or more parties as to account ownership, Client agrees that Active will be the sole arbiter of such dispute in its sole discretion and that Active's decision (which may include termination or suspension of any account subject to dispute) will be final and binding on all parties. Client agrees not to use the Software or Services to collect or elicit (a) any special categories of data (as defined in the European Union Data Protection Directive, as may be amended from time to time), including, but not limited to, data revealing racial or ethnic origin, political opinions, religious or other beliefs, trade-union membership, as well as personal data concerning health or sexual life or criminal convictions other than as expressly directed by Active, and in such event, only in pre-defined fields within the Software that are intended for that purpose; or (b) credit card information other than in pre-defined fields within the Software that are intended for that purpose.

3.2. Both parties agree to use the collected information in compliance with (a) all applicable laws, rules and regulations, including, without limitation, those governing privacy and personal information (e.g., by including an appropriate CAN-SPAM Act and Canadian Anti-Spam Legislation opt out mechanism in email communications) and the use of credit card data (e.g., using credit card information only for purposes authorized by the cardholder); (b) applicable credit card network rules and Payment Card Industry Data Security Standards; and (c) Active's privacy policy, as published on its website or otherwise provided by Active from time to time. Notwithstanding any contrary provision of Active's privacy policy or this Agreement, all data and information generated, collected, developed, discovered, or otherwise saved in the System exclusively for the Client (collectively the "**Data**") by Active in the performance of this Agreement are confidential and must not be disclosed to any person except as authorized by Client or as required by law, with the exception of employees of Active, Global Payments, or our authorized users or partners in the service of providing support or services to the Client or associated End User.

4. FEES.

4.1. Client will pay the fees as more fully described in the applicable Schedule. Unless otherwise set forth in the applicable Schedule, Active will charge registration fees to individuals who register for the Events or purchase goods or services online, and will process and collect such fees as a merchant of record according to the

card networks. On a bi-weekly basis, unless otherwise set forth in the applicable Schedule, Active will pay Client sums due to Client based on the total fees collected, net of Active's service fees as set forth in the applicable Schedule and any other deductions provided herein. The applicable currency will be set forth in the Schedule.

4.2. Active may suspend its performance hereunder, including remitting payments, or terminate the Agreement or this Product Attachment in the event it reasonably believes that Client's use of the Services or SaaS is not in compliance with applicable law or the Agreement, is fraudulent, or is otherwise suspect, or if there is a dispute as to the legal authority of a Client-associated party to perform hereunder. If Active reasonably believes that a transaction may be fraudulent or otherwise contrary to law, Active may issue an invoice or offset an equivalent amount from Client's account or any payment Active owes to Client and return the value to the End User (as set forth below) and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so.

4.3. If the Schedule indicates that Client is paying on a subscription basis, Client will be invoiced for the first year of subscription fees upon the date of the first live operational use of the SaaS for the Event(s) ("**Go-Live Date**"), with subsequent annual subscription fees being invoiced upon each anniversary of the Go-Live Date.

4.4. If (a) there are any overdue amounts owed by Client; or (b) there are returned charges or items, including those resulting from any error or complaint related to an Event, Active has the right to charge fees owed to Active by Client by issuing an invoice, or by offsetting the deficiency from any account balance Client maintains with Active or any payment Active owes Client.

4.5. All fees described in the applicable Schedule are in consideration of the SaaS and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agrees not to impose such a surcharge on any end user.

4.6. In the event Client is entering into this Product Attachment and using the Services and/or SaaS for the benefit of a third-party Event or organization ("**Third Party Recipient**"), Client agrees that Active can remit amounts directly to the Third Party Recipient identified by Client. In addition, Client will cause each Third Party Recipient to agree to and comply with provisions that are at least as protective of Active as Section 4 of the General Terms and Section 5 of this Product Attachment in Client's agreement with such Third Party Recipient. Should Client fail to obtain such agreement to such provisions and the failure results in costs or damages to Active, Client agrees to defend, indemnify, and hold Active harmless from any such costs and damages, including, without limitation, reasonable attorneys' fees. In addition, Client is responsible and liable for each Third Party Recipient's compliance with the terms and conditions of the Agreement.

4.7. It is Client's responsibility to notify End Users of Client's refund policy. Client must ensure that Client's refund policies are consistent with the Agreement. Client agrees that all fees for a given Event are earned by Client only following either the conclusion or delivery of the applicable Event (as applicable) and all amounts ultimately due to Client will be net of all service fees, reversals, refunds, disputed charges, chargebacks and other deductions whether due to customer complaints, allegations of fraud, discrepancies related to the applicable Event or otherwise. No payments will be made to Client with respect to any Event that is cancelled. If payments have already been made by Active to Client for a cancelled Event or if Active reasonably determines that it is prudent or otherwise necessary to pay a refund to or honor a chargeback request from an End User, Active may issue an invoice or offset an equivalent amount from Client's account or payment owed by Active to Client and return the value to the End User, and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so.

4.8. When Active is acting as the merchant of record and Client elects to include an additional fee in the End Users' cart that is identified as a "sales tax" or similar designation, then, no more frequently than once per calendar year during the term of the Agreement, Active may, upon at least 5 business days' prior written notice, (i) require Client to send to Active Client's books and records related to its sales tax payments, and/or (ii) visit Client's premises during Client's normal business hours to review Client's sales tax payments.

5. **INDEMNIFICATION.** Client will defend, indemnify, and hold Active harmless from and against any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) ("**Claims**") against Active to the extent that such Claim is (a) based upon (i) injury or death to a person or damage to property resulting from the participation in an Event operated by Client in connection with the Services and/or SaaS; (ii) Client's provision to Active of materials, products, or services as part of Client's obligations hereunder that infringe the intellectual property rights of any third party provided that such materials, products, or services are used by Active in accordance with the Agreement; (iii) use or unauthorized disclosure of Participant Information by Client or other third parties to whom access is given to Participant Information as provided hereunder; (iv) Client's use of the Services and/or SaaS in violation of Section 2.4 of this Product Attachment; (v) any claims for refunds, reversals or chargeback requests from End Users; or (b) brought by a Third Party Recipient or brought in connection with Active's payment to a Third Party Recipient of any fees due hereunder in accordance with the Agreement.

6. TERM AND TERMINATION.

6.1. Unless otherwise set forth in the applicable Schedule, the initial term of this Product Attachment will be for 3 years from the Effective Date with automatic renewals for 3 year terms thereafter (each, a "**Renewal Term**"), unless either party gives written notice to the other party to terminate this Product Attachment no less than 6 months prior to the expiration of the then-current term. Unless otherwise set forth in the applicable Schedule, to the extent that Client enters into a Schedule for additional Services and/or SaaS that are related to or interoperable with Services or SaaS set forth in a previously entered into Schedule, the term of such subsequent Schedule will be concurrent and coterminous with the term of the previously entered into Schedule.

6.2. If Client has entered into a sub-merchant agreement for payment processing services, and such agreement is terminated by the applicable acquiring bank, Active may terminate this Product Attachment and the effected Schedule.

6.3. Notwithstanding the termination or expiration of this Product Attachment or the Agreement under any circumstance other than in the event of Active's material, uncured breach of the Agreement, the parties agree that Active will continue to be the exclusive provider of registration software and other services similar to the Services and SaaS for all of Client's Events for which registration begins during the term of this Product Attachment until the Event occurs.

7. ASSIGNMENT.

7.1. Client may not resell, assign, or transfer any of its rights or obligations hereunder except as expressly provided herein, and any attempt to resell, assign, or transfer such rights or obligations without Active's prior written approval will be null and void.

7.2. Client will cause each Schedule hereunder to be assigned to (a) the purchaser of all or substantially all of Client's assets or equity securities or (b) to any successor by way of merger, consolidation, or other corporate reorganization of Client ((a) and (b) together, a "Change of Control").

7.3. Client will provide written notice to Active of any proposed or completed Change of Control as soon as permissible and in any event within 5 days of the public announcement or close of the transaction, whichever occurs first. Within the 30 day period following such notice, Active will have the right to immediately terminate each applicable Schedule if Active determines, in its reasonable good faith discretion that the purchaser or assignee is a competitor of Active or a party with whom Active does not want to do business. Client agrees to require that the purchaser or assignee (as outlined in this Section 7) agree, in writing, to be bound by the terms and conditions of the Agreement and each applicable Schedule.

8. MISCELLANEOUS.

8.1. Sections 5, 6, and 8 of this Product Attachment and any fees owed by Client will survive any termination or expiration of the Agreement.

8.2. The "Liquidated Damage Amount" equals the "Annual Projected Contract Value" (to the extent such amount is specified in the applicable Schedule(s)) times the number of years in the then-current term, minus the amount of revenue already paid to Active during the then-current term, net of all refunds, credit card chargebacks, and all other deducted amounts. Client agrees that (a) it will pay Liquidated Damages to Active if (i) Client breaches its exclusivity obligations under Section 2.2 of this Product Attachment; (ii) Active terminates a Schedule and/or the Agreement in accordance with Section 5.2 of the General Terms; (iii) Client fails to cause an assignment as specified in Section 7 of this Product Attachment; and/or (iv) Active terminates a Schedule and/or the Agreement pursuant to Section 7.3 of this Product Attachment; (b) all Liquidated Damage Amounts set forth in the Agreement will automatically reset during each Renewal Term; (c) Active may offset any Liquidated Damages Amount set forth in the Agreement from any account balance Client maintains with Active or any payment Active owes Client; (d) because of the difficulty in making a precise determination of actual damages incurred by Active, the Liquidated Damage Amount will be assessed, not as a penalty, but as a reasonable approximation of costs incurred by Active and Active's loss of revenue; and (e) that in any suit or other action or proceeding involving the assessment or recovery of liquidated damages, the reasonableness of the Liquidated Damage Amount will be presumed and the liquidated damages assessed will be in addition to every other remedy now or hereinafter enforceable at law, in equity, by statute, or under the Agreement.



Schedule

Company Address 717 North Harwood Drive, Suite 2500
 Dallas, TX 75201
 US

Created Date 2/22/2021
 Quote Number 00118811
 Currency USD

Prepared By Kim Klauer
 Opportunity Owner Jace Fecht
 Owner Email jace.fecht@activenetwork.com

Contact Name Catherine Quffa
 Phone (415) 485-3078
 Email catherine.quffa@cityofsanrafael.org

Bill To Name City of San Rafael
 Bill To Contact Catherine Quffa
 Bill To Address 618 B Street
 San Rafael, CA 94901 United States

Ship To Contact Catherine Quffa, 618 B Street, San
 Ship To Address Rafael, CA 94901

First Year Registrations 3,000
 Average Registration Cost USD 836.67

Total Processing Volume USD 2,510,010.00

Product	Product Type	Description	Quantity	Fee %	Total Price	Total Discount Amount
ACTIVENet - (credit card refunds - flat fee)	SaaS		1	0.00	0.10	USD 0.00
ACTIVENet - ACH Remittance - "Daily" Every 72 Hours	Service	Daily remittances are processed by Active on non-holiday business days 72 hours after the transaction day. Payments take one to three banking business days to process.	1	0.00		USD 0.00
ACTIVENet - Annual Subscription Fee	SaaS		1		30,000.00	USD 0.00
ACTIVENet - Functionality: Activity Registration	SaaS		1	0.00		USD 0.00
ACTIVENet - Functionality: Equipment Lending & POS	SaaS		1	0.00		USD 0.00
ACTIVENet - Functionality: Facility Reservation	SaaS		1	0.00		USD 0.00
ACTIVENet - Functionality: Memberships	SaaS		1	0.00		USD 0.00
ACTIVENet - Primary Transportation (to be reimbursed based on actual cost incurred)	Service	Quoted prices for onsite services do not include the costs of transporting Active Network resources onsite. If onsite services are required, economy primary transportation costs (eg. Airfare, train fare, or mileage) will be assessed and invoiced separately. Onsite services are billed in minimum, 8 hour daily increments.	1	0.00		USD 0.00
ACTIVENet - Public		Rates for organizations between \$1,500,000 to \$8,000,000 in				USD



Schedule

Interface - Online Transaction Fee	SaaS	annual revenue through ACTIVE Net.	1	2.50		0.00
ACTIVENet - Public Interface Fee Set up - absorbed by client	SaaS		1	0.00		USD 0.00
ACTIVENet - SaaS				0.00		USD 0.00
ACTIVENet - Service Package Advanced 4	Service	<p>ACTIVE Net Service Package ADVANCED 4 consists of the following Services:</p> <ul style="list-style-type: none"> • onsite business process review • remote functionality review & data collection preparation • remote data collection review • remote data entry (inventory and policy controls) • onsite & remote user testing • LMS training • onsite supplemental training & Go Live preparation • remote go live support • remote hardware configuration • remote system optimization training <p>The scope of Services is contained to the 4 functionalities of choice.</p> <p>50% of total Service costs will be billed at Service initiation, payable within 30 days of the date of invoice. 50% of total Service costs will be billed at Service completion, payable within 30 days of the date of invoice.</p>	1		43,800.00	USD 0.00
ACTIVENet - Service Package: Brochure Export	Service		1	0.00	1,400.00	USD 0.00
ACTIVENet - Staff Interface - Payment Processing Fee - Credit Card	SaaS	Rates for organizations between \$1,500,000 to \$8,000,000 in annual revenue through ACTIVE Net.	1	2.50		USD 0.00
ACTIVENet - Staff Interface - Payment Processing Fee - Electronic Cheque/Check Processing	SaaS		1	0.50		USD 0.00
ACTIVENet - Support Advanced Package	Maintenance	Support package for organizations between \$1,500,000 to \$8,000,000 in annual revenue through ACTIVE Net.	1	0.00		USD 0.00
ACTIVENet - Technical Services: ACH Remittance	Service	<p>ACTIVE Net Technical Services: ACH Remittance consists of the following Services:</p> <ul style="list-style-type: none"> • remote configuration, testing & training 	1	0.00		USD 0.00
ACTIVENet - Technical Services: Financial Export	Service	<p>ACTIVE Net Technical Services: Financial Export consists of the following Services:</p> <ul style="list-style-type: none"> • remote configuration, testing & training 	1	0.00	1,400.00	USD 0.00
ACTIVENet - Technical Services: GIS Import	Service	<p>ACTIVE Net Technical Services: GIS Import consists of the following Services:</p> <ul style="list-style-type: none"> • remote configuration, testing & training 	1	0.00	1,400.00	USD 0.00

Total Price

USD 78,000.00



Schedule

Annual Projected
Contract Value

USD 82,710.00

Active reserves the right, and may take additional measures to verify Client's account which may consist of reviewing publicly available data and/ confirmation of Client provided information. Such verification measures will be completed in advance of remittance.

All fees described herein are in consideration of the Software and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agree not to impose such a surcharge on any End User. The payment options we offer may include MasterCard, Visa, American Express and Discover.

*Sales tax and shipping not included in total price. Sales tax and shipping, where applicable, will be added to your invoice.

Quote Acceptance Information

Signature: _____

Printed Name: _____

Title: _____

Date: _____

PO# (if applicable): _____



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: LIBRARY AND RECREATION

**Prepared by: Susan Andrade-Wax,
Library and Recreation Director**

City Manager Approval: _____

TOPIC: AGE-FRIENDLY SAN RAFAEL STRATEGIC ACTION PLAN

SUBJECT: ACCEPT THE AGE-FRIENDLY SAN RAFAEL STRATEGIC ACTION PLAN 2020-2023

RECOMMENDATION:

Accept the Age-Friendly San Rafael Strategic Action Report 2020-2023.

BACKGROUND:

In 2017, San Rafael became a member of the World Health Organization Global Network of Age Friendly Cities and Communities. An Age-Friendly Community adapts the structures and services to be accessible and inclusive to older adults with varying needs and capacities, making it easy for them to stay active and connected to their friends and activities that are important to them, and providing appropriately for those who can no longer take care of themselves. The network provides excellent guidance, toolkits, keeps track of new and promising initiatives and supports communities in partnering with other communities in the network.

As part of the process of becoming an “Age-Friendly” community, the City began a five-year process of planning, implementing and evaluating a strategic plan for the City. The plan would assure that improvements are made to the policies, services, and structures related to the physical and social environments to support and enable older adults to live and fully participate in the community.

In 2017, the San Rafael Age-Friendly Task Force was formed and is comprised of representatives from entities including, but not limited to, the Marin County Commission on Aging, Aging Action Initiative, the Health Insurance Counseling & Advocacy Program (HICAP), Marin Villages, Vivalon (formerly Whistlestop), Marin County Cultural Commission, and City staff.

The San Rafael Age-Friendly Task Force is part of the dynamic Age-Friendly Marin Network, which meets monthly to share updates and brainstorm ideas to help make every Marin jurisdiction an inclusionary place for older people to live. The County of Marin has hired its first ever age-friendly coordinator, who will oversee the integration of the County’s own age-friendly plan specifically focused on the County’s unincorporated areas.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

Age-Friendly San Rafael Strategic Action Plan 2020-2023

In May 2018, the San Rafael Age-Friendly Task Force with support of the City of San Rafael submitted a grant request of \$5,000 to the Marin County Department of Health and Human Services to begin the development of a strategic plan. In support of this endeavor, the City of San Rafael also committed \$5,000 in matching funding, as well as use of its facilities to host community workshops, focus groups and/or planning meetings.

Upon receiving the \$5,000 in requested grant funding along with the City's \$5,000 in matching funding, the Age-Friendly Task Force conducted an analysis of San Rafael's current status related to the American Association of Retired Persons' (AARP) Eight Domains of Livability that cities can address to better serve the needs of older people which include: transportation, housing, employment, civic participation, communication, social participation, respect and social inclusion, and outdoor spaces and buildings. Based on the needs of the San Rafael community, the Leadership Team added a ninth domain, emergency preparedness.

Initially, the Age-Friendly Task Force engaged the Frameworks Institute to educate the Task Force and others in the community who work with older people about the most effective strategies to design policies that address aging and ageism. This step which is referred to as 'reframing aging' was a critical foundational step for moving forward.

In 2019, the Age-Friendly Task Force created a survey tool to gather baseline community data. The survey was sent out electronically in English and Spanish and hard copies were also distributed throughout the City. The data was analyzed by the Task Force and shared with the City Council and the community.

Additionally, key informant interviews were held with various City department staff and community nonprofit leaders. The Task Force planned to supplement the data by hosting focus groups in the community. Although they were not able to hold in-person focus groups due to the COVID-19 pandemic, they plan on soliciting community feedback and input throughout the implementation of the Strategic Action Plan. The [Age-Friendly San Rafael Strategic Action Plan](#) was completed in 2020 (Attachment 1).

Summary of Findings

While the Strategic Action Plan's detailed findings and recommendations are included in various sections of the document, the "Introduction" includes a brief overview which is summarized below.

- The San Rafael Age-Friendly Task Force seeks to work with local government to make San Rafael a place where individuals who live and contribute so much to the community can continue to be a vibrant and essential part of its culture as they age.
- With a population of over 58,000, San Rafael is the largest city and the county seat of Marin, the most rapidly aging county in the state. The San Rafael community includes several unincorporated areas including Santa Venetia and Marinwood, whose residents are governed by County law but may still take advantage of city services such as libraries and recreation centers. 18 percent of San Rafael's population is over the age of 65, and that number is rapidly increasing. The largest number of Marin's low-income seniors live here.
- Overall, San Rafael's older residents find it a decent place to age, with plenty of room for improvement. Eighty-nine percent of respondents to the San Rafael Age-Friendly survey replied that San Rafael is an "excellent", "good" or "OK" place for people to live as they age. Common

challenges for residents include expensive housing and other costs of living, and suburban design patterns that promote traffic and can be difficult to navigate without a car. More than a third of respondents reported that it is “very important” for them to remain in San Rafael as they age.

- There is much to be done to meet the need for viable, affordable, and safe senior housing. Roughly half of San Rafael residents are renters, including many older people, who face one of the most expensive rental markets in the country. Meanwhile, many “house rich, cash poor” homeowners may not be able to afford needed retrofits for their homes as they age, and may feel isolated from their community, particularly if they are unable to drive. While there are several options for senior housing, spanning the range from independent retirement communities to skilled nursing facilities, affordable options are still lacking.
- This plan particularly considers that while San Rafael is the most diverse city in Marin County, there are distinct racial inequities in income and health outcomes for both aging adults and the general population. The COVID-19 pandemic is having a disproportionate effect on members of our community who live in nursing homes and other congregate living sites as well as essential workers who live in multigenerational homes.
- Another theme of this plan is the need to address the pernicious effects of ageism as a social determinant of health, a form of discrimination and an issue of social justice. Ageism can damage all aspects of an older person’s life, including in the workplace, family life, health care, overall health, and civic participation. This plan makes the case for the City to adopt a strong anti-ageism stance through its messaging, services, and policies.
- Fortunately, there are many projects already underway to address these compound challenges. Numerous nonprofits provide opportunities for access to food, social interaction, on-going learning, mental health resources and much more. Whistlestop’s new healthy aging campus, soon to be under construction in downtown San Rafael, promises to be a hub of activities and services for older people, as well as providing 66 affordable housing units. Additionally, all three of San Rafael’s community centers include programming for older adults. The Marin Aging Action Initiative, funded by the County of Marin, seeks to coordinate these many efforts for service innovation, education, and better advocacy on behalf of older people.

ANALYSIS:

The City of San Rafael has supported the efforts of the San Rafael Age-Friendly Task Force and actively participated in the process and development of the Strategic Action Plan. The Plan is an aspirational document, is meant to inform, educate, and shape future decision making. It contains both short-term and long-term goals and can easily be adapted or modified as needed or conditions change.

Throughout the Strategic Action Plan, the City of San Rafael has been identified as the lead agency or the primary partner responsible for implementing the Plan’s goals and objectives. Since the recommended timeframe for implementing the Plan is ambitious, issues such as limited staffing, available funding or lack thereof, and prioritization of existing and new workload will need to be carefully considered and community partnerships will be key. It will be important as the City and the Age-Friendly Task Force work together to implement the Plan, that expectations are clearly defined and within the constraints of available resources.

Recommendations for Implementation

The Age-Friendly Task Force has developed a series of initial recommended actions based on the findings from the “Strategic Action Plan.” The recommendations summarized in brief below include items that the Task Force would like the City Council to consider including in their annual Goals and Objectives for FY 2021/2022.

Domain 1 - Housing

- Research factors that make up the cost of living in residential facilities

Domain 2 - Employment

- Research current employment situation for older adults
- Connect with non-profit and government agencies working in employment

Domain 3 - Civic Participation

- Learn about library programs and engage with library management

Domain 4 - Communications

- Explore with City staff the priority areas for improving communications, particularly with and to older adults

Domain 5 - Outdoor Spaces and Community Buildings

- Create a collaborative partnership with City and neighborhood associations to repair, upgrade lighting and sidewalk repair

Domain 6 - Community Preparedness

- Partner with San Rafael Fire/EMS to produce and distribute emergency preparedness materials in English and Spanish that reflect the needs of older adults and the disabled community

Domain 7 - Respect and Social Inclusion

- Educate all City staff members on basic facts and myths about aging and teach the most effective communication strategies

FISCAL IMPACT:

There is no direct fiscal impact associated with the acceptance of the Age-Friendly San Rafael Strategic Action Plan 2020-2023 on the City. The fiscal impact of subsequent projects, programs or initiatives resulting from this discussion will be assessed and determined on a case-by-case basis.

OPTIONS:

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

1. Accept Age-Friendly San Rafael Strategic Action Plan 2020-2023 and/or provide feedback.
2. Provide alternative direction and direct the Task Force to return with more information.
3. Take no action.

RECOMMENDED ACTION: Accept Age-Friendly San Rafael Strategic Action Plan 2020-2023.

Attachment:

1. Age Friendly San Rafael Strategic Action Plan 2020-2023 (DRAFT)



Age-Friendly San Rafael Strategic Action Plan 2020–2023

“An age-friendly community enables people of all ages to **actively participate** in community activities and treats everyone with **respect**, regardless of their age. It is a place that makes it easy for older people to **stay connected** to people who are important to them. And it is a place that helps people stay **healthy and active** even at the oldest ages and provides **appropriate support** to those who can no longer look after themselves.”

— *World Health Organization*

INTRODUCTION

Age-Friendly San Rafael Leadership Team

Chrisula Asimos, Marin County Commission on Aging

Caran Cuneo, County of Marin, Business Development and Employment (Ret.)

Gail Gifford, Senior Community Volunteer

Linda Jackson, Program Director, Aging Action Initiative; San Rafael School Board

Salamah Locks, Marin County Commission on Aging

Diana López, Marin County Commission on Aging; HICAP Counselor, Patient Navigator

Patty McCulley, City of San Rafael, Program Coordinator

Suzie Pollak, a founder of Marin Villages and CVNL

Sparkie Spaeth, Board Member, Marin Villages; Chair, San Rafael Village

Stakeholder Interviews

Susan Andrade-Wax, City of San Rafael, Library & Recreation Director

Henry Bankhead, City of San Rafael, Assistant Library & Recreation Director

Diana Bishop, City of San Rafael, Police Chief

Omar Carrera, CEO, Canal Alliance

Kate Colin, City of San Rafael, Vice Mayor

Christopher Gray, City of San Rafael, Fire Chief

Bill Guerin, City of San Rafael, Public Works Director

Nancy Masters, Jewish Family and Children's Services

Dr. Ruth Ramsey, Dr. Andrea Boyle, and Dr. Gina Tucker-Tighe, Dominican University

Others

Jennifer Golbus, Public Relations and Marketing Communication, Whistlestop

Nancy Frank, Survey Consultant

Catherine Quffa, Assistant Library & Recreation Director – Survey Support

Marin Aging & Adult Services, Age-Friendly Survey

Sami Mericle, Age-Friendly San Rafael Plan, Editor

Age-Friendly Marin Network

Special thanks for assistance with the Age-Friendly San Rafael Survey:

- San Rafael Public Libraries
- Albert J. Boro Community Center
- Terra Linda Community Center
- San Rafael Community Center
- Aldersley Retirement Community

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LETTER FROM THE MAYOR



May 22, 2017

World Health Organization, Age-Friendly Communities
c/o AARP
150 Post Street, Suite 450
San Francisco, CA 94108

Dear World Health Organization, Age-Friendly Communities,

On behalf of the City of San Rafael, I am pleased to share our ongoing commitment to being an Age-Friendly City. We would like to request membership in the WHO Global Network of Age-Friendly Cities and Communities. A citizen-led task force, named Age-Friendly San Rafael Task Force, is championing our local effort and working collaboratively with the City. Consequently, San Rafael is thrilled to submit our application to become designated as an Age-Friendly City.

The City of San Rafael has embraced the fact that our community is aging-in-place. Our middle age and older residents have become a larger proportion of the City's population since 2000. We have over 6,000 senior households (over one-half are 75 years and older) of which 73 percent are homeowners. As our community population ages, there is greater need for more supportive housing options and services. Acknowledging this need, the City's General Plan 2020 Housing Element includes policies that



reinforce senior housing and ageing-in-place assistance. With over 14 percent of the owner-occupied residential units, the City has made efforts to facilitate innovative ways for these residents to continue to live in their homes. In 2016, the City adopted a Junior Second Unit Ordinance, which offers a simple and affordable approach to re-purposing existing home space as a separate unit for the resident or a caregiver. In tandem with this effort, services such as Whistlestop’s “Meals-on-Wheels” help support aging in the home. The City has also strongly supported alternative housing options for seniors of all income levels and lifestyles; examples include Rotary Manor and San Rafael Commons, which provide low-income apartments for seniors, as well as full-service communities such as Villa Marin and Smith Ranch Homes.

San Rafael also has an active seniors’ program with 1100 members throughout San Rafael; including a Multicultural Program offered at the Al Boro Community Center in the Canal neighborhood. San Rafael Community Center in partnership with the County of Marin are congregate meal sites that provides both a healthy meal and a needed opportunity for people to socialize. The City also has a successful partnership with Whistlestop which provides support staff to help run the Multicultural Senior programs for Spanish and Vietnamese speaking participants. Special workshops are coordinated with other nonprofits in the community to help educate older adults about senior access, AARP, the Alzheimer’s Association, the SMART Train, Golden Gate Transit, Wellness Center, nutrition classes, exercise and much more. Older adults in the community also have access through the City of San Rafael to exercise classes, technology classes, swim programs, volunteering, card games, travel, special events and much more. The City of San Rafael provides a comprehensive community program so that older adults in the community can stay active, remain social and involved in their community.

We have developed a strong framework to build upon addressing the WHO eight domains that contribute to the health and quality of life for older adults. We look forward to joining this global network of communities dedicated to giving their older residents the opportunity to live rewarding, productive and safe lives.

Sincerely,

Gary Phillips
Mayor

MESSAGE FROM LEADERSHIP

It is with a sense of pride, hope and gratitude that we submit our Age-Friendly Strategic Action Plan for the City of San Rafael. Our hope is that it helps San Rafael become a thriving intergenerational community; inclusive, accessible and collaborative.

Our journey began in early 2017, when several local leaders met with Mayor Phillips and Councilmember Kate Colin to share information regarding the World Health Organization's (WHO) Global Network for Age-Friendly Cities and Communities as well as age-friendly efforts already underway throughout Marin County.

City leaders, well aware that close to 25 percent of the community is over 60 years of age, were interested in expanding, building on and complementing the City's successful services and programs. In April 2017, the San Rafael City Council resolved to become an Age-Friendly City. An application to become a member of the WHO Global Network for Age-Friendly Cities and Communities was submitted in May 2017.

In early 2018, after recruiting additional community members for our Leadership Team, we began a two-year process of developing our Strategic Action Plan.

We were fortunate to receive \$10,000 from the City of San Rafael and the County of Marin to support our work.

In partnership with the City, we conducted an analysis of San Rafael's current status related to the Eight Domains of Livability that cities can address to better serve the needs of older people: transportation, housing, employment, civic participation, communication, social participation, respect and social inclusion, and outdoor spaces and buildings. Based on the needs of our community, we added a ninth domain, emergency preparedness.

We then engaged the Frameworks Institute to educate ourselves and others in the community who work with older people about the most effective strategies to design policies that address aging and ageism. This step — 'reframing aging' — was a critical foundational step for moving forward.

In 2019, we created a survey tool to gather baseline community data. The survey was sent out electronically in English and Spanish and hard copies were also distributed throughout the City. The data was analyzed by the Leadership Committee and shared with the City Council and the community.

Additionally, key informant interviews were held with various City Department heads and community nonprofit leaders. We planned to supplement our data by hosting focus groups in the community. Unfortunately, we were not able to hold in-person focus groups due to the COVID-19 pandemic. We will solicit community feedback and input throughout the implementation of the Strategic Action Plan.

In early 2020, we were able to host a wonderful celebration for the members of the community who are 90 years old and better. We are very grateful for the City's support for this event and to the City and County officials who attended and helped us celebrate!

The Strategic Action Plan for Age-Friendly San Rafael was completed in 2020. The partnership and support from the City and the Age-Friendly Marin Network has been crucial to our success.

"Old age will only be respected if it fights for itself, maintains its rights and asserts control over its own to its last breath." - Cicero

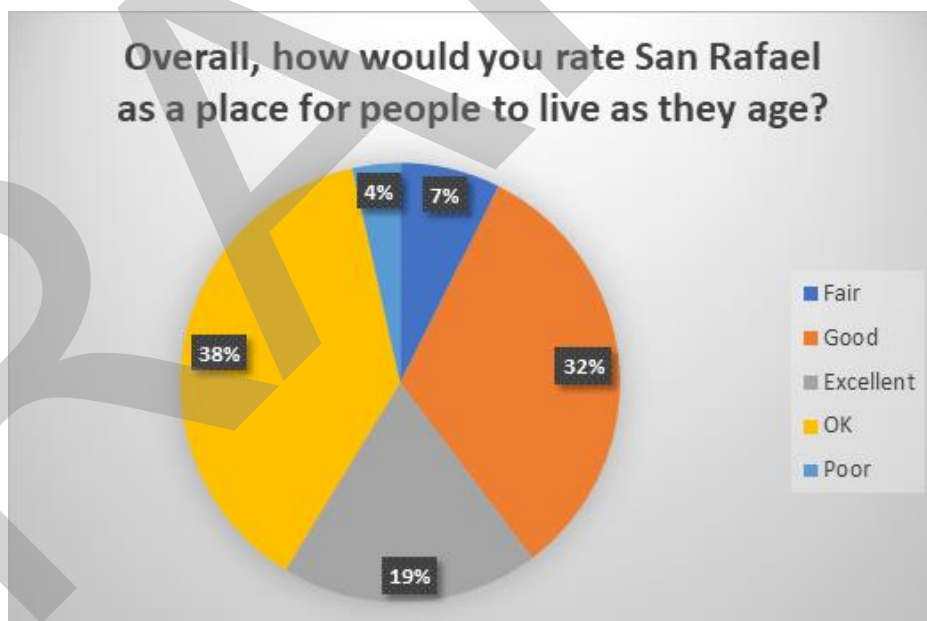


INTRODUCTION TO THE PLAN

The San Rafael Age-Friendly Task Force seeks to work with local government to make San Rafael a place where individuals who live and contribute so much to the community can continue to be a vibrant and essential part of its culture as they age. With a population of over 58,000¹, San Rafael is the largest city and the county seat of Marin, the most rapidly aging county in the state. The San Rafael community includes several unincorporated areas including Santa Venetia and Marinwood, whose residents are governed by County law but may still take advantage of city services such as libraries and recreation centers. 18 percent of San Rafael’s population is over the age of 65, and that number is rapidly increasing.² The largest number of Marin’s low-income seniors live here.

Overall, San Rafael’s older residents find it a decent place to age, with plenty of room for improvement. Eighty-nine percent of respondents to the San Rafael Age-Friendly survey replied that the city is an “excellent”, “good” or “OK” place for people to live as they age.³

Common challenges for residents include expensive housing and other costs of living, and suburban design patterns that promote traffic and can be difficult to navigate without a car. More than a third of respondents reported that it is “very important” for them to remain in San Rafael as they age.⁴



There is much to be done to meet the need for viable, affordable and safe senior housing. Roughly half of San Rafael residents are renters,⁵ including many older people, who face one of the most expensive rental markets in the

¹ United States Census Bureau, [San Rafael City](#) (2019)

² United States Census Bureau, [San Rafael City](#) (2019)

³ San Rafael Age-Friendly Task Force, “San Rafael Age-Friendly Survey” (2019)

⁴ San Rafael Age-Friendly Task Force, “San Rafael Age-Friendly Survey” (2019)

⁵ United States Census Bureau, [San Rafael City](#) (2019)

country. Meanwhile, many “house rich, cash poor” homeowners may not be able to afford needed retrofits for their homes as they age, and may feel isolated from their community, particularly if they are unable to drive. While there are several options for senior housing, spanning the range from independent retirement communities to skilled nursing facilities, affordable options are still lacking.

This plan particularly takes into account that while San Rafael is the most diverse city in Marin County, there are distinct racial inequities in income and health outcomes for both aging adults and the general population.

The COVID-19 pandemic is having a disproportionate effect on members of our community who live in nursing homes and other congregate living sites as well as essential workers who live in multigenerational homes.

Another theme of this plan is the need to address the pernicious effects of ageism as a social determinant of health, a form of discrimination and an issue of social justice. Ageism can damage all aspects of an older person’s life, including in the workplace, family life, health care, overall health and civic participation. This plan makes the case for the City to adopt a strong anti-ageism stance through its messaging, services and policies.

Fortunately, there are many projects already underway to address these compound challenges. Numerous nonprofits provide opportunities for access to food, social interaction, on-going learning, mental health resources and much more. Whistlestop’s new healthy aging campus, soon to be under construction in downtown San Rafael, promises to be a hub of activities and services for older people, as well as providing 66 affordable housing units. Additionally, all three of San Rafael’s community centers include programming for older adults. The Marin Aging Action Initiative, funded by the County of Marin, seeks to coordinate these many efforts for service innovation, education and better advocacy on behalf of older people.

The San Rafael Age-Friendly team is part of the dynamic Age-Friendly Marin Network, which meets monthly to share updates and brainstorm ideas to help make every Marin jurisdiction an inclusionary place for older people to live. The County of Marin is currently hiring its first ever age-friendly coordinator, who will oversee the integration of the County’s own age-friendly plan and provide leadership to help the community-driven age-friendly efforts meet their goals.

SAN RAFAEL COMMUNITY PROFILE (2018)

AARP Age-Friendly Index

Total Index Score: 58%



The Age-Friendly Index summarizes data for each of the age-friendly domains. An age-friendly percentage score was created indicating the level of success in meeting a 50 percent minimum standard threshold of age-friendliness. Meeting or exceeding the 50 percent threshold does not indicate fulfillment of all requirements, but rather serves as a relative comparative measure.

Not all of the domains in the San Rafael Age-Friendly Action Plan are listed here.



Neighborhoods

Factors:

- Proximity to destinations
 - Grocery stores and farmers markets
 - Parks
 - Libraries
 - Jobs by transit
 - Jobs by auto
- Mixed-use neighborhoods
- Compact neighborhoods
- Personal safety
- Neighborhood quality

Age-Friendly Index Score: 67%



Transportation

Factors:

- Convenient transportation options
 - Local transit service
 - Walking
 - Congestion
- Transportation costs
- Safe streets

Age-Friendly Index Score: 56%





Civic Participation

Factors:

- Internet access
- Opportunity for civic engagement
- Voting rate
- Social involvement
- Cultural, arts and entertainment institutions

Age-Friendly Index Score: 60%



Employment

Factors:

- Equal opportunity
 - Income inequality
- Economic opportunity
 - Jobs per worker
- Educational opportunity
 - High school graduation rate
- Multi-generational communities
 - Age diversity

Age-Friendly Index Score: 42%



Housing

Factors:

- Percentage of housing units with zero-step entry
- Availability of multi-family housing
- Housing affordability
 - Housing costs
 - Housing cost burden
 - Availability of subsidized housing

Age-Friendly Index Score: 45%



ACTION PLAN



DOMAIN 1: HOUSING

Age-Friendly Index Score: 45%



Introduction:

Housing is essential to safety and well-being. There is a link between appropriate housing and access to community and social services that influences the independence and quality of life of older people. Housing that allows older people to age comfortably and safely within the community to which they belong is universally valued.⁶

Older adults are extremely vulnerable to the rising cost of housing. If the rising cost of housing (and other costs of living) are factored into calculations of poverty, statistics for the “hidden poor” emerge, revealing a large population of older adults living above the poverty line but below the Elder Economic Security Standard Index.⁷

The City of San Rafael is a strong supporter of accessory dwelling units. San Rafael is home to numerous quality senior residential and care facilities, and longtime homeowners create stability and are committed to our community.

For more information, see the Marin Commission on Aging Report, “[Older Adult Housing in Marin: Planning for 2030](#)” (2018).

Marin is one of the most segregated counties in the Bay Area. Sixty percent of its tracts have a similar proportion of white people to the county's population. On the other hand, for Latino, Asian, and Black people, those percentages are 15 percent, 29 percent and 7 percent, respectively.

A family of four with an income of \$105,350 per year is considered low-income in Marin — higher than Seattle, Boston and Los Angeles.

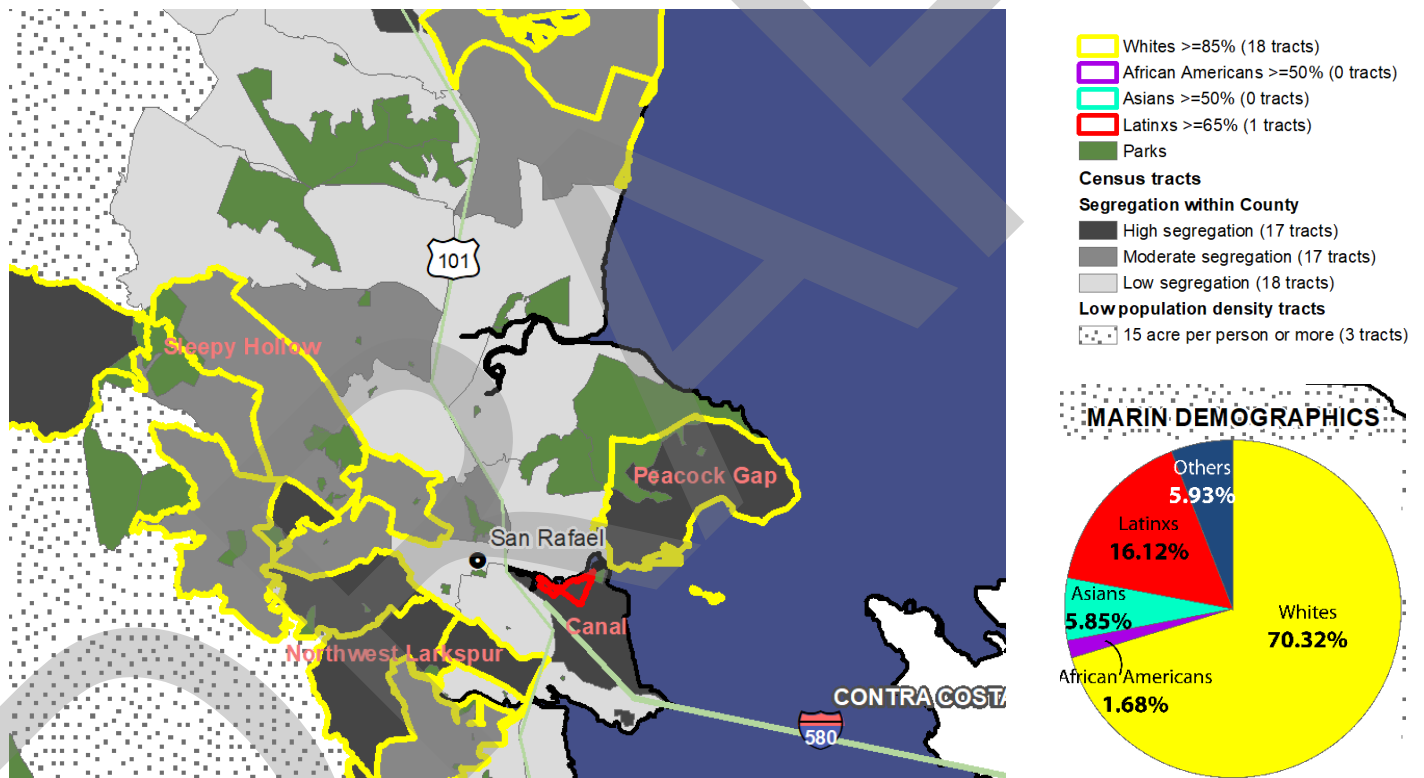
⁶ World Health Organization, [Global Age Friendly Cities: A Guide](#) (2007)

⁷ Wallace & Padilla-Fausto (2016)



A neighborhood in San Rafael, as highlighted in the map, is the most segregated tract for Latinos in the entire Bay Area, where more than 90 percent of the population is of this group. Novato also contains a substantial number of Latinos, with a 19 percent Latino population.

Five of the 10 most segregated census tracts in the entire Bay Area for white people are located in Marin County, as is visible below. A small number of clustered public housing or affordable housing communities are home to many of the people of color in the county. Anti-development policies strictly regulate where new or affordable housing can be built, helping maintain patterns of racial segregation. As we will see in the next brief in this series, however, many people of color have left or been displaced from Marin County in recent decades. ⁸



Map from the Haas Institute⁹

⁸ John Powell, [“The Perils and Promises of Fair Housing”](#) (2020)

⁹ Stephen Menendian and Samir Gambhir, [“Racial Segregation in the San Francisco Bay Area, Part 1”](#) (2018)



Issue #1: Existing Homes

Existing homes no longer meet the needs of residents or the community.

Goal: Streamline retrofitting homes so people can stay in their homes safely and comfortably.

- **Action #1:** Explore opportunities to reduce cost and simplify permit process.
- **Action #2:** Work with contractors and retail businesses to secure discounts for goods and services related to retrofitting.
 - **Partners:** Local contractors and businesses such as Home Depot, Goodman’s Lumber, etc.
- **Action #3:** Educate residents about the benefits of retrofitting their homes.
 - **Partners:** City of San Rafael, contractors, local businesses.

Issue #2: Residential Facilities

Residential facilities have availability but are not affordable.

Goal: Gain insight into the factors that make up the cost of Residential Care Facilities

- **Action #1:** Research what factors affect the monthly residential care charges.
 - **Partners:** County of Marin Social Services, Area Agency on Aging
- **Action #2:** Research how individual resident’s total monthly charges are affected by their health conditions and functional status.
 - **Partners:** County of Marin Social Services, Area Agency on Aging
- **Action #3:** Determine what services Medicare and Medi-Cal will pay for
 - **Partners:** County of Marin Social Services, Area Agency on Aging
- **Action #4:** Disseminate information to San Rafael residents
 - **Partners:** County of Marin Social Services, Area Agency on Aging

Issue #3: Affordable Housing

There is a dearth of affordable housing in San Rafael for people of all ages. Assembly Bill 1537, adopted in 2014, changed the designation of Marin County from “metropolitan” to “suburban” until 2023. This change requires fewer low-income units to be created.

Goal: Monitor viable options including city properties, churches, public/nonprofit and commercial sites for affordable housing.



- **Action #1:** Proactively support and promote affordable housing options for older people and their caregivers (workforce housing), including junior accessory dwelling units and land trust housing.
 - **Partners:** City of San Rafael, housing advocates
- **Action #2:** Advocate for affordable housing
 - **Partners:** County of Marin, Marin Housing Authority, EAH Housing





DOMAIN 2: EMPLOYMENT

Age-Friendly Index Score: 42%



Introduction:

In *Elderhood: Redefining Aging, Transforming Medicine, Reimagining Life*, Louise Aronson writes:

“Working longer, even (perhaps especially) if we work different jobs or fewer hours in our older years than in our younger ones, is likely to increase our life satisfaction while decreasing our rates of chronic disease and disability. This is just one of the societal and public health interventions that, unlike disease treatments offered by medicine, might move us toward true compression of morbidity – in other words, toward lives that are longer and healthier.”

Aronson continues:

“Although older adults as a group hold a disproportionate amount of wealth, the average older adult of today, often no longer generating income, is not wealthy. While those in the upper income brackets tend to over save, people with less to begin with get poorer by the year. Both are working in increasing numbers, albeit for very different reasons, to the point where the so-called encore career may become the new normal. Recent studies show an increased risk of death in the two years after retirement for men in their sixties and that over 40 percent of older people, fitter than those of previous generations, are ‘unretiring.’”¹⁰

One of the key motivating factors for San Rafael to join the WHO and AARP Age-Friendly movement was the critical need to provide job



¹⁰ Louise Aronson, *Elderhood: Redefining Aging, Transforming Medicine, Reimagining Life* (2019)



opportunities for older adults who need and want to work.

The Marin Economic Forum’s recent Business Retention and Expansion Survey showed that 60 percent of the businesses surveyed state that their biggest challenge is hiring and retaining employees.¹¹

“More older adults want to continue to work,” said Nancy Masters, associate executive director of Jewish Family and Children’s Services, in a stakeholder interview.

San Rafael Age-Friendly Task Force Survey results showed that 48 percent of respondents are working or looking for work and 62 percent of respondents are ‘very likely’ or ‘extremely likely’ to work for as long as possible rather than choosing to retire.¹²

It is essential to consider the impact of COVID-19 on working people to determine and provide what is needed, such as training and tech knowledge, to keep people employed.

Issue #1: Ageism

“A form of discrimination and prejudice, which limits the value of a person through definitions and stereotypes of old age.” – Carroll Estes, Aging A–Z¹³

For more information, check out the Gerontological Society of America’s [Reframing Aging Initiative](#).

Goal: Reduce ageism in the workplace

- **Action #1:** Foster intergenerational communication and teams
 - Market older adults as an integral, important and necessary component of a business
 - Highlight the importance of wisdom on a team.
 - **Partners:** City of San Rafael, CareerPoint MARIN, Future of Work Commission

Issue #2: Many older adults must work in order to continue to live in San Rafael.

Consider the intersection of affordable housing public policies and employment.

¹¹ Marin Economic Forum, “Marin County Business Retention & Expansion Project” (2020)

¹² San Rafael Age-Friendly Task Force, “San Rafael Age-Friendly Survey” (2019)

¹³ Carroll Estes, *Aging A–Z: Concepts toward Emancipatory Gerontology* (2019)



Goal: Reduce cost of living burdens for older people who cannot work full time

- **Action #1:** Advocate for senior affordable housing (see housing domain)
- **Action #2:** Provide and promote part-time work opportunities for those who are able.
 - **Partners:** City of San Rafael, San Rafael Chamber of Commerce
- **Action #3:** Provide and promote tax cuts and grant programs for low-income older people to cover expenses such as rent and utility payments.
 - **Partners:** County of Marin, utility providers such as Marin Municipal Water District and Marin Sanitary

Issue #3: Employers think in terms of full-time jobs and career ladders.

Residents are thinking in terms of part-time, self-employment and 'gig' work.

The Future of Work Commission emphasizes the importance of creating 'high road jobs'.¹⁴

As stated by the Roberts Enterprise Development Fund (REDF), the key components of 'high road' jobs are:

- "A living wage that supports a decent standard of living.
- A safe workplace.
- A benefits package, including health insurance, paid time off (i.e., sick time and paid vacation time) and a retirement savings plan.
- Access to training and professional development.
- Potential for upward mobility and wealth-building, so the employee can save to buy a home, send children to college and retire with security.
- Dignity, respect and agency."

REDF continues:

"The Federal Home Loan Bank, among others, have defined criteria for 'quality jobs' – let's provide procurement incentives and low-cost capital to employers/companies to create more. ... Make sure 'quality' employers provide job opportunities to the people served by social enterprise and that investments are made in social enterprise growth. We must view job quality through an equity lens to get to the right solutions.

- Enforce standards. Accountability/enforcement to meet current wage and other labor standards.

¹⁴ Carla Javits, Roberts Enterprise Development Fund, "The Future of Work Commission —A Bird's Eye View" (2019)



- Invest in worker training. Encourage and incentivize employers to see labor as an ‘asset’ worthy of investment and to share responsibility for training with other employers in their sector (GE, as an example, paid people 95 percent of wage during training).
- Job growth. Fighting climate change and ameliorating the disasters it is driving are job growth opportunities.”

Future of Work Commission Findings and Statistics

As is stated by the REDF:

“While skill building (e.g., job training, education, etc.) is essential for individuals to contribute their full range of talent and improve their incomes, it will not solve inequity or reduce poverty by closing the huge and growing gap between a small percentage of working people at the top of the income scale, and everyone else, nor fundamentally shift gender or racial inequities. To close the gap requires an all-out effort to raise wages across the board for front-line jobs and low-income workers.

- Today, 35 percent of California workers earn \$15/hour or less (half of Latinx workers; 35 percent of African Americans; 25 percent of whites) across many industries; 21 percent of them have an associate degree or bachelor’s degree, and 29 percent have some college.
- Between 1978 and 2018, worker productivity rose by 259 percent; but worker compensation rose by 11.6 percent.
- Comparative data definitively shows that the race and gender wage gap cannot be explained by differences in skills or education.
- Decisions by employers and policymakers on wages/working conditions matter and have the greatest impact on the most vulnerable/disadvantaged workers and those impacted by racial inequity.
- The median wage rose 1% annually pre-1973 but 0.2 percent annually since 1973. If it had risen at 1 percent, it would be at \$26/hour. This while a much higher percentage of the workforce now has college degrees than pre-1973.
- A Commissioner asked that we stop speaking about ‘low skill’ work, and instead name it as ‘low wage’ work which requires significant skill to do well (from hospitality to recycling to childcare).”¹⁵

¹⁵ Carla Javits, Roberts Enterprise Development Fund, “The Future of Work Commission —A Bird’s Eye View” (2019)



Goal: Ensure older workers in San Rafael are fairly compensated.

- **Action #1:** Consider raising local minimum wage to account for high cost of living, and reevaluate annually.
 - **Partners:** City of San Rafael, Chamber of Commerce

Issue #4: Workforce Development

Training opportunities and job fairs can help older adults gain new skills and find suitable jobs.

According to Omar Carrera, CEO of Canal Alliance, workforce development is critical to providing economic opportunities for the residents of the Canal and the Bahia neighborhoods.

Employment Social Enterprise funding Roberts Enterprise Development Fund invests exclusively in social enterprises that employ and empower people overcoming barriers to work.

Special attention should be paid to immigrant workers. There is an opportunity to help promotoras — experienced community health workers — to move from volunteers into the paid workforce. Avionte, a Latino-owned, California staffing agency for the tech sector, could be a model for promotoras/community health workers.

Goal: Provide viable job opportunities

- **Action #1:** Define work environments that are suited for older adults.
 - Recognize that there are work environments that are not suited to older adults.
 - Define work environments that work for older adults.
 - **Partners:** Buck Institute, Marin Economic Forum
- **Action #2:** Job fair(s) for older adults
 - Develop ways to link older adults into existing job fairs.
 - Encourage ‘high road’ employers to participate in job fairs.
 - **Partners:** San Rafael Chamber of Commerce, City of San Rafael, CareerPoint MARIN
- **Action #3:** Collaborate with existing “Employment Hub” — a one-stop shop where people of all ages can go to learn about employers and jobs.



- Current job programs:
 - YWCA
 - CareerPoint MARIN – minimally funded, focus on the hardest people to employ.
 - Senior Community Service Employment Program
- Include mentoring program in which older adults mentor younger adults who are working in their area of expertise.
 - SCORE
- Leverage and use the current change in dynamics as a model; MDs, RNs and other professionals coming out of retirement in response to the COVID-19 pandemic.
- Technology training
- **Partners:** County of Marin Aging & Adult Services, San Rafael Chamber of Commerce, Marin Economic Forum

Notes:

- Marin County employers pay less than those in San Francisco.
- The Los Angeles Board of Supervisors developed a special classification for older employees that compliments rather than competes.



DOMAIN 3: CIVIC PARTICIPATION

Introduction:

Civic participation involves working to make a difference in the civic life of one's community and developing the combination of knowledge, skills, values and motivation to make that difference.

Older adults can promote the quality of life in the San Rafael community through both political and non-political processes.

A high degree of civic participation was reflected in the survey conducted by the Age-Friendly San Rafael Task Force.¹⁶ Many residents of San Rafael attend community sponsored events, volunteer in the community, and/or participate in civic organizations.



The San Rafael Public Library sees itself as a “central place, like a watering hole,” said Henry Bankhead, assistant library and recreation director, in a stakeholder interview. “We’re like a naturally occurring group – all different kinds and types of people come to the library.” A new, combined library and community center is being planned, which offers an opportunity for older adults to engage in the planning process.

“Changing attitudes about aging and ageism is our future,” said Nancy Masters, associate executive director of Jewish Family and Children’s Services. Bankhead stated, “We are becoming aware of ways we discriminate against each other, including age. ... It seems to be harder to recognize and talk about. We get divided.”

Issue #1: Older adults may not know that their participation is welcomed in civic organizations.

San Rafael’s older residents have valuable insight and should be encouraged to participate in public planning processes and in the nonprofit sector.

¹⁶ San Rafael Age-Friendly Task Force, “San Rafael Age-Friendly Survey” (2019)



Goal: Develop a local repository of civic engagement leaders and opportunities for civic participation.

- **Action #1:** Identify resources, e.g., City of San Rafael, Center for Volunteer and Nonprofit Leadership and other civic organizations, and codify them in a database that is easy to use and kept up-to-date.
 - Identify where the database will be housed and at what intervals will it be updated.
 - Explore opportunities to publicize and promote the repository, e.g., San Rafael Employment and Civic Participation Fair
 - Monitor for effectiveness
 - **Partners:** Age-Friendly San Rafael Task Force, San Rafael representatives to the Marin County Commission on Aging, City of San Rafael and County of Marin Volunteer Coordinators

Goal: In what way and how does the next generation want to participate?

- **Action #1:** Create a nexus for intergenerational civic participation.
 - Research available data
 - Explore potential for research partnerships with Dominican University and College of Marin
 - Identify gathering opportunities for intergenerational contact.
 - Use the data to create a nexus for intergenerational civic participation.
 - **Partners:** Age-Friendly San Rafael Task Force, San Rafael representatives to the Marin County Commission on Aging, City of San Rafael Volunteer Coordinator, Dominican University and College of Marin

Goal: Create a strong partnership with the San Rafael Library

- **Action #1:** Define the most effective way(s) to participate in the planning process.
 - Active engagement in the planning process is an opportunity for civic engagement for older adults.
 - Community-based organizations are integral to the planning process.
 - Ensure that program design has a multicultural, intergenerational focus.
- **Action #2:** Advocate for the representation of San Rafael older adults in the program planning process.
 - Meet with the library director and Susan Andrade-Wax to assess status and potential for involvement.
 - **Partners:** City of San Rafael



DOMAIN 4: COMMUNICATION

Introduction:

In order for the actions and services listed in this plan to be effective, it is critical that older residents are kept up to date on programs, services and meetings. Communications should be offered in several forms to be sensitive of different needs, including access to and comfort with technology, language barriers and visual or hearing impairments.

Public Sector

Currently, the City of San Rafael has a primary source of information, the Snapshot Newsletter, issued bi-weekly sharing highlights of City Council meetings and important community-wide announcements. Each City department has a unique interface with residents. Only one department, Library and Recreation, has services specific to older adults. Some, such as the police department, have programs for other ages and have expressed an interest in offering more for older adults.

San Rafael has three senior clubs: San Rafael Goldenaires, the Terra Linda Seniors and the Albert G. Boro Community Center older adult program. Two of the centers host a weekly congregate meal and other activities.

The County of Marin has an Information & Assistance phone line and website, 415-473-INFO, to help older people connect to resources.

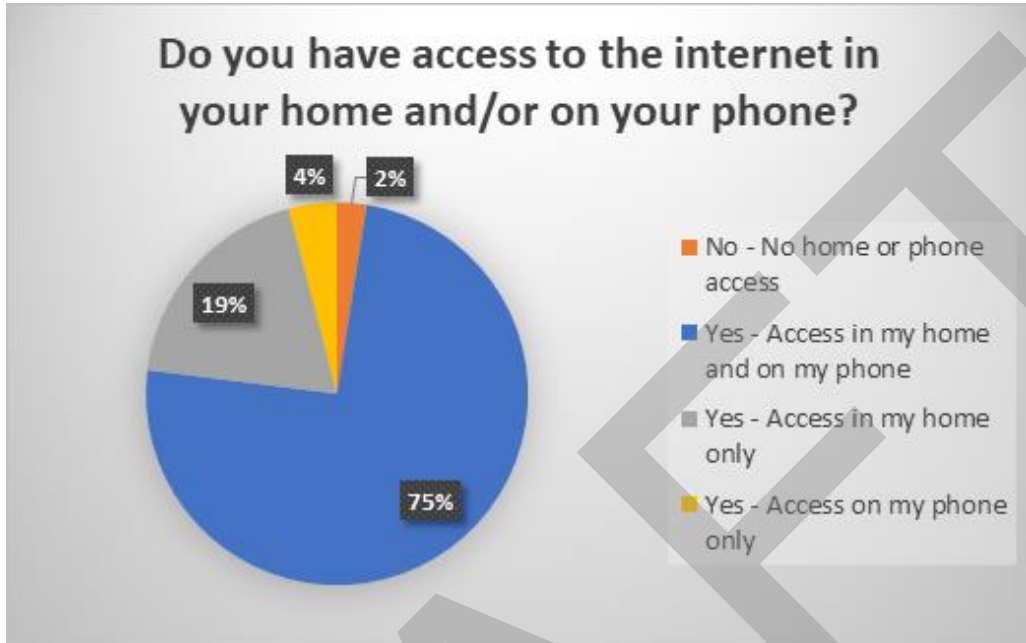
Nonprofit Sector

As the County seat, San Rafael is home to several countywide organizations providing essential communication to older residents. Whistlestop publishes a monthly activity and information guide called *Whistlestop Express*. Marin Center for Independent Living's Information and Referral program provides information on free disability-relevant community resources.





Communication and Tech



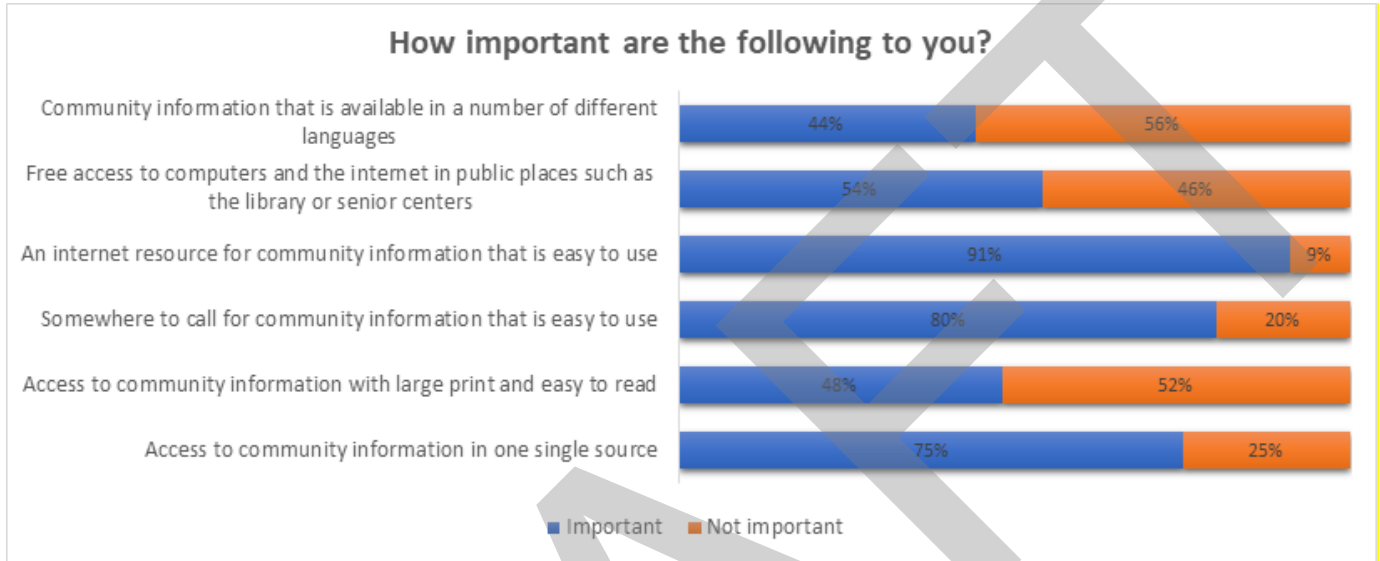
Of those who responded to the San Rafael Age-Friendly survey, 94 percent have internet in their home or their home and phone.¹⁷ Many older people in San Rafael are comfortable with technology, although changes in programs and systems may be challenging to keep up with over the years. In addition, parts of San Rafael, including the Canal neighborhood and other parts of San Rafael nestled in the hills, do not have adequate internet or mobile phone access.



¹⁷ San Rafael Age-Friendly Task Force, "San Rafael Age-Friendly Survey" (2019)



People use the internet, family and friends for information. Other sources are Osher Lifelong Learning Institute at Dominican University, Emeritus Students College of Marin at the community college, and online searches. There is room for the library to expand its services and better meet the information needs of older people.



Community survey results showed the need for a central location for information. There are a multitude of programs, events and activities in San Rafael; however, it can be difficult for older adults to find what they want or need. This is especially challenging when a change occurs in health when it's essential to quickly find help with meals or care.

A significant number of people would like to see information in languages other than English. In order to ensure quality communications with older people, information needs to be presented in a variety of methods (e.g., in print and online, using different social media outlets, etc.) and in ways that are accessible to older people and people with disabilities.

Issue #1: Communication

Despite an increase in the number of older people, there has been a decline in participation by them in City programs.

Goal: Ensure effective communications to older adults

- **Action #1:** Examine and refine citywide communications strategy to reach all audiences and identify stakeholder groups to improve engagement with older adults.
 - Make communication devices available and provide seating near speakers so seniors and others with hearing difficulty can participate in public meetings.



- Enhance the City’s Age-Friendly website so that it is the go-to resource about services, news, projects and activities in San Rafael. Look for ways to integrate information from the library and recreation department online communications to reach all older residents.
- Develop a list of best practices for effective print and online communications with older people so they are not excluded due to lack of ability, skills or resources. Work with representatives of different populations (low income, immigrants, disabled) to ensure appropriate communication techniques. Ensure that all City communications follow best practices and standards for communication.
- **Partner:** City of San Rafael
- **Action #2:** Research ways to expand broadband access for older adults in the community.
 - **Partners:** City of San Rafael, utility providers, Digital Marin

DRAFT



DOMAIN 5: OUDOOR SPACES AND BUILDINGS

Introduction:

People need public spaces to gather. Public parks and open spaces are important places for building a sense of community and social belonging. Accessible public spaces improve physical health, provide mental health benefits and enhance community connections for people of all ages. Recreation plays a key role in the well-being of older adults and in enhancing quality of life by increasing health and fitness and providing opportunities for socialization.¹⁸

Issue #1: Aging and inadequate infrastructure in outdoor spaces

Build on San Rafael's strengths: With our moderate climate encouraging outdoor activities, 19 neighborhood parks and six community parks and a variety of multicultural services in community centers, San Rafael parks and open spaces are an important community asset, along with County and State parks located in San Rafael.

Goal: Expand opportunities for older adults to safely participate in outdoor community life through collaborative partnerships with the City and local neighborhood associations to repair, replace and improve existing infrastructure.

- **Action #1:** Expand partnership between the San Rafael's Department of Public Works and local neighborhood associations to support efforts to repair or replace aging infrastructure, which is often outdated and not accessible or welcoming.
 - Seek grant funding in partnership with the City.
 - Create shade structures and exercise equipment for seniors in parks and open spaces. Collaborate with the art community on this project.
 - Expand Sidewalk Repair Program with City as sidewalks and pathways, in and out of parks, are not always accessible or safe.
 - As park improvements are made, consider adding benches downtown and in parks that are designed to assist elders and people with disabilities get up more easily.
 - Assure that parks and community spaces have working water fountains.

¹⁸ Bhawana Singh and UV Kiran, *International Journal of Humanities and Social Science*, "[Recreational Activities for Seniors](#)" (2014)



- Encourage neighbor walking partners and groups.
- Encourage the City of San Rafael to work with developers to continue to develop safe accessible outdoor spaces.
- Encourage participation in the development of the City-wide Parks and Recreation Plan.
- **Partners:** City, County and State Parks & Open Space, art community, Marin Center for Independent Living, other disability advocacy groups, developers

Issue #2: Concerns and perceptions that our parks, trails and open spaces are not safe

The City of San Rafael has a lack of affordable housing for very low-income people, and several nonprofit organizations, primarily located in the downtown, provide services to adults experiencing homelessness. This often results in a higher visibility of homelessness in the parks and open spaces downtown and in surrounding areas.

Goal: Address perception of safety issues around people experiencing homelessness in our community.

- **Action #1:** Promote partnership with public safety personnel and the downtown business community to address perceptions around safety in parks and streets and address concerns about homeless encampments.
 - **Partners:** City of San Rafael, nonprofit agencies, Chamber of Commerce

Issue #3: Lack of intergenerational programming

The three San Rafael community centers offer programming that support the unique cultures of their communities. None of the centers offer focused intergenerational programs.

Research shows that intergenerational programs offer benefits to all age groups. In the Age-Friendly San Rafael survey administered in 2019, 80 percent of respondents indicated that “activities mixing younger and older people” were very important and somewhat important to them.

Creating places, practices and policies that promote interaction across ages leads to increased: participation in services and opportunities to learn and contribute; connection and reduced isolation; and an increased sense of shared fate and shared responsibility. In addition to these short-term benefits, long-term outcomes have shown improved well-being of children, youth, older adults and families; increased capacity to address critical issues



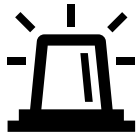
from a multi-generational perspective; and responsive and comprehensive systems that support all generations.¹⁹

Goal: Develop and support intergenerational programming at the City’s community centers and libraries.

- **Action #1:** Encourage and support community center staff to promote best practices and planning around intergenerational and multicultural programming.
 - Age-Friendly Task Force members can educate and provide evidence-based practices from other successful intergenerational programs (referenced in other cities’ age-friendly plans).
 - Involve community members in program development related to the new Vivalon Senior Center, which will provide opportunities to model and build best practices.
 - **Partners:** City of San Rafael, Vivalon, San Rafael Age-Friendly Task Force



¹⁹ The Intergenerational Center at Temple University, “[International Community Building: Resource Guide](#)” (2012)



DOMAIN 6: EMERGENCY PREPAREDNESS

Introduction:

Considering recent and looming natural disasters like earthquakes, wildfires and pandemics in Marin County, emergency preparedness is a prominent concern and presents many challenges for all residents, especially older adults aging in place. As emergencies tend to force people to evacuate without much warning, this presents challenges for people with limited mobility as well as those who rely on durable medical equipment or have limited support networks. Hearing and vision limitations, as well as cognitive impairments, may also hinder one's ability to quickly respond to an emergency. Additional barriers to emergency preparedness for many older persons include lower income and geographic isolation.

Issue #1: Vulnerable elders in San Rafael face barriers and challenges regarding emergency preparedness.

To date, there are no well-established methods to identify special needs for the older adult population in our communities. Many neighbors do not know each other for purposes of checking-in. Some also live in isolated situations, often without cell phones, computers and unreliable air wave reception. Responses from our San Rafael Age-Friendly Survey indicated that 33 percent of respondents were not confident that members of their community would assist them if they required assistance.²⁰

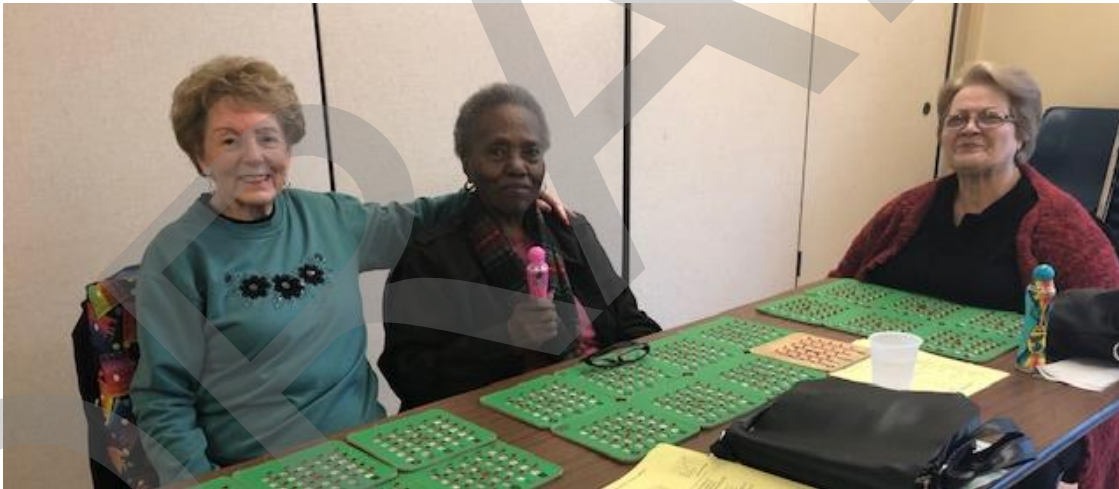
Goal: Older persons are prepared for and safe during natural disasters, pandemics and emergencies.

- **Action #1:** Use census and other local data to identify and locate vulnerable persons.
 - **Partners:** City of San Rafael, Emergency Medical Services, Neighborhood Response Groups, Community Emergency Response Teams
- **Action #2:** Continue to develop and distribute emergency GO kits and checklists giving priority to single occupant households, adults with disabilities and non-English speakers.
 - **Partners:** City of San Rafael, San Rafael Village

²⁰ San Rafael Age-Friendly Task Force, "San Rafael Age-Friendly Survey" (2019)



- **Action #3:** Collaborate with local community-based organizations to coordinate printed information related to emergency preparedness for the hard-to-reach communities.
 - **Partners:** Food banks, Center for Volunteer and Nonprofit Leadership, Marin Voluntary Organizations Active in Disaster, Marin Financial Abuse Specialist Team, colleges and universities, faith community, Marin Health & Human Services
- **Action #4:** In concert with San Rafael officials and neighborhood captains, recommend routine rolling community and/or neighborhood emergency drills and evacuation procedures.
 - **Partners:** Community Emergency Response Teams, San Rafael Fire Department, homeowner associations
- **Action #5:** Collaborate with face-to-face contactors in alerting all communities about episodic events, such as PG&E shutdowns and pandemic updates.
 - **Partners:** United States Postal Service, Meals on Wheels, San Rafael Village, emergency medical services





DOMAIN 7: RESPECT AND SOCIAL INCLUSION

Introduction:

Aging in place has its complexities with older adults. In some cases, older adults experience positive recognition and regard, while in other cases experience being dismissed, ignored or disregarded. This can occur in family matters or in community settings. Ageism, as this phenomenon is typically called, is more prevalent in some cultures than in others. There can be multi factors contributing to this generational disconnect including a lack of understanding about the aging process, changing societal norms, separation of the nuclear family with the accompanying generational divide, a society that values youth, physical compensation and economic stresses. Results from WHO surveys report that respect and social inclusion of older adults is also related to the extent to which older people participate in the civic life of their city.

How did we arrive at this generational split? ‘Senior citizens’ used to be sought after for their wisdom and experiences and were asked to weigh in on important life issues. Let us promote and support intergenerational activities which contribute to a sense of inclusion and better understanding of the differences and similarities of different generations.

Issue #1: Older adults are neglected and depreciated in many settings, causing serious effects on physical, mental and social well-being.

Goal: San Rafael’s older residents feel valued and do not face discrimination based on age.

- **Action #1:** Launch an age-friendly educational campaign, providing examples of what “age friendly” means for San Rafael and dispelling common myths about aging.
 - Include outreach to business owners to encourage offering





special benefits to older adults, as well as promoting patience and respectful treatment of older customers.

- Recognize that aging exists, develop expertise and understanding of aging, and reframe perceptions about growing older in San Rafael.
 - Provide educational opportunities to improve the skills of older adults and service providers on best communication practices in print, electronic and social media.
 - Work with Dominican University and Osher Lifelong Learning to offer culturally diverse programs and gerontology courses to enhance a broader understanding of the aging process.
 - **Partners:** City of San Rafael, San Rafael Chamber of Commerce, Dominican University
- **Action #2:** Educate all city staff members on basic facts and myths about aging, and teach the most effective communication strategies.
- **Partners:** City of San Rafael

APPENDIX

RESOURCES

FrameWorks Institute, "[Aging](#)"

San Rafael Age-Friendly SWOT (Strengths, Weaknesses, Opportunities, Threats)

San Rafael Age-Friendly Task Force presentation to the San Rafael City Council

San Rafael Age-Friendly Task Force, "San Rafael Age-Friendly Survey" (2019)

UCLA Fielding School of Public Health, "[The Elder Index: Research and Data](#)" (2018)



SAN RAFAEL CITY COUNCIL AGENDA REPORT	
Department: Public Works	
Prepared by: Bill Guerin, Director of Public Works	City Manager Approval: _____

TOPIC: SMITH RANCH ROAD AND LUCAS VALLEY ROAD RESURFACING

SUBJECT: ACCEPT COMPLETION OF THE SMITH RANCH ROAD AND LUCAS VALLEY ROAD RESURFACING PROJECT (CITY PROJECT NO. 11336), AND AUTHORIZE THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

RECOMMENDATION: Accept completion of the Smith Ranch Road and Lucas Valley Road Resurfacing Project and authorize the City Clerk to file the Notice of Completion.

BACKGROUND: Throughout the early and mid-1900s, the State of California retained large swaths of real estate for planning and construction of the present-day freeway system, including U.S. Highway 101. While local streets are built within State right-of-way to allow public access to the freeway system, Caltrans, as the State Department of Transportation, typically does not maintain these streets. As such, the City of San Rafael desired to resurface with new asphalt portions of Smith Ranch Road and Lucas Valley Road within State right-of-way providing a smooth surface on which vehicles could travel.

The project was advertised in accordance with San Rafael's Municipal Code on May 6, 2020, and sealed bids were publicly opened and read aloud May 21, 2020. On [June 1, 2020](#), the City Council adopted a resolution authorizing the City Manager to enter into an agreement with the low bidder, Ghilotti Bros. Inc. in the amount of \$997,779 and approving a construction contingency of \$142,221 for a total appropriation in an amount of \$1,140,000. Following recent acceptance of the project by Caltrans staff, City staff desire the City Council to accept the project.

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

FISCAL IMPACT: No fiscal impact is associated with this report.

RECOMMENDED ACTION: Accept completion of the Smith Ranch Road and Lucas Valley Road Resurfacing Project and authorize the City Clerk to file the Notice of Completion.

- ATTACHMENTS:**
1. Notice of Completion

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

Recording Requested By:
The City of San Rafael

When Recorded Mail To:
Lindsay Lara, City Clerk
1400 Fifth Avenue
San Rafael, CA 94901

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

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

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

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is the agent of the owner of the Project described below.
2. Owner's full name is the City of San Rafael ("City")
3. City's address is 1400 5th Ave, San Rafael, CA 94901
4. The nature of City's interest in the Project is:
 Fee Ownership Lessee Other Public Right of Way Easement
5. Construction work on the Project performed on City's behalf is generally described as follows: The resurfacing of the roadway and construction of ADA compliant curb ramps and associated work including but not limited to excavation, removal of existing concrete sidewalk, curb, and gutter; construction of new sidewalk, curb, gutter, and curb ramps; full width grinding, resurfacing, utility iron adjustments, signing, striping, and electrical work.
6. The name of the original Contractor for the Project is: Ghilotti Bros. Inc.
7. The Project was accepted as complete on: February 25, 2021.
8. The Project is located at: Smith Ranch Road and Lucas Valley Road between Redwood Highway and the Southbound US 101 on/off-ramps.

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

Date and Place

Signature

Bill Guerin, Director of Public Works

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



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Economic Development

Prepared by: Danielle O'Leary
Director of Economic Development & Innovation

City Manager Approval: _____

TOPIC COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)

SUBJECT RESOLUTION RECOMMENDING COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROJECT FUNDING FOR FISCAL YEAR 2021-22 TO THE MARIN COUNTY BOARD OF SUPERVISORS

RECOMMENDATION

Adopt a resolution recommending CDBG funding for Fiscal Year 2021-22 to the Countywide Priority Setting Committee and Marin County Board of Supervisors for the San Rafael Planning Area.

BACKGROUND

The Community Development Block Grant (CDBG) program is a federally-funded program of the U.S. Department of Housing and Urban Development (HUD) that provides funding for housing, community facilities, and human services.

Federal regulation requires at least 85% of the funds must be spent on housing and capital projects, no more than 15% may be spent on public services. The City Council has the option to adjust the public service percentage on an annual basis. However, it cannot exceed 15% of San Rafael's grant. For example, the City Council could choose to allocate 0% of the CDBG allocation to public services.

In San Rafael, examples of CDBG-funded projects have included development of affordable housing, Pickleweed Park play structure replacement, and a wide range of public services. The funds are divided into three activity categories consisting of:

- 1.) Housing
- 2.) Capital Projects
- 3.) Public Services

Because San Rafael has a population of over 50,000 residents, under HUD regulations and provisions of the cooperation agreement, the City may choose to assume responsibilities for making its own recommendations for funding projects in the San Rafael Planning Area (consisting of the City and the surrounding unincorporated areas) to the Countywide Priority Setting Committee (PSC).

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

Since 1999, when San Rafael reached 50,000 in population, the City Council has elected to assume responsibility for making funding recommendations for CDBG applications in the San Rafael Planning Area. After the City Council makes its recommendations, the PSC recommends them to the Board of Supervisors (BOS), which has final approval authority prior to sending the recommendations to HUD.

In 2020, the City renewed a cooperation agreement with the County of Marin regarding the management of the CDBG program. Under this agreement, Marin County is divided into three local planning areas. Funding recommendations are overseen by a Countywide Priority Setting Committee (PSC) made up of City and Town Council members, a County Supervisor, and community members representing members of the protected classes (race, color, national origin, religion, sex, familial status, or disability) under fair housing laws.

CDBG Funding Update – Federal

Funds for the County of Marin’s 2021-2022 CDBG program funding cycle comes from the Fiscal Year 2022 federal budget, which runs from October 1, 2021 to September 30, 2022, and allocated on a formula basis to entitled cities and counties. The County of Marin represents the entitled jurisdiction covering the City of San Rafael. The County of Marin has not yet received its CDBG program allocation and is basing recommendations on last year’s allocation of \$1,594,382.

This grant provides San Rafael an allocation of \$502,804 (sum of “San Rafael recommended Funds” in Attachment 2). Per HUD regulation, a maximum of \$94,276 can be used for public services, a minimum of \$201,122 must be spent on housing, and the remaining \$207,406 can be spent on either housing or capital projects.

Federal Grant Program

In 2020 the PSC approved, and the BOS accepted, two program enhancements including a two-year application cycle beginning in 2020. Under this structure Public Service projects are eligible for funding renewal based on accomplishing goals and subject to available CDBG funds. Capital and Housing projects apply for funding using a two-year project timeline and budget. In addition, the PSC enacted a minimum grant size of \$15K per year. Countywide projects may receive funding from each planning area to bring their grant up to \$15K.

These two enhancements increase the impact on funded organizations and enables nonprofit partners to better plan their programs. While applications are only received every two years, funding allocations must be approved annually based on the past performance of the project and expected funding allocated by HUD.

Evaluation Guidelines

All project applications are evaluated based on their ability to meet HUD’s national objective thresholds, the PSC’s enhanced thresholds for evaluating projects, and the standard project evaluation criteria as listed below:

National Objective Thresholds:

- Benefit low-and-moderate-income persons.
- Prevent or eliminate blight or meet other community development needs for low-and moderate-income persons.

PSC Enhanced Thresholds:

- Support projects that Affirmatively Further Fair Housing and have the commitment and capacity to engage in Affirmative Marketing¹.
- Prioritize projects that serve members of the protected classes as defined by HUD.
- Prioritize projects that serve low-income persons.

Project Evaluation Criteria:

- Readiness--can awarded funds be completely expended during the grant year?
- Sustainability—does the organization have the capacity to sustain a project or program beyond this federal funding period?
- Effectiveness and Accountability—does the organization have the capacity and track record to effectively conduct the project and administer federal funds?
- Prioritize greatest impact.

In addition to the criteria set forth by HUD, three planning and assessment documents submitted to and approved by HUD (Consolidated Plan, Analysis of Impediments to Fair Housing Choice, and Voluntary Compliance Agreement), identify additional priorities. The Countywide Priority Setting committee approved establishing two of these priorities for funding CDBG and HOME housing projects:

- 1.) Family Housing²
- 2.) Land trust model in eastern Marin that provides home ownership opportunities (In this context, Eastern Marin is defined as all of the areas in Marin, except West Marin).

The PSC also established the following priorities for CDBG funds allocated to public service projects:

1. **Basic Health Services**—includes services that prevent or treat medical conditions for individuals who are uninsured, under-insured, or people with low incomes who cannot afford their deductible. Programs and services include preventive health such as immunizations, well-child visits, periodic health evaluations for adults, voluntary family planning services, children's eye and ear examinations conducted to determine the need for vision and hearing correction, and hygiene services. Services may also include medically necessary emergency health care, inpatient and outpatient treatment, diagnostic laboratory and diagnostic and therapeutic radiologic services, and prescription drugs.
2. **Children, Youth and Parent Support Services**—includes services that address disparities in access to early childhood education and the high costs of childcare, targeting low-income families. Programs and services include supporting childcare

¹ Affirmative Marketing is targeted outreach about program opportunities to groups of people otherwise least likely to apply for or receive those opportunities. Given Marin's history of segregation, the protected class populations typically included in Affirmative Marketing are Black/African American, Asian/Pacific Islander, and Latinx. Programs that do not conduct broad affirmative marketing are less competitive in the allocation process.

² Family Housing has been identified as a need to both the Consolidated Plan and Analysis of Impediments. In addition, HUD is requiring Marin's CDBG and HOME grant funding to contribute to the creation of at least 100 new family housing units by 2022. The only application for a project developing family housing this year is Habitat for Humanity.

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 4

scholarships, student extracurricular activities, parent engagement and training, therapeutic services, teacher's salaries, transportation, and home visitations.

- Housing Support Services**—includes services that assist individuals in accessing stable housing, prevent discrimination in housing choice, and aid renters in maintaining stable housing. Programs and services include but are not limited to fair housing counseling, legal support, housing locators, down payment, and rental assistance.

ANALYSIS

The CDBG funding recommendations for FY21-22 are vetted through the Countywide Priority Setting Committee that consists of one County Supervisor, a representative from each of the City and Town Councils, as well as seven community members representing six regions spanning Marin and an at-large member representing the County.

In early May, the Board of Supervisors will hold a final public hearing on the recommendations from the Countywide (PSC), and in mid-May, the County will send its annual list of projects to the US Department of Housing and Urban Development (HUD).

HOUSING PROJECTS

A minimum of 40% of CDBG funds must be spent on Housing projects. Seven (7) housing projects submitted applications for funding from the San Rafael Planning Area. The seven projects have a funding request of \$2,728,545. Five (5) of the seven projects will benefit the entire County, a subset of services and units will serve San Rafael residents.

There are two (2) projects based in San Rafael with a total funding request of \$548,545, Bridge Housing – Centertown at \$282,000 and San Rafael Rotary Manor at \$266,545 – (See Attachment 2).

Funding Recommendations

Staff recommends the following housing applications, totaling \$308,529 in available CDBG grant funds.

Organization	FY 20-21 San Rafael Allocation	FY 21-22 Countywide Request	FY 21-22 San Rafael Recommendation	Expected Countywide Funding
Eden Housing, Inc. (CHDO) <i>Vivalon Healthy Aging Campus</i>	-	\$500,000	\$88,528	\$448,528 FY21-22 \$396,371 FY20-21
Habitat for Humanity Greater San Francisco, Inc. <i>Redwood Blvd. Homes</i>	\$84,347	\$250,000	-	-
Homeward Bound of Marin <i>Predevelopment and Construction of Veterans and Workforce Housing in Novato</i>	-	\$1,075,000	-	-
Marin Center For Independent Living <i>Residential Access Modification Program</i>	\$9,922	\$30,000	-	-
Marin Housing Authority <i>Residential Rehabilitation Loan Program (RLP)</i>	\$100,000	\$325,000	\$100,000	\$230,000

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 5

Bridge Housing* <i>Centertown Apartments</i>	\$63,732	\$282,000*	\$20,000	\$950,000 FY19-21 HOME Funds
San Rafael Rotary Manor* <i>Rotary Manor Window Rehabilitation</i>	-	\$266,545*	\$100,000	San Rafael Only
Grand Totals	\$258,001	\$3,728,545	\$308,528	

* San Rafael only request

CAPITAL PROJECTS

Two (2) applications for capital projects were received—one (1) Countywide project and one (1) serving San Rafael only. The Countywide projects benefiting the entire County, including services for San Rafael residents, have a funding request of \$150,000. The one (1) project based in San Rafael has a total funding request of \$100,000.

Funding Recommendations

Staff recommends funding the full request of the San Rafael project totaling \$100,000 in CDBG monies.

Organization	FY 20-21 San Rafael Allocation	FY 21-22 Countywide Request	FY 21-22 San Rafael Recommendation	Expected Countywide Funding
Marin City Community Services District <i>Manzanita Center Facility Master Plan</i>	-	\$150,000	-	-
City of San Rafael Department of Public Works* <i>Canal Area Pump Station Improvements</i>	\$85,328	\$100,000*	\$100,000	San Rafael Only
Grand Totals	\$85,328	\$100,000	\$100,000	

* San Rafael only request

PUBLIC SERVICE PROJECTS

Based on County estimates, the City is expected to receive an allocation of approximately \$94,276 for public services in 2021-22. This 15% allocation is based on the total funding available including entitlements, program income and any reprogrammed funds, whereas, the overall allocation to each planning area is a percentage of these totals, less the allowed administration allocation. Due to this, the amount available for Public Services is higher than a straight 15% of San Rafael allocation allotment.

There is a total of six (6) projects eligible for public service renewal funding—four (4) Countywide projects with a portion of services going to San Rafael residents and two (2) serving San Rafael only.

Funding Recommendations

PSC recommends renewing funding for six (6) public service projects totaling \$94,276 in CDBG monies, the maximum allowed by HUD.

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 6

Organization	FY 20-21 San Rafael Allocation	FY 21-22 Countywide Renewal	FY 21-22 San Rafael Recommendation	Expected Countywide Funding
Covia Foundation <i>Home Match Marin</i>	\$8,000	\$15,000	\$8,000	\$15,000
Fair Housing Advocates of Northern California <i>Fair Housing Counseling and Education</i>	\$25,000	\$64,000	\$25,000	\$64,000
Family & Children's Law Center <i>Domestic Violence Legal Services for Low Income Families</i>	\$6,750	\$15,000	\$6,750	\$15,000
Legal Aid of Marin <i>Keeping Marin Residents in their Homes</i>	\$20,384	\$32,640	\$18,026	\$32,640
RotaCare Bay Area <i>RotaCare Clinic of San Rafael</i>	\$15,000	\$15,000*	\$15,000	San Rafael Only
City of San Rafael, Library and Recreation Department* <i>Pickleweed Preschool</i>	\$21,500	\$15,000*	\$21,500	San Rafael Only
Grand Totals	\$96,634	\$163,140	\$94,276**	

* San Rafael only

**FY2020-21 had \$2,358 in Program Income that is not available in FY2021-22

A list of all the applications that were submitted for the San Rafael Planning Area and Countywide projects serving San Rafael is provided in Attachment 2. This attachment also includes staff recommendations for allocating all of San Rafael's CDBG funds and the total expected allocations including funding from the other planning areas. The applications for all funding can be accessed online via these links:

Capital Projects – https://www.marincounty.org/-/media/files/departments/cd/federal-grants/2021_22/applications-received/202122-cdbg-c-projects.pdf?la=en

Housing Projects – https://www.marincounty.org/-/media/files/departments/cd/federal-grants/2021_22/applications-received/202122-cdbg-h-projects.pdf?la=en

Public Services Projects – https://www.marincounty.org/-/media/files/departments/cd/federal-grants/2021_22/applications-received/202122-cdbg-ps-projects.pdf?la=en

FISCAL IMPACT:

There is no direct cost or revenue impact generated by the recommended action as the City is directing HUD funds to specific projects. Allocating funds to potential City projects may allow City general and capital funds to be allocated to other priorities.

OPTIONS:

1. Adopt Resolution recommending allocations of CDBG funding as recommended by staff.
2. Adopt Resolution recommending different allocations of CDBG funding. (Funds may be shifted within categories, but the Public Service category cannot exceed \$94,278.)
3. Let the Countywide Priority Setting Committee provide a recommendation for the San Rafael Planning Area funding requests.
4. Provide direction to staff.

ACTION REQUIRED:

1. Adopt Resolution recommending CDBG project funding for the FY 2021-22 CDBG program to the Marin County Board of Supervisors.

ATTACHMENTS

Attachment 1	City of San Rafael Resolution CDBG Project Funding for FY 2021-22
Attachment 2	Attachment to Resolution: 2021-22 CDBG Project Allocations
Attachment 3	PSC 2021-2022 Roster
Attachment 4	2020-2022 CDBG Application Guidelines

RESOLUTION NO.

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL RECOMMENDING
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROJECT FUNDING FOR
FISCAL YEAR 2021-22 TO THE MARIN COUNTY BOARD OF SUPERVISORS**

BE IT RESOLVED by the Council of the City of San Rafael as follows:

WHEREAS in June 1999, the City Council revised the Cooperation Agreement with the County of Marin for Community Development Block Grant (CDBG) funds whereby the City remained in the County system; and

WHEREAS in December 1999, the City devised a project selection process and established allocation priorities for CDBG projects; and

WHEREAS in 2020, the City renewed a cooperation agreement with the County of Marin regarding the management of the CDBG program. Under this agreement, Marin County is divided into three local planning areas. Funding recommendations are overseen by a Countywide Priority Setting Committee (PSC) made up of City and Town Council members, a County Supervisor, and community members representing members of the protected classes (race, color, national origin, religion, sex, familial status, or disability) under fair housing laws; and

WHEREAS The CDBG funding recommendations for FY21-22 were vetted through the Countywide Priority Setting Committee; and

WHEREAS on March 15, 2021, in accordance with the adopted project selection process the City Council reviewed the submitted applications;

NOW, THEREFORE IT IS HEREBY RESOLVED that the City Council recommends to the Marin County Board of Supervisors that the \$502,804 in CDBG funds available for allocation by the City of San Rafael be distributed to the projects and in the amounts as shown on the attached Attachment 2 subject to adjustments necessary to accommodate any changes in the final allocation given to the County of Marin by the federal Department of Housing and Urban Development (HUD).

I, LINDSAY LARA, City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City held on the 15th day of March 2021, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Lindsay Lara, City Clerk

Attachment 2

PROJECT #	PROJECT SPONSOR	PROJECT NAME	COUNTYWIDE FUNDING REQUEST	SAN RAFAEL SPECIFIC FUNDING REQUEST	SAN RAFAEL RECOMMENDED FUNDS	EXPECTED COUNTYWIDE FUNDING*
Housing						
CH-1-2021	Eden Housing, Inc. (CHDO)	Vivalon Healthy Aging Campus	\$500,000	\$197,100	\$88,528	\$448,528
CH-2-2021	Habitat for Humanity Greater San Francisco, Inc.	Redwood Blvd. Homes	\$250,000	\$98,550	-	-
CH-3-2021	Homeward Bound of Marin	Predevelopment and Construction of Veterans and Workforce Housing in Novato	\$1,075,000	\$423,765	-	\$579,000
CH-4-2021	Marin Center For Independent Living	Residential Access Modification Program	\$30,000	\$15,000	-	-
CH-5-2021	Marin Housing Authority	Residential Rehabilitation Loan Program (RLP)	\$325,000	\$110,500	\$100,000	\$230,000
SH-1-2021	Bridge Housing	Centertown Apartments	\$282,000	\$282,000	\$20,000	\$20,000
SH-2-2021	San Rafael Rotary Manor	Rotary Manor Window Rehabilitation	\$266,545	\$266,545	\$100,000	\$100,000
San Rafael Housing Subtotal			\$3,728,545	\$1,393,460	\$308,528	\$1,419,904

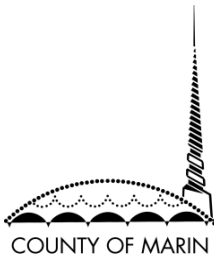
Capital

CC-1-2021	Marin City Community Services District	Manzanita Center Facility Master Plan	\$150,000	\$30,000	-	-
SC-1-2021	City of San Rafael Department of Public Works	Canal Area Pump Station Improvements	\$100,000	\$100,000	\$100,000	\$100,000
San Rafael Capital Subtotal			\$250,000	\$100,000	\$100,000	\$100,000

Attachment 2

PROJECT #	PROJECT SPONSOR	PROJECT NAME	COUNTYWIDE FUNDING REQUEST	SAN RAFAEL SPECIFIC FUNDING REQUEST	SAN RAFAEL RECOMMENDED FUNDS	EXPECTED COUNTYWIDE FUNDING*
Public Services						
CS-1-2021	Covia Foundation	Home Match Marin	\$15,000	\$8,000	\$8,000	\$15,000
CS-2-2021	Fair Housing Advocates of Northern California	Fair Housing Counseling and Education	\$64,000	\$25,000	\$25,000	\$64,000
CS-3-2021	Family & Children's Law Center	Domestic Violence Legal Services for Low Income Families	\$15,000	\$6,750	\$6,750	\$15,000
CS-4-2021	Legal Aid of Marin	Keeping Marin Residents in their Homes	\$32,640	\$20,400	\$18,026	\$32,640
SS-1-2021	RotaCare Bay Area	RotaCare Clinic of San Rafael	\$15,000	\$15,000	\$15,000	\$15,000
SS-2-2021	City of San Rafael, Library And Recreation	Pickleweed Preschool	\$49,440	\$49,440	\$21,500	\$21,500
San Rafael Public Services Subtotal			\$163,140	\$96,634	\$94,276	\$163,140

* The Expected Countywide Funding includes anticipated recommendations for all Planning Areas and HOME.



COMMUNITY DEVELOPMENT AGENCY
HOUSING AND FEDERAL GRANTS DIVISION

2021-2022 Countywide Priority Setting Committee

Name	Affiliation
Cathy Cortez	At-Large Community Representative
Loni Mahanta	Lower Ross Community Representative
Curtis Aikens Sr.	Novato Community Representative
Darlene Goins	San Rafael Community Representative
Sylvia Bynum	Southern Marin Community Representative
PJ Feffer	Upper Ross Community Representative
Madeline Nieto Hope	West Marin Community Representative
Jim Lynch	City of Belvedere Councilmember
Catherine Way	City of Larkspur Councilmember
Urban Carmel	City of Mill Valley Councilmember
Denise Athas	City of Novato Councilmember
Eli Hill	City of San Rafael Councilmember
Susan Cleveland-Knowles	City of Sausalito Councilmember
Judy Arnold	County of Marin Supervisor
David Kunhardt	Town of Corte Madera Councilmember
Barbara Coler	Town of Fairfax Councilmember
Alexis Fineman	Town of San Anselmo Councilmember
Holli Their	Town of Tiburon Councilmember

2020-22 COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAM APPLICATION GUIDELINES

Application logistics:

Application Process and Timing

- Applications will be open on **Monday, January 6, 2020**.
- Application Preparation (Bidders Conference): Wednesday, January 15th, 2020 at the Marin County Civic Center, Board of Supervisors Chambers, 3501 Civic Center Drive, Room 330, San Rafael, CA 94903
 - 1:00 P.M. to 2:00 P.M. - Public Service Projects
 - 2:30 P.M. to 3:30 P.M. - Community Infrastructure/Capital and Housing Projects
- Applications will be due on **Thursday, February 6, 2020, no later than 5:00 PM. POSTMARKS WILL NOT BE ACCEPTED.**
- Federal Grants staff will review applications in February and March.
- Public hearings for each of the three Planning Areas to determine recommendations will be held March-April 2020.
- The Board of Supervisors will hold the final public hearing to confer recommendations on all of the applications in May and transmit the recommendations to HUD.

Application submittal

Submissions may be made via online, email, mail, or in person to one of the addresses below.

- Emailed applications should be sent to this address **ONLY**: federalgrants@marincounty.org
- Mailing address/physical address (if dropping off application):
County of Marin
3501 Civic Center Drive #308
San Rafael, CA 94903
Attn: Federal Grants

Application Content

- *****NEW***** Transitioning from a one (1) year application cycle to a two (2) year application cycle.
- The minimum grant size is \$15,000 per year.
- Organizations may only apply for **one project** in each category of funding. (Ex. An organization may apply for funding under the Public Service category and the Community Infrastructure/Capital category.)
- **Only complete applications submitted on time will be considered for funding.**
- Complete applications include the **application document, project budget, and organization budget.**

Average Grant Size

- Public service grants are typically awarded between \$15,000 and \$30,000.
- Community Infrastructure/Capital improvement grants range from \$15,000 to \$150,000, depending on the project scope.
- Housing grants vary from \$30,000 to \$500,000, depending on the project scope.

Eligible Applicants and Projects

- Applicants must either be a nonprofit, government entity, or have a fiscal sponsor that is a nonprofit or government entity. Individuals are not eligible for funding.
- To ensure affordable housing is dispersed through the county, CDBG and HOME funds cannot be used for housing projects in the Canal Neighborhood of San Rafael or Marin City.
- To learn more about eligible and ineligible activities, review these guides to [eligible CDBG activities](#) and [eligible HOME activities](#).

Notice of Funding Availability: Community Development Block Grant (“CDBG”) and Home Investment Partnership Program (“HOME”) For 2020-22 funding cycle

The Marin County Community Development Agency’s Federal Grants Division is pleased to announce the opening of the application period for the CDBG and HOME programs.

Overview

Federal funding through the Community Development Block Grant (CDBG) program provides communities with resources to address a wide range of unique community development needs. The CDBG entitlement program allocates annual grants to larger cities and urban counties to develop thriving communities by providing funding to assist in the creation of affordable housing, a suitable living environment, and expanded economic opportunities for low and moderate-income persons. The Home Investment Partnerships Program (HOME) funds the creation, preservation, and rehabilitation of affordable housing for low income households. The programs are managed by the Federal Department of Housing and Urban Development (HUD).

National objectives for funding

Each activity funded by CDBG must meet one of the following national objectives for the program. Each application must clearly state which objective the proposed project addresses.

- Benefit low and moderate-income persons.
- Prevention or elimination of slums or blight.
- Address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which no other funding is available.

Priority Setting Committee local thresholds for funding

All applications are assessed using the following as thresholds for funding:

- Support projects that Affirmatively Further Fair Housing and have the commitment and capacity to engage in Affirmative Marketing.
- Prioritize projects that serve members of the protected classes as defined by HUD (race, color, religion, national origin, sex, disability, and familial status).
- Prioritize projects that serve low-income persons.

Evaluation Criteria:

All projects are assessed on the following baseline criteria:

- Readiness—can awarded funds be completely expended during the grant year.
- Sustainability—does the organization have capacity to sustain a project or program beyond this federal

funding period?

- Effectiveness and Accountability—does the organization have the capacity and track record to effectively conduct the project and administer federal funds?
- Prioritize greatest impact.

The Countywide Priority Setting Committee has approved funding priorities for CDBG Housing and Public Services dollars that considers projects in the following categories first:

Funding priorities for CDBG Housing funds:

- Family Housing
- Land trust model in eastern Marin¹ that provides home ownership opportunities

Funding priorities for CDBG Public Service funds:

- Basic Health Services – includes services that prevents or treats medical conditions for individuals who are un-insured, under-insured, or people with low-incomes who cannot afford their deductible. Programs and services include but are not limited to preventative health such as immunizations, well-child care from birth, periodic health evaluations for adults, voluntary family planning services, children’s eye and ear examinations conducted to determine the need for vision and hearing correction, and hygiene services. Services may also include medically necessary emergency health care, inpatient and outpatient treatment, diagnostic laboratory and diagnostic and therapeutic radiologic services, and provision of prescription drugs.
- Children, Youth, and Parent Support Services – includes services that address disparities in access to early childhood education and high costs of childcare county wide targeting low-income families. Programs and services include but are not limited to supporting childcare scholarships, student extracurricular activities, parent engagement and training, therapeutic services, teacher’s salaries, transportation, and home visitations.
- Housing Support Services – includes services that assists individuals in accessing stable housing, prevent discrimination in housing choice, and aids renters in maintaining stable housing. Programs and services include but are not limited to fair housing counseling, legal support, housing locators, down payment and rental assistance.

While this priority list does not preclude the funding of other types of projects, it provides staff with further direction when evaluating applications that meet both the national and local baseline thresholds.

Project budgets:

Public Services:

Project budgets for all public service project applications should cover a 1-year time period only. Year two funding allocations will be based on the 1-year budget in relation to outcomes achieved and HUD funding levels.

Community Infrastructure/Capital and Housing:

Project budgets for community infrastructure/capital and housing project applications should be developed spanning a two-year time period, with specific outcomes and line items associated with each

¹ Eastern Marin in this case is defined as all of the areas of Marin, except for West Marin

year. If your project has received planning approvals, has an environmental review on file, and is ready to move forward in a 1-year time frame please indicate so.

Income verifying clients:

All applicants are required to income qualify beneficiaries of services provided with CDBG and HOME funds. Under CDBG regulations HUD presumes the following groups to be low-income and income verification is not required: abused children, battered spouses, the elderly, adult persons with serious disabilities, individuals who are homeless, illiterate persons, and migrant farm workers. Removal of architectural barriers to assist seniors and adults with severe disabilities would fall under this category of Presumed Benefit.

Key changes for 2020-22 fiscal year

- Transitioning from a one (1) year application cycle to a two (2) year application cycle.²
- The minimum grant size is \$15,000 per year.
- CDBG housing funds will first prioritize projects that provide Family Housing and/or Land trust model in eastern Marin that provides home ownership opportunities
- CDBG public service funds will first prioritize projects that provide Basic Health Services; Children, Youth, and Parent Support Services; and Housing Support Services
- Staff will pursue reprogramming of funds for projects that do not make substantial progress in the initial funding year.

Marin County CDBG Program Overview

All of the eleven cities and towns in Marin County and the County of Marin participate in the CDBG program through a cooperation agreement. The cooperation agreement is renewed every three years. The cooperation agreement allows Marin County to be defined as an “urban county”, having a population of over 200,000, and to receive a direct CDBG funding allocation. Novato and San Rafael are eligible to receive CDBG funding as entitlement cities because their populations exceed 50,000 persons. However, both cities have chosen to continue with the cooperation agreement to assure that Marin meets the population standard for urban counties and continue to receive CDBG funding.

The total CDBG allocation for Marin County has been about \$1.4 Million dollars annually and HOME is about \$700,000. Staff is anticipating the 2020-21 allocation will be similar to 2019-20. Staff will make their funding recommendations based on the 2019-20 allocation.

Marin County Allocation Formula:

The program is administered by staff in the Marin County Community Development Agency. Federal regulations limit the amount of administrative costs to 20% of the available grant funds. In addition, public services are limited to 15% of available grant funds. 40% of funds are allocated to housing and the remaining 25% of funding is available for community infrastructure/capital improvement projects and/or housing.

HOME funds are used exclusively for affordable housing serving low and very low-income.

The County is divided into three (3) planning areas: Novato, San Rafael, and County Other. Each planning area receives a portion of the overall allocation based on an analysis of 2010 Census Data looking at population,

² Staff reserve the right to open the application in 2021-22, if deemed necessary.

the extent of poverty, and the extent of housing overcrowding, with the provision that the extent of poverty be counted twice. For fiscal year 2020-21, the Novato planning area will receive 23.68% of funds, the San Rafael planning area will receive 39.42% of funds, and the County Other planning area will receive 36.9% of funds.

Selection Process:

The Novato City Council and San Rafael City Council hold public hearings on all applications for their respective planning areas and make a funding recommendation to the Board of Supervisors.

The Countywide Priority Setting Committee makes funding recommendations for the County Other planning area and HOME Program funding to the Board of Supervisors.

Requirements for Grant Disbursement:

All recipients will be required to enter into a contract with the County of Marin. This contract will include:

- Scope of service and use of funds.
- Expected outcomes.
- Compliance with certain administrative requirements and accounting records.
- Agreement to affirmatively further fair housing and conduct affirmative marketing.
- Non-discrimination.

All projects will require Federal **environmental review** clearance (NEPA). This is required even for projects that are not subject to CEQA. The Housing and Federal Grants Division is responsible to conduct the environmental review. Awardees should note that project funds may not be spent until the environmental review has been completed.

All community infrastructure/capital projects and some housing projects will be subject to the Federal Davis-Bacon Act regarding prevailing wages for construction workers. Davis Bacon often has standards that differ from California prevailing wage standards.

CDBG will place a lien on all community infrastructure/capital and housing improvement projects. This lien must be repaid if the property is ever sold. The lien amount is not fixed and will be calculated as the amount of CDBG funding to the current value. The lien will increase as the value of the property rises. This lien has no time limit. The lien can be assumed by another nonprofit.

HOME will establish regulatory agreements dictating the affordability of the property and/or HOME units.

Commonly Used Terms

Affirmatively Furthering Fair Housing: Taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. Public service projects can affirmatively further fair housing by providing access to opportunities and by transforming racially and ethnically concentrated areas of poverty into areas of opportunity.

Affirmative Marketing: Through an affirmative marketing plan, a housing and service provider indicates what special efforts they will make to reach out to potential tenants or applicants who might not normally seek housing or services in their project and identify those least likely to apply and market to them.

Community Housing Development Organization (CHDO), is a private nonprofit, community-based organization that has staff with the capacity to develop affordable housing for the community it serves. To qualify for designation as a CHDO, the organization must meet certain requirements pertaining to their legal status, organizational structure, and capacity and experience. At least 15% of HOME funds must be allocated to CHDOs. A minimum requirement to be a CHDO is that at least one-third of the board membership are either low-income, residents of low-income neighborhoods, or are elected as representatives of low-income neighborhood organizations.

Community Development Block Grant (CDBG): funds local [community development](#) activities such as [affordable housing](#), [anti-poverty programs](#), and infrastructure development.

Demographics: HUD changed the data collection requirements regarding race/ethnicity categories during program year 2002-2003. These changes reflect Office of Management and Budget 1997 standards establishing that “Hispanic” is not a race category, but an ethnic category that cuts across all races. Those who are White, Black, Asian, Pacific Islander, American Indian, or a multi-race may also be counted as being of Hispanic ethnicity. As such, when asking the individual/household to select a race category, the individual/household must also state whether they are of Hispanic ethnicity. For example, an individual/household of Mexican descent would likely state their race as either American Indian or White, and would also fall under the category of “also Hispanic.”

Federal Grants Division: Staffed by the Marin County Community Development Agency, Federal Grants provides Marin communities with resources to address a wide range of unique community development needs. Federal funds are awarded to non-profits which provide community development activities, anti-poverty programs and affordable housing for low and moderate households throughout Marin County. Oversight is provided by the Priority Setting Committee, made up of appointed community members as well as elected officials from the County, cities and towns.

HOME Investment Partnerships Program (HOME): funds a wide range of activities including building, buying, and/or rehabilitating affordable housing for low-income people. HOME projects must match every dollar of HOME funds used with 25 cents from nonfederal sources, which may include donated materials or labor, the value of donated property, proceeds from bond financing, and other resources.

HUD: US Department of Housing and Urban Development

Protected classes: Under federal anti-discrimination law, a protected class is a group of people with a common characteristic who are legally protected from discrimination on the basis of that characteristic. The following characteristics are protected by the Federal Fair Housing Act: race, color, religion, national origin, sex, disability, and familial status (This last term refers to the presence of at least one child under 18 years old, and also protects prospects and tenants who are pregnant or in the process of adopting a child).

Public Services: CDBG funds can be used for activities that benefit low- and moderate-income people, such as child care, health care, job training, recreation programs, education programs, public safety services, fair housing activities, services for senior citizens, services for homeless persons, drug abuse counseling and treatment, energy conservation counseling and testing, and homebuyer down payment assistance. To be eligible for funding public services must be either a new service; or provide a quantifiable increase in the level

of a service. No more than 15% of CDBG funds can be used for public services.

Rehabilitation: CDBG funds may be used to finance the costs of rehabilitation as shown below.

Residential—Residential property, whether privately or publicly owned. This includes manufactured housing when such housing constitutes part of the community’s housing stock.

Commercial/industrial—Commercial or industrial property, but where such property is owned by a for-profit, rehabilitation under this category is limited to exterior improvements of the building and the correction of code violations.

Other—Nonprofit-owned, nonresidential buildings and improvements that are not considered to be public facilities or improvements under §570.201(c) of the CDBG program regulations.

Construction of Housing: Under this category, CDBG funds may be used in certain specified circumstances to finance the construction of new permanent residential structures. Eligible uses include acquisition of sites, clearance of toxic contaminants of property to be used for the new construction of housing, site improvements to publicly-owned land to enable the property to be used for the new construction of housing, provided the improvements are undertaken while the property is still in public ownership and the cost of disposing of real property, acquired with CDBG funds, which will be used for new construction of housing.

Davis-Bacon: The Davis–Bacon Act of 1931 is a United States federal law that establishes the requirement for paying the local prevailing wages on public works projects for laborers and mechanics.

NEPA: The National Environmental Policy Act (NEPA) is a United States environmental law that promotes the enhancement of the environment and established the President's Council on Environmental Quality (CEQ). Staff must complete environmental review for all CDBG funded projects.

Income Limits - 2019 HUD INCOME LIMITS

Household Size	1	2	3	4	5	6	7	8
Extremely Low (0-30%)	\$33,850	\$38,700	\$43,550	\$48,350	\$52,250	\$56,111	\$60,000	\$63,850
Very Low-Income (30+-50%)	\$56,450	\$64,500	\$72,550	\$80,600	\$87,050	\$93,500	\$99,950	\$106,400
Low-Income (50+-80%)	\$90,450	\$103,350	\$116,250	\$129,150	\$139,500	\$149,850	\$160,150	\$170,500
Moderate-Income (80+-120%)	\$114,900	\$131,350	\$147,750	\$164,150	\$177,300	\$190,450	\$203,550	\$216,700

SOURCE: U.S. Department of Housing and Urban Development



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Economic Development

**Prepared by: Danielle O’Leary,
Director of Economic Development & Innovation**

City Manager Approval: 

TOPIC: AMENDMENT OF AGREEMENT TO NEGOTIATE EXCLUSIVELY WITH GOLDSTONE MANAGEMENT, INC.

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDMENT NO. 2 TO EXTEND THE AGREEMENT TO NEGOTIATE EXCLUSIVELY WITH GOLDSTONE MANAGEMENT, INC. REGARDING REDEVELOPMENT OF 1009 AND 1001 FOURTH STREET, 924-926 THIRD STREET, AND THE THIRD STREET AND LOOTENS PLAZA PARKING GARAGE

RECOMMENDATION:

Adopt the resolution approving and authorizing the City Manager to execute an Amendment No. 2 to extend the Agreement to Negotiate Exclusively with Goldstone Management, Inc., retroactively from March 6, 2021.

BACKGROUND:

The City entered into an Agreement to Negotiate Exclusively (ENA) with Goldstone Management Inc. (“Developer”), on December 7th, 2019. The ENA provides, among other things, for the parties to negotiate a proposed Disposition and Development Agreement (“DDA”) pursuant to which Developer would acquire the City-owned public parking garage located near the southeast intersection of Third Street and Lootens Plaza (the “City Parcel”) and develop on the City Parcel and certain adjacent parcels owned by Developer a mixed-use residential/retail development project. The adjacent parcels owned by Developer include the three contiguous parcels at 1009 4th St, 1001 4th St, and 924-926 3rd St. improved with three commercial structures and an approximately 30-space, street level parking lot (the “Developer Parcels”).

Under the ENA, the Developer proposes to acquire an ownership interest in the City Parcel and to merge the City Parcel with the Developer Parcels, demolish existing structures, and build upon the entire site a mixed-use residential/retail development, including a market hall style food emporium (“Project”). A new, fully automated parking garage (“Automated Multi-Use Garage”) would replace the 171 public parking spaces located in the existing parking structure on the City Parcel and provide additional private parking to serve the retail and residential components of the proposed Project.

FOR CITY CLERK ONLY

File

Council Meeting:

Disposition:

In June 2020 in response to the COVID-19 pandemic, City and Developer entered into Amendment No. 1 to ENA extending the negotiating period by six months. As permitted under the ENA, the negotiating period was further extended by the City Manager for an additional 3 months in December 2020. The terms of the ENA as so amended stipulate that the Negotiation Period would not exceed thirty (30) months. The Negotiation Period includes a Preliminary Stage (15 months) and a DDA Stage (15 months). The primary purpose of the Preliminary Stage is to determine whether an automated parking garage appears to be feasible and attempt to agree upon a Term Sheet setting forth the key terms of a DDA.

Successful completion of the Preliminary Stage would result in a Preliminary Stage Feasibility Confirmation and would allow the commencement of the DDA stage.

PHASE 1 - PRELIMINARY STAGE PROGRESS:

- Since the Effective Date of the ENA on December 7th, 2019, a preliminary parking plan (a description of the project parking plan and a design, operation, and service description of the automated parking system by U-Tron, the vendor) has been submitted. In April of 2020, additional background studies were submitted to the City, including Developer's feasibility estimates, an appraisal of the parking garage, and a project parking requirement analysis.
- The City has since engaged with Watry Design, Inc. to assist with the peer review of the automated parking plan. The City has continued to work with outside legal counsel, Burke, Williams & Sorensen, LLP, and the City's financial consultant, Keyser Marston Associates, in reviewing the submitted plans and studies.
- Economic Development has collaborated with various other City departments, including the Community Development Department, Department of Public Works, and Parking Services to ensure the proposal is consistent with City goals, policies, and requirements.

ANALYSIS:

Developer requested and paid for an independent City appraisal of the Lootens garage to help them develop their parking feasibility study and project pro-forma analysis. The contract extension provided time for the City to conduct an independent appraisal for the Lootens parking garage.

The City, through its outside legal counsel, contracted with Chapman & Associates, and an appraisal was conducted and completed in mid-January 2021. The Developer received the City's appraisal and provided comments back to the City in late February.

AMENDMENT:

The Developer is requesting an additional (3) three-month Preliminary Stage Negotiating Period extension to conduct negotiations, prepare and submit the parking feasibility study, and develop the Project pro-forma analysis needed for the parties to make a determination as to Project feasibility. The parties will also increase the budget for Preliminary Stage Costs that Developer is obligated to reimburse to City and Developer will augment its existing Preliminary Stage Deposit by depositing with City an additional sum of \$15,000. All other terms of the ENA not specifically modified by the amendment will remain in full force and effect.

In short, the Negotiation Period will now last (33) months (three additional months from the 30 months under the existing ENA, as previously amended) and moves the Preliminary Stage target

date from March 6, 2021 to June 6, 2021. The DDA Stage duration remains at fifteen (15) months, with a new target date of September 6, 2022.

Administrative Extension:

Amendment No. 2 also authorizes the City Manager to approve further administrative extensions of the Negotiating Period not to exceed an additional 90-days in total, if the City Manager determines in his sole discretion that the parties have made substantial progress toward meeting the performance milestones identified in the ENA.

FISCAL IMPACT:

City staff has been monitoring and providing regular oversight over the Developer submitted deposit of \$50,000. To ensure City's costs are not exceeded during the Preliminary Stage, Developer has agreed to augment this deposit by an additional \$15,000 to cover additional City costs anticipated to be incurred during the extended Preliminary Stage of the Negotiating Period. Therefore, there will be no fiscal impact to the City if the amendment to the ENA is approved.

OPTIONS:

1. Adopt the resolution approving Amendment No. 2 to the ENA as proposed.
2. Request further information.

RECOMMENDED ACTION:

Adopt the resolution approving and authorizing the City Manager to execute Amendment No. 2 to the ENA with Goldstone Management, Inc.

ATTACHMENTS:

1. Formal Request for ENA Extension, Dated March 3, 2021
2. Amendment No.2 to Agreement Negotiate Exclusively with Goldstone Management, Inc.
3. Resolution approving Amendment No. 2 to ENA
4. Original ENA Agreement to Negotiate with Goldstone Management, Inc. (December 2019)
5. Amendment No.1 to Agreement to Negotiate Exclusively with Goldstone Management, Inc. (June 2020)
6. ENA Resolution 14802 Amendment No. 1 (June 2020)
7. Administrative Extension Memo (December 2020)



Ragghianti|Freitas LLP

ATTORNEYS AT LAW

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Eric Sternberger
eric@rflawllp.com

Client File No: 7588:1

March 3, 2021

VIA EMAIL ONLY: PAUL.JENSEN@CITYOFSANRAFAEL.ORG

Paul Jensen, Community Development Department Director
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

RE: Proposed Extension of Exclusive Negotiating Agreement with Goldstone Management (San Rafael Marketplace)

Dear Paul:

Per our recent discussions, I am writing on behalf of our client Goldstone Management, Inc. ("Goldstone") to submit a formal request that you bring an item for consideration before the San Rafael City Council to extend the end of the Preliminary Stage of the "Agreement to Negotiate Exclusively" ("the ENA") between the City and Goldstone for a period of six months. In light of the ongoing public health crisis under the COVID-19 outbreak, we believe that it is necessary to extend the Preliminary Stage of the negotiation period contemplated under the ENA for a period of six months. Under these challenging and unprecedented circumstances, the process of conducting basic negotiations and submitting and having the City peer review performance milestones outlined in the ENA simply cannot proceed at the pace that was anticipated under the ENA, and we believe that a second extension is warranted. While the ENA does allow for administrative extensions to be authorized by the City Manager, we think that it is in the interest of both parties to preserve these potential administrative extensions in the event of additional unforeseen delays. As we have demonstrated, however, Goldstone remains firmly committed to completing the negotiation process outlined under the ENA and has made considerable progress in completing performance milestones outlined under the ENA. Goldstone looks forward to memorializing a Disposition and Development Agreement with the City, and constructing the project as soon as economic conditions permit.



Ragghianti|Freitas LLP

PAGE 2 OF 3

Since the Effective Date of the ENA on December 7, 2019, Goldstone has worked diligently with its consultants and experts to prepare and deliver the work product and background studies necessary to complete the Preliminary Stage milestones identified under the ENA. On April 7, 2020, we provided the City with background studies and information intended to assist the City in conducting feasibility analyses and peer review of the parking, engineering, construction and cost analyses anticipated under the ENA. The documents included an "Appraisal of Parking Garage (assumed to be Vacant)," PSG File #847263, prepared by Property Sciences and dated February 9, 2020; the "Report: Feasibility Estimate, San Rafael Parking Lot, Goldstone Management Company," prepared by Turner and Townsend and dated January 30, 2020; and the "Parking Analysis for the Proposed San Rafael Market Hall Project," prepared by Abrams Associates and dated March 27, 2020. On Friday, May 1, 2020, we furnished the City with a full Parking Plan to enable the City to evaluate the operation and joint use of the proposed automated parking structure, comprising both technical feasibility and cost analyses completed by U-Tron and Michael Zucker and Associates, as well as a basic outline of proposed ownership and operational details as required under Section 2.1 of the ENA. On February 24, 2021, we provided detailed comments to the appraisal prepared on behalf of the City by Chapman & Patton.

All of these studies are intended to assist the Parties in reaching and later memorializing conceptual agreement on the Preliminary Stage tasks set forth under the ENA.

In short, Goldstone is committed to continuing this process and finalizing a Preliminary Stage Feasibility Confirmation as outlined under the ENA. In light of the challenges of the continued regional shelter in place orders, the City, on December 22, 2020 provided an administrative extension until March 6, 2021. However, we request that the City Council approve a simple amendment to the ENA to further extend the end of the Preliminary Stage **from March 6, 2021, until September 6, 2021**. We ask that you make appropriate arrangements to have this calendared as an item for consideration at the City Council's first meeting in March. We have attached a proposed draft amendment to this letter for your Counsel's review.

Please let me know if you have any questions or concerns. We look forward to working with you and your staff to move this exciting project forward for the City.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Eric Sternberger". The signature is fluid and cursive, with a large loop at the end.

Eric Sternberger



Ragghianti|Freitas LLP

PAGE 3 OF 3

Enclosure

cc: Danielle O'Leary, Director of Economic Development and Innovation
Simon Vuong, Economic Development Coordinator
Gerald J. Ramiza, Burke, Williams and Sorensen, LLP
Client

AMENDMENT NO.2 TO AGREEMENT TO NEGOTIATE EXCLUSIVELY

This Amendment No. 2 ("Amendment") to that certain "Agreement to Negotiate Exclusively," by and between the City of San Rafael, a municipal corporation ("City"), and Goldstone Management, Inc. ("Goldstone") ("the ENA"), is effective on the Effective Date identified on the signature page. Together, City and Goldstone may be referred to as "the Parties."

RECITALS

A. On November 18, 2019, City adopted a resolution approving and authorizing the City Manager to execute the ENA to govern the phases of negotiations for the Parties to negotiate and execute a Disposition and Development Agreement ("DDA") for Goldstone to acquire a City-owned public parking garage and develop a mixed-use residential/retail development project at the southeast intersection of Third Street and Lootens Plaza in the City of San Rafael ("the Project"). Pursuant to the authorization conferred by the November 18, 2019 resolution, the City executed the ENA with an effective date of December 7, 2019.

B. Under the terms of the ENA, the Parties outlined a series of phased negotiations towards memorializing the terms of a DDA, which require that the parties execute a Preliminary Stage Feasibility Confirmation no later than six months following the Effective Date, or June 7th, 2020.

C. In early 2020, following an initial outbreak in Wuhan, China in December of 2019, a pandemic outbreak of the SARS-COV-2 virus spread globally, reaching all 50 of the United States ("the COVID-19 Outbreak"). In March of 2020, to prevent spread of the viral outbreak, the Marin County Health and Human Services Department issued a shelter in place order, which is ongoing.

D. In light of the ongoing public health crisis under the COVID-19 Outbreak, the Parties extended the Preliminary Stage of the negotiation period contemplated under the ENA for a period of six months pursuant to Amendment No. 1 to Agreement to Negotiate Exclusively.

E. Due to the continuing public health crisis, on December 22, 2020, the City provided an administrative extension to the Preliminary Stage of the negotiation period until March 6, 2021.

F. In light of the continuing public health crisis under the COVID-19 Outbreak, and the progress made by the Parties in spite of the pandemic, the Parties wish to extend the Preliminary Stage of the negotiation period contemplated under the ENA for a period of six months, to September 6, 2021.

NOW, THEREFORE, the City and Goldstone, for the mutual consideration described herein, agree as follows:

1. INCORPORATION BY REFERENCE. Unless otherwise specified, all subsequent references to the ENA are deemed to mean the original ENA as modified by this Amendment. This Amendment incorporates the ENA by reference, except and only to the extent that any terms or conditions of the ENA are specifically modified by this Amendment. All terms and conditions in the ENA that are not specifically modified by this Amendment remain in full force and effect.

2. AMENDMENT. The first two sentences of Section 1.2 of the ENA, "Negotiation Period Duration," are hereby amended to read as follows [NOTE: none of the remaining sentences of Section 1.2 is modified by this Amendment]:

"1.2 Negotiation Period Duration.

(a) The negotiations shall be conducted in two stages, the combined duration of which shall not exceed thirty-three (33) months, plus extensions, if any, as provided in subsection (b) below. ("**Negotiation Period**"). The "**Preliminary Stage**" of the Negotiation Period shall commence on the Effective Date and expire on September 6, 2021, subject to potential extension as provided in subsection (b) below, or on the date the Parties execute a Preliminary Stage Feasibility Confirmation (defined below) whichever is earlier."

3. ENTIRE AGREEMENT. The ENA, as modified by this Amendment, constitutes the entire integrated understanding between the Parties concerning the Project. This Amendment supersedes all prior negotiations, agreements and understandings regarding the ENA, whether written or oral. The documents incorporated by reference into this Amendment are complementary; what is called for in one is binding as if called for in all, except and only to the extent otherwise specified. If any provision in an exhibit to this Amendment conflicts with or is inconsistent with a provision in the body of this Amendment, the provisions in the body of this Amendment will control over any such conflicting or inconsistent provisions.

4. SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of Goldstone and City. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and authorized assigns.

IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective on the Effective Date set forth below.

CITY:

CITY OF SAN RAFAEL, a California municipal corporation

ATTEST:

By: _____
Jim Schutz, City Manager

Lindsay Lara, City Clerk

Date: _____
("Effective Date")

APPROVED AS TO FORM:

Robert Epstein, City Attorney

CONSULTANT:
Goldstone Management, Incorporated

By: _____
Paul Goldstone, President

By: _____

AMENDMENT NO. 2 TO AGREEMENT TO NEGOTIATE EXCLUSIVELY

This Amendment No. 2 (“Amendment”) to that certain “Agreement to Negotiate Exclusively” by and between the City of San Rafael, a municipal corporation (“City”), and Goldstone Management, Inc. (“Developer”), is effective on the Amendment Date identified on the signature page. City and Developer may be referred to individually herein as a “Party”, and collectively as the “Parties”.

RECITALS

A. On November 18th, 2019, City adopted a resolution approving and authorizing the City Manager to execute an Agreement to Negotiate Exclusively to govern the phases of negotiations for the Parties to negotiate and present to the City Council for approval a proposed Disposition and Development Agreement (“DDA”) for Developer to acquire a City-owned public parking garage and develop a mixed-use residential/retail development project at the southeast intersection of Third Street and Lootens Plaza in the City of San Rafael as more particularly described therein. Pursuant to the authorization conferred by the November 18th 2019 resolution, the City executed the Agreement to Negotiate Exclusively with an effective date of December 7th, 2019 (the “Original Agreement”). The Original Agreement has been amended by an Amendment No. 1 to Agreement to Negotiate Exclusively dated June 9, 2020. The Original Agreement as amended by Amendment No. 1 is referred to herein as the “ENA”.

B. Under the terms of the ENA, the Parties outlined a series of phased negotiations towards memorializing the terms of a DDA, which required that the Parties make a determination as to feasibility of the proposed Project, and if the Project is mutually determined to be feasible, execute a Preliminary Stage Feasibility Confirmation no later than twelve months following the Effective Date, or December 7th, 2020, subject to further administrative extension as provided in the ENA.

C. In December 2020, the Developer requested, and the City Manager authorized, a one-time (90) day administrative extension, for the City to conduct an independent -appraisal of the City Parcel to facilitate the negotiations and assist Developer in the preparation of its financial pro-forma analysis and parking feasibility study.

D. In mid-January 2021, City received the preliminary results of the independent appraisal and shared those findings with Developer. City and Developer now desire to: (i) further extend the Preliminary Stage by an additional three months, (ii) authorize additional discretionary administrative extensions not to exceed 90 days in total, (iii) increase the budgeted amount of Preliminary Stage Costs, and (iv) augment Developer’s Preliminary Stage Deposit, all as provided herein, so the Parties can continue the negotiations and Developer can further develop its financial *pro-forma* and prepare and submit additional information regarding the proposed Automated Multi-Use Garage.

NOW, THEREFORE, the City and Developer, for the mutual consideration described herein, agree as follows:

AGREEMENTS:

1. INCORPORATION BY REFERENCE. Unless otherwise specified, all subsequent references to the ENA are deemed to mean the ENA, as further modified by this Amendment. This Amendment incorporates the ENA by reference, except and only to the extent that any terms or conditions of the ENA are specifically modified by this Amendment. All terms and conditions in the ENA that are not specifically modified by this Amendment remain in full force and effect.

2. AMENDMENT OF SECTION 1.2. Section 1.2 of the ENA, “Negotiation Period Duration,” is hereby amended and restated in its entirety to read as follows:

“1.2 Negotiation Period Duration.

(a) The negotiations shall be conducted in two stages, the combined duration of which shall not exceed thirty-three (33) months, plus extensions, if any, as provided in subsection (b) below (“**Negotiation Period**”). The “**Preliminary Stage**” of the Negotiation Period shall commence on the Effective Date and expire eighteen (18) months thereafter, subject to potential extension as provided in subsection (b) below, or on the date the Parties execute a Preliminary Stage Feasibility Confirmation (defined below) whichever is earlier. During the Preliminary Stage, the Parties shall work together in good faith to assess whether the proposed Automated Multi-Use Garage is feasible from a technical, financial, and operational perspective, and to negotiate a proposed DDA Term Sheet (defined below). If, on or before expiration of the Preliminary Stage, either Party determines in its sole and absolute discretion that the proposed Automated Multi-Use Garage is impractical or infeasible or otherwise does not meet its needs and objectives, or that the key terms of a DDA Term Sheet as proposed by the other Party are unacceptable to such Party, then the Party making such determination may terminate this Agreement by written notice to the other Party. If, however, on or before expiration of the Preliminary Stage each Party determines in its sole and absolute discretion that the proposed Automated Multi-Use Garage appears to be feasible and is likely to meet such Party’s needs and objectives and that the DDA Term Sheet is acceptable to such Party, then the Parties shall memorialize the achievement of such milestones in writing (“**Preliminary Stage Feasibility Confirmation**”) and, in such event, the Parties shall proceed to the DDA Stage (defined below) of the Negotiation Period. If the Parties have not executed a Preliminary Stage Feasibility Confirmation by the expiration of the Preliminary Stage (as it may be extended as provided for in subsection (b) below), then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except for those obligations which by their terms survive expiration or termination hereof. The “**DDA Stage**” of the Negotiation Period shall commence, if at all, on the effective date of the Preliminary Stage Feasibility Confirmation and expire fifteen (15) months thereafter, subject to potential extension as provided in subsection (b) below. Commencement of the DDA Stage shall also be contingent upon Developer delivering the DDA Stage Deposit to City as provided in Section 3.3 below. During the DDA Stage, the Parties will endeavor to negotiate and draft a comprehensive DDA and undertake the other DDA Stage tasks described in the Schedule of Performance.

(b) The Preliminary Stage and/or DDA Stage of the Negotiation Period may each be extended from time to time if the City Manager determines in his or her sole discretion

that the Parties have made substantial progress toward meeting the performance milestones identified in this Agreement and in the Schedule of Performance to merit such extension. However, the cumulative total of all such extensions granted by the City Manager shall not exceed ninety (90) days.”

3. AMENDMENT OF SECTION 3.2. The first sentence of Section 3.2 of the ENA, “Preliminary Stage Costs”, is hereby amended and restated in its entirety to read as follows:

“Developer’s obligation to reimburse City Costs incurred during the Preliminary Stage (“Preliminary Stage Costs”) will be capped at \$65,000 Thousand Dollars (\$65,000).”

4. INCREASE IN AMOUNT OF PRELIMINARY STAGE DEPOSIT. Concurrently with its execution of this Amendment, Developer shall augment the Preliminary Stage Deposit by delivering to City immediately available funds in the amount of \$15,000 (the “Additional Preliminary Stage Deposit”). From and after the Amendment Date, all references to “Preliminary Stage Deposit” in the ENA, as amended by this Amendment, shall be deemed to refer to the original Preliminary Stage Deposit, plus the Additional Preliminary Stage Deposit.

5. ENTIRE AGREEMENT. The ENA, as further modified by this Amendment, constitutes the entire integrated understanding between the Parties concerning the Project. This Amendment supersedes all prior negotiations, agreements and understandings regarding the ENA, whether written or oral. The documents incorporated by reference into this Amendment are complementary; what is called for in one is binding as if called for in all, except and only to the extent otherwise specified. If any provision in an exhibit to this Amendment conflicts with or is inconsistent with a provision in the body of this Amendment, the provisions in the body of this Amendment will control over any such conflicting or inconsistent provisions.

6. SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of Developer and City. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and authorized assigns.

IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective on the Amendment Date set forth below.

DATED: _____, 2021
("Amendment Date")

CITY:

CITY OF SAN RAFAEL, a California
municipal corporation

By: _____
Jim Schutz, City Manager

ATTEST:

Lindsay Lara, City Clerk

APPROVED AS TO FORM:

By: _____
Robert Epstein, City Attorney

DATED: _____, 2021

DEVELOPER:

GOLDSTONE MANAGEMENT INC., a
California corporation

By: _____
Name: Paul Goldstone
Title: President

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDMENT NO. 2 TO EXTEND THE AGREEMENT TO NEGOTIATE EXCLUSIVELY WITH GOLDSTONE MANAGEMENT, INC. REGARDING REDEVELOPMENT OF 1009 AND 1001 FOURTH STREET, 924-926 THIRD STREET, AND THE THIRD STREET AND LOOTENS PLAZA PARKING GARAGE

WHEREAS, the City of San Rafael owns the real property and parking garage located at Third Street and Lootens Plaza ("City Parcel"); and

WHEREAS, the City adopted a goal to "provide a vibrant Downtown" in "our Vision of Downtown" in 1993, which was later incorporated into the goals of the General Plan as Goal 6. General Plan Goal 6 includes the following implementation policies:

- NH 16 to substantially expand Downtown's economic success and increase opportunities for retail, office and residential development;
- NH 22 to create a popular and attractive residential environment that contributes to the activity and sense of community in Downtown; and
- NH 34 to encourage activities that will promote the Fourth Street Retail Core as being "Alive after Five"; and

WHEREAS, one of the City Council goals is to provide neighborhood and economic vitality by supporting the development of key Downtown sites, and the City Council's Economic Development Committee has adopted "support development of key sites such as 1001-1009 Fourth Street" as one of its eight priorities; and

WHEREAS, Goldstone Management, Inc. ("Developer") has proposed redeveloping the City Parcel and adjoining properties that Developer owns at 1009 and 1001 Fourth Street and 924-926 Third Street, into a proposed mixed-use residential/retail development, including a market hall-style food emporium and a fully automated parking garage ("Project"); and

WHEREAS, Developer and City are parties to an Agreement to Negotiate Exclusively with an effective date of December 7, 2019, as amended by an Amendment No. 1 to Agreement to Negotiate Exclusively dated June 9, 2020 (as so amended, the "ENA"); and

WHEREAS, the ENA provides for a Preliminary Stage of the Negotiation Period (as such terms are defined in the ENA) which, after extensions, was to expire on March 6, 2021; and

WHEREAS, Developer has requested that the City further extend the Preliminary Stage of the Negotiation Period by an additional 3 months with the potential for additional administrative extensions not to exceed 90 days in total; and

WHEREAS, the staff report accompanying this Resolution provides additional information about the request and rationale for the extension request due to the COVID-19 outbreak, and Developer's request for a City-prepared appraisal to assist with project pro-forma analysis and parking garage feasibility determination; and

WHEREAS, while City and Developer have made progress towards completing the milestones to be achieved during the Preliminary Stage, additional time is needed for the parties to make their respective feasibility determinations regarding the proposed Project, including the

proposed Automated Multi-Use Garage, and, therefore, staff recommends that the City Council approve the attached Amendment No. 2 to the ENA; and

WHEREAS, Developer has agreed to augment its Preliminary Stage Deposit by depositing with City an additional \$15,000 to pay the additional costs anticipated to be incurred by City during the extended Preliminary Stage negotiations; and

WHEREAS, amending the ENA is not committing the City to grant any land use approvals for the proposed Project or to approve any further agreement with the Developer;

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

1. The City Council hereby finds and determines that the above recitals are true, correct and incorporated herein.

2. The City Council hereby approves and authorizes the City Manager to sign on behalf of the City Amendment No. 2 to the ENA in substantially the form submitted to the City Council in connection with the consideration of this Resolution, subject to such minor changes as the City Manager and City Attorney may approve, provided, however, that nothing in this Resolution or the conduct of the negotiations pursuant to the ENA, as amended, shall be deemed to commit the City to approve any land use approvals for the proposed Project or to approve any further agreement with the Developer.

3. The City Council authorizes and directs the City Manager and his designees to take such steps as are reasonable and necessary to ensure performance of the City's obligations under the ENA, as further amended by Amendment No. 2, and to carry out the terms and conditions of the ENA, as so amended.

4. This Resolution shall take immediate retroactive effect upon adoption.

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 the 15th day of March 2021, retroactive to March 6, 2021, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

AGREEMENT TO NEGOTIATE EXCLUSIVELY

THIS AGREEMENT TO NEGOTIATE EXCLUSIVELY (“**Agreement**”) dated for reference purposes as of 12/7 2019 (“**Effective Date**”), is entered into by and between the City of San Rafael, a municipal corporation (“**City**”), and Goldstone Management Inc., a California corporation (“**Developer**”). City and Developer are sometimes referred to individually herein as a “**Party**”, and collectively as the “**Parties**”.

R E C I T A L S:

A. City owns that certain real property designated as APN: 011-263-22 (“**City Parcel**”) located near the southeast corner of Third Street and Lootens Plaza in downtown San Rafael, as depicted on the “**Site Map**” attached hereto as Exhibit A. The City Parcel is improved with an existing 171-space two-story public parking garage.

B. Developer owns three parcels immediately adjacent to the City Parcel, designated as APNs 011-263-18 (1009 4th Street, San Rafael), 011-263-04 (1001 4th Street, San Rafael) and 011-263-16 (924-926 3rd Street, San Rafael) (the “**Developer Parcels**” and, collectively with the City Parcel, the “**Site**”) as depicted on the Site Map. The Developer Parcels are improved with three commercial structures and an approximately 30-space, street level parking lot.

C. Developer proposes to acquire an ownership interest in the City Parcel, and to effect a voluntary merger of the City Parcel with the Developer Parcels in order to clear the existing improvements and build upon the Site a mixed-use residential/retail development, including a market hall style food emporium and a fully automated parking garage (“**Automated Multi-Use Garage**”) that would replace the 171 public parking spaces located in the existing parking structure on the City Parcel and provide additional private parking to serve the retail and residential components of the proposed Project (collectively, the “**Project**”).

D. City and Developer desire to enter into this Agreement setting forth the terms under which City and Developer will diligently and in good faith endeavor to accomplish the following: (1) during a Preliminary Stage (defined below) of negotiations, for the Parties to (i) determine, each in its sole and absolute discretion, whether an automated parking garage of the type proposed by Developer appears to be feasible from a financial, design and operational perspective and to otherwise meet the City’s and Developer’s respective parking objectives, and (ii) attempt to agree upon a Term Sheet setting forth the key terms of a DDA (defined below) with respect to the Site and proposed Project; and (2) if, and only if, the Parties memorialize their successful completion of the Preliminary Stage of the negotiations via a Preliminary Stage Feasibility Confirmation, for the Parties to proceed to a DDA Stage of negotiations during which the Parties would negotiate and draft a comprehensive Disposition and Development Agreement (“**DDA**”) setting forth the terms under which City would transfer the City Parcel to Developer and Developer would develop the proposed Project, including the Automated Multi-Use Garage, on the Site and Developer and its successors and assigns, at its and their expense, would agree to operate the Automated Multi-Use Garage and provide ongoing public parking in perpetuity for

the benefit of City and the public in accordance with agreed upon pricing requirements to be set forth under the terms of the DDA.

A G R E E M E N T S:

CITY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

1. NEGOTIATION PERIOD

1.1 Good Faith Negotiations. City and Developer, acknowledging that time is of the essence, agree for the Negotiation Period set forth in Section 1.2 below, to negotiate diligently and in good faith and endeavor to perform the tasks and due diligence necessary for successful completion of the Preliminary Stage, and if the Preliminary Stage conditions are satisfied, for the Parties to endeavor to complete the DDA Stage tasks which, if successfully concluded, would culminate in presentation of a comprehensive DDA to the City Council for its consideration and potential approval. City agrees, for the Negotiation Period, not to negotiate with, solicit offers or proposals regarding, or respond to inquiries from (other than to notify the inquiring party, person or entity that City is subject to an agreement to negotiate exclusively), any other person or entity regarding the conveyance of the City Parcel and/or the development of the Site or any portion thereof. A DDA resulting from the negotiations hereunder shall become effective only if and after such DDA has been considered and approved by the City Council at a duly noticed public meeting called for such purpose. If a DDA is executed by City and Developer, the DDA shall thereafter govern the rights and obligations of the Parties.

1.2 Negotiation Period Duration.

(a) The negotiations shall be conducted in two stages, the combined duration of which shall not exceed twenty-one (21) months, plus extensions, if any, as provided in subsection (b) below ("**Negotiation Period**"). The "**Preliminary Stage**" of the Negotiation Period shall commence on the Effective Date and expire six (6) months thereafter, subject to potential extension as provided in subsection (b) below, or on the date the Parties execute a Preliminary Stage Feasibility Confirmation (defined below) whichever is earlier. During the Preliminary Stage, the Parties shall work together in good faith to assess whether the proposed Automated Multi-Use Garage is feasible from a technical, financial, and operational perspective, and to negotiate a proposed DDA Term Sheet (defined below). If, on or before expiration of the Preliminary Stage, either Party determines in its sole and absolute discretion that the proposed Automated Multi-Use Garage is impractical or infeasible or otherwise does not meet its needs and objectives, or that the key terms of a DDA Term Sheet as proposed by the other Party are unacceptable to such Party, then the Party making such determination may terminate this Agreement by written notice to the other Party. If, however, on or before expiration of the Preliminary Stage each Party determines in its sole and absolute discretion that the proposed Automated Multi-Use Garage appears to be feasible and is likely to meet such Party's needs and objectives and that the DDA Term Sheet is acceptable to such Party, then the Parties shall memorialize the achievement of such milestones in writing ("**Preliminary Stage Feasibility Confirmation**") and, in such event, the Parties shall proceed to the DDA Stage (defined below) of the Negotiation Period. If the Parties have not executed a Preliminary Stage Feasibility

Confirmation by the expiration of the Preliminary Stage (as it may be extended as provided for in subsection (b) below), then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except for those obligations which by their terms survive expiration or termination hereof. The “**DDA Stage**” of the Negotiation Period shall commence, if at all, on the effective date of the Preliminary Stage Feasibility Confirmation and expire fifteen (15) months thereafter, subject to potential extension as provided in subsection (b) below. Commencement of the DDA Stage shall also be contingent upon Developer delivering the DDA Stage Deposit to City as provided in Section 3.3 below. During the DDA Stage, the Parties will endeavor to negotiate and draft a comprehensive DDA and undertake the other DDA Stage tasks described in the Schedule of Performance.

(b) Extensions. The Preliminary Stage and/or DDA Stage of the Negotiation Period may each be extended from time to time if the City Manager determines in his or her sole discretion that the Parties have made substantial progress toward meeting the performance milestones identified in this Agreement and in the Schedule of Performance to merit such extension. However, the cumulative total of all such extensions granted by the City Manager shall not exceed ninety (90) days.

2. **NEGOTIATION PERIOD TASKS AND PERFORMANCE MILESTONES.**

2.1 Preliminary Stage Tasks. During the Preliminary Stage of the Negotiation Period, Developer, in addition to undertaking the other Preliminary Stage tasks set forth in the Schedule of Performance, will retain Abrams Associates, as its parking consultant, to prepare for City review and input a detailed plan describing all aspects of operation and joint use of the proposed Automated Multi-Use Garage (“**Parking Plan**”), including:

- (a) The proposed design of the Automated Multi-Use Garage, including the proposed automated parking solutions,
- (b) City’s access, use and/or ownership or other rights with respect to the public space portions of the Automated Multi-Use Garage,
- (c) Plans for ensuring the ongoing operation and maintenance of the public parking portions of the Automated Multi-Use Garage, and of the Automated Multi-Use Garage as a whole,
- (d) Funding of long term operation and maintenance costs,
- (e) Method of establishing and adjusting public parking rates to ensure those rates will be consistent with public parking rates in other City owned garages and lots,
- (f) Designation of flex spaces, if any, which are publicly available during regular daytime and early evening business hours but revert to residential use at night.

City will retain Watry Design, Inc. or such other parking consultant as City may select as its parking consultant, the costs of which shall be included in City Costs (defined below) and

reimbursed by Developer, to peer review Developer's Parking Plan and advise City on changes or adjustments that may be required to meet City's needs.

In addition to the Parking Plan related tasks and other Preliminary Stage tasks described in the Schedule of Performance, during the Preliminary Stage of the Negotiation Period, Developer and City will endeavor to negotiate and draft a mutually acceptable term sheet ("**Term Sheet**") setting forth the key terms for inclusion in the proposed DDA. The Term Sheet will address, among other things, the following:

- i) Transfer value of the City Parcel and the existing improvements thereon based on a fair market value appraisal methodology agreeable to the Parties;
- ii) Details of the proposed Project land use and operational characteristics, generally consisting of a European-style Market Hall facility with numerous and varied food vendors selling both prepared food and specialty groceries;
- iii) Details of the proposed Project structures, in plan and elevation, along with conceptual renderings;
- iv) A budget for the anticipated amount of City Costs (defined below) to be incurred during the DDA Stage, if the Parties proceed to such stage (collectively, "**Anticipated DDA Stage Costs**"), all of which shall be paid by Developer, and the amount and form of a security deposit ("**DDA Stage Deposit**") guaranteeing Developer's payment of same;
- v) Details of Developer's proposed use of Lauren's Place, the public civic plaza and right of way adjacent to the City parcel and Developer's Parcels, for outdoor seating as well as access and potential ingress and egress into the proposed Market Hall facility via grant of easement or license or encroachment permit as the parties may mutually determine;
- vi) Agreed-upon timelines for entitlements and documentation necessary for commencement of construction;
- vii) Conditions precedent for close of escrow, including identification of all land use approvals, building permits, and construction contracts with a general contractor that Developer will have to obtain;
- viii) Financing details, including any debt and equity financing that Developer may have to obtain, and appropriate evidence of debt and equity commitments that Developer will need to provide to City's financial consultant prior to City's consideration of a DDA for approval and prior to closing;
- ix) City remedies, including reverter rights, if Developer fails to timely commence or complete construction of the proposed Project by specified dates;

- x) City remedies if Developer or its successors or assigns fails to continuously operate and maintain the public portions of the Automated Multi-Use Garage following initial construction thereof;
- xi) Prevailing wage requirements for all stages of construction;
- xii) Details of the parking agreement between City and Developer that would govern the Automated Multi-Use Garage;
- xiii) Outline of the City entitlement process to be administered and processed separately from the DDA, the costs of which will be borne exclusively by Developer; and
- xiv) Physical and environmental investigation and Site testing.

2.2 DDA Stage Tasks. If the Parties proceed to the DDA Stage of the Negotiation Period, then City and Developer, in addition to undertaking the other DDA Stage tasks as set forth in the Schedule of Performance, will endeavor to negotiate and draft a mutually acceptable DDA, including ancillary agreements, to be considered for approval by the City Council prior to expiration of the Negotiation Period.

3. DEVELOPER PAYMENT OF CITY COSTS.

3.1 General. Subject to the terms set forth below, Developer shall be responsible for paying all City Costs (defined below) incurred in connection with the implementation of this Agreement, including: (a) during the Preliminary Stage, the City Costs associated with evaluation of the feasibility of the Automated Multi-Use Garage and the negotiation and drafting of the DDA Term Sheet, and (b) during the DDA Stage, the City Costs associated with the negotiation and drafting of the proposed DDA and preparation of an appropriate California Environmental Quality Act (“CEQA”) document addressing the environmental impacts of the proposed Project. As used in this Agreement, “City Costs” means and includes all of City’s reasonable out-of-pocket costs and expenses paid to third-party consultants and attorneys, including City’s outside legal counsel, Burke Williams & Sorensen LLP; City’s financial consultant, Keyser Marston Associates, Inc., and City’s parking consultant, Watry Design, Inc., and, if applicable, planning and CEQA consultants, in connection with evaluation of the proposed Automated Multi-Use Garage; negotiation and drafting of a DDA Term Sheet; drafting, negotiation and production of the DDA and ancillary agreements; preparation of an appropriate CEQA document; and other work product as required to implement the Project.

3.2 Preliminary Stage Costs. Developer’s obligation to reimburse City Costs incurred during the Preliminary Stage (“Preliminary Stage Costs”) will be capped at Fifty Thousand Dollars (\$50,000). Concurrently with Developer’s execution of this Agreement, Developer shall deliver to City cash or other immediately available funds in the amount of Fifty Thousand Dollars (\$50,000) (“Preliminary Stage Deposit”) as security for Developer’s obligation to pay Preliminary Stage Costs as provided herein. Developer’s obligation to reimburse all such Preliminary Stage Costs shall survive the expiration or termination of this Agreement with respect to any and all Preliminary Stage Costs incurred on or before the date which is ten (10)

days following the date of such expiration or termination, provided, however, that in no event will Developer's liability for Preliminary Stage Costs exceed the amount of the Preliminary Stage Deposit then held by City.

3.3 DDA Stage Costs. As provided for under Section 2.1, subsection iv above, Developer and City shall endeavor to reach mutual agreement on a budget for the Anticipated DDA Stage Costs and the amount and form of a DDA Stage Deposit as Preliminary Stage milestones. Concurrently with the Parties execution of the Preliminary Stage Feasibility Confirmation, Developer shall deliver to City cash or other immediately available funds in the full amount of the DDA Stage Deposit as security for Developer's obligation to pay City Costs incurred during the DDA Stage as provided in this Section 3. If City determines that in order to carry out its DDA Stage obligations under this Agreement, the DDA Stage City Costs will exceed the Anticipated DDA Stage Costs, City shall give written notice to Developer, which written notice (each, an "**Additional DDA Stage Cost Notice**") shall include detailed projections, prepared in good faith to the best of the City's ability, of all future City Costs to be incurred during the remainder of the DDA Stage. Upon receipt of an Additional DDA Stage Cost Notice, Developer shall then have ten (10) days to approve or disapprove in writing City's request for approval of the increase in Anticipated DDA Stage Costs. If Developer approves an Additional DDA Stage Cost Notice, Developer's approval shall be accompanied by delivery of additional DDA Stage Deposit funds in the amount of the additional anticipated City Costs as approved by Developer. If Developer has disapproved or failed to provide written approval of such request to City within such ten (10) day period, this Agreement may be terminated by City upon five (5) days' written notice to Developer. If City terminates this Agreement as provided in this Section 3.3, City shall promptly return the unexpended and uncommitted portion of the DDA Stage Deposit (including any augmentations of same), if any, to Developer and, except for those obligations which by their terms survive termination hereof, neither Party shall have any further rights against or liability to the other Party under this Agreement. The approval of any proposed increase in Anticipated DDA Stage Costs shall be deemed an amendment of this Agreement. Developer's obligation to pay for all such DDA Stage City Costs shall survive the expiration or termination of this Agreement with respect to any and all City Costs incurred on or before the date which is ten (10) days following the date of expiration or termination as set forth herein, provided, however, that in no event will Developer's liability for DDA Stage City Costs exceed the amount of the DDA Stage Deposit, including any augmentations of same, then held by City.

3.4 Developer Acknowledgments. Developer acknowledges and agrees that if it fails to timely approve a requested augmentation of the Anticipated DDA Stage Costs budget or timely augment the DDA Stage Deposit as provided above, City shall have no obligation to continue incurring any City Costs or continue negotiating in connection with the proposed Project or DDA and City may terminate this Agreement upon written notice to Developer as provided in Section 3.3 above. Developer further covenants that if City ceases negotiation of the DDA or refuses to continue incurring City Costs as a result of Developer's failure to approve such requested augmentation of the Anticipated DDA Stage Costs budget or augment the DDA Stage Deposit as described above, Developer shall not directly or indirectly initiate any litigation against City or its officials, employees, agents, contractors or volunteers in connection with such City action.

3.5 City Right to Draw on Deposits. Subject to the limitations set forth above, City may pay all City Costs from the Preliminary Stage Deposit or DDA Stage Deposit (including any augmentations of same) as applicable as such City Costs are incurred. The Preliminary Stage Deposit and DDA Stage Deposit shall be the sole and exclusive remedy of the City for any and all City Costs. City shall transmit to Developer monthly a copy of each invoice, bill or other evidence that City has incurred as City Costs, including itemized invoices and receipts for any reimbursable expenses. City's legal and advisory services invoices shall be redacted as necessary to preserve attorney-client privilege.

3.6 Close Out Period. In the event that either City or Developer terminates this Agreement, then (i) City shall cease incurring City Costs with respect to the proposed Project, other than Project close out expenses which City may continue to incur for up to ten (10) days following expiration or termination of this Agreement ("**Close Out Period**"); (ii) Developer shall remain obligated to pay all City Costs incurred prior to the effective date of expiration or termination, and Project close out expenses incurred during such Close Out Period, solely to the extent of the Preliminary Stage Deposit or DDA Stage Deposit (including any augmentations of same) held by City on the date this Agreement is terminated; and (iii) Developer shall have no responsibility to pay or reimburse City for any City Costs incurred with respect to the proposed Project after the date of expiration or termination other than Project close out expenses incurred during the Close Out Period.

4. RIGHT OF ENTRY.

4.1 Access Agreement and City Reports. City shall provide Developer reasonable access to all portions of the City Parcel and improvements thereon for the purpose of obtaining data and making surveys and tests necessary to evaluate the development potential of the City Parcel and otherwise to conduct the land use due diligence relating to the Project as contemplated hereunder, including, without limitation, the right to make borings to investigate the soils and environmental condition of the City Parcel. Said right of access shall be memorialized via an access agreement in a form reasonably acceptable to City. Developer acknowledges and agrees that any engineering, environmental reports and related data (collectively, "**City Reports**"), if any, provided by City will be and are furnished without warranty of any kind and on the express condition that Developer will make its own independent verification of the accuracy, reliability and completeness of such information as Developer deems appropriate, and that Developer will not rely on the City Reports. Developer shall determine the appropriate scope of investigation of the physical and environmental conditions of the City Parcel and existing improvements thereon. All costs of said investigation, including a Phase 1 and Phase 2 environmental site assessment (if required), and geotechnical and soils investigations, if any, shall be paid and borne by Developer at its sole cost and expense and shall not be considered part of City Costs.

5. ADDITIONAL DEVELOPER RESPONSIBILITIES

5.1 Full Disclosure. Developer shall provide to City (a) the names of its principals, officers and/or those with managerial authority, joint venturers, negotiators, development managers, consultants and directly-involved managerial employees (collectively, "**Developer**

Parties”); and (b) all other material information concerning Developer reasonably requested by City. Any material change in the identity of the Developer Parties shall be subject to the approval of City, which shall not be unreasonably withheld.

5.2 Project Cost and Revenue Documentation. Upon request by City, Developer shall provide City or its designees with development and operating assumptions related to Project costs and revenues by category, including detailed information regarding extra-ordinary Project costs, if any, attributable to the Automated Multi-Use Garage or other individual Project components and full disclosure regarding the potential methods of financing to be used in the acquisition of the City Parcel and development of the proposed Project. Developer acknowledges that detailed information regarding such development and operating assumptions will be necessary in order for City and its financial consultants to evaluate the financial terms of the proposed DDA.

5.3 Progress Reports. Developer shall keep City advised as to the status of all work to be undertaken by or on behalf of Developer as described in the Schedule of Performance. Within ten (10) days following City’s request, which may be made from time to time during the Negotiation Period, Developer shall submit to City a written progress report advising City on the status of all work being undertaken by or on behalf of Developer.

6. CITY’S RESPONSIBILITIES

6.1 City Assistance and Cooperation. City shall cooperate with Developer by providing full disclosure regarding any existing condition of the City Parcel or the improvements thereon. City shall share with Developer any studies and information received as part of City’s own parking and traffic flow studies as they relate to the Site or the proposed Project.

7. GENERAL PROVISIONS

7.1 No Brokerage Fees. City shall not be liable for any real estate commission or brokerage fees which may arise from the proposed transfer of the City Parcel or any portion thereof or interest therein. Developer represents and warrants to City that it has not engaged any broker, agent or finder in connection with the acquisition or development of the City Parcel. Developer shall be solely responsible for payment of all costs and fees payable to Developer’s Broker. Developer further agrees to indemnify, defend and hold City harmless from any claim by any other broker, agent or finder retained by, or alleged to have been retained by, Developer. Developer’s indemnity obligations under this Section 7.1 shall survive expiration or termination of this Agreement.

7.2 Notices. Any approval, disapproval, demand or other notice which either Party may desire to give to the other Party under this Agreement must be in writing and may be given by any commercially acceptable means, including personal delivery, or overnight courier, to the Party to whom the notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by notice.

To City: City of San Rafael
1400 Fifth Avenue, Room 203
San Rafael, CA 94901
Attention: Jim Schutz, City Manager

With a copy to: City of San Rafael
1400 Fifth Avenue, Room 202
San Rafael, CA 94901
Attention: Robert Epstein, City Attorney

With a copy to: Burke, Williams & Sorensen, LLP
1901 Harrison St., Suite 900
Oakland, CA 94612
Attention: Gerald J. Ramiza

To Developer: 82 Shattuck Square
Berkeley, CA 94704
Attention: Paul Goldstone

Any notice shall be deemed received on the date of delivery if delivered by personal service, three (3) business days after mailing if sent by first class mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via overnight courier.

7.3 Limitations of this Agreement. By its execution of this Agreement, City is not committing itself to or agreeing to undertake: (i) disposition of the City Parcel to Developer; or (ii) any other acts or activities requiring the subsequent independent exercise of discretion by City or any agency or department thereof. This Agreement does not constitute a disposition of property by City. Execution of this Agreement by City is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by City as to any DDA, including Automated Multi-Use Garage parking agreement, and all proceedings and decisions in connection therewith. In addition, nothing in this Agreement shall be construed to limit the application of CEQA to any DDA or the proposed Project or control the actions of City in meeting its CEQA obligations. In fulfilling its obligations under CEQA, City shall act independently, reserving full and complete discretion with respect to any such CEQA approvals without reference to this Agreement. City shall not be liable, in any respect, to Developer for its action or inaction in fulfilling its CEQA obligations. City will not consider the approval of any DDA or the proposed Project, unless and until it has fully reviewed and considered the environmental impacts in accordance with CEQA. City is not, and shall not be considered to be, obligated by this Agreement, or otherwise, to approve the proposed Project or any DDA, or any changes to the foregoing, or any other agreement. After CEQA review, City is not obligated, by this Agreement or otherwise, to adopt findings of

overriding considerations for approval of or to take any other action in support of the proposed Project or any DDA or any changes to the foregoing, nor is City precluded from rejecting the DDA and/or proposed Project or from imposing mitigation measures as a condition of approval, which measures mitigate or avoid direct or indirect environmental effects of the proposed Project. If City rejects the DDA or proposed Project, this Agreement shall automatically terminate and, except for those obligations which by their terms survive termination hereof, neither Party shall have any further rights or obligations hereunder.

7.4 Integration. This Agreement contains the entire understanding between the Parties relating to the matters set forth herein. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect.

7.5 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

7.6 Severability. If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

7.7 No Assignment. The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Developer. Accordingly, except as otherwise expressly provided below, Developer may not transfer or assign any or all of its rights or obligations under this Agreement except with the prior written consent of the City, which consent shall be granted or withheld in the City's sole absolute discretion, and any such attempted transfer or assignment without the prior written consent of City shall be void. Notwithstanding the foregoing, the Parties acknowledge that Developer intends to form a new special purpose entity to develop the proposed Project and to enter into the proposed DDA. Developer may assign its rights and obligations under this Agreement to an affiliate company or a new special-purpose entity, provided Paul Goldstone retains full management and control of the assignee entity or entities.

7.8 Successors and Assigns. Subject to the limitations on assignment set forth in Section 7.7 above, this Agreement shall be binding upon, and inure to the benefit of, the Parties, their heirs, executors, personal representatives, nominees, successors and assigns.

7.9 Indemnity. Developer shall indemnify, defend (with counsel reasonably acceptable to City), protect and hold City, and its officers, employees, elected officials, agents and representatives, harmless from, all third-party claims, demands, damages, defense costs or liability of any kind or nature arising directly or indirectly from the implementation of this Agreement, including any City Parcel investigation and/or acquisition activities under Section 4 above, including damages to property or injuries to persons, accidental death, and reasonable

attorneys' fees and costs, whether such activities or performance thereof be by Developer or its employees, agents, contractors or subcontractors and whether such damage shall accrue or be discovered before or after expiration or termination of this Agreement. Developer's indemnity obligations under this Section 7.9 shall not extend to claims, demands, damages, defense costs or liability for property damage, bodily injury or death, to the extent (i) occasioned by the sole negligence or willful misconduct of City or its officers, employees, elected officials, agents or representatives; or (ii) related to the discovery or disturbance by Developer or its contractors, subcontractors or agents during due diligence of any pre-existing hazardous materials or hazardous substances on the City Parcel. Developer's obligations under this Section 7.9 shall survive the expiration or other termination of this Agreement.

7.10 Confidentiality. Any information provided by Developer to City, including financial statements, pro formas and other financial projections (whether in written, graphic, electronic or any other form), that is clearly marked as "CONFIDENTIAL/PROPRIETARY INFORMATION" ("**Confidential Information**") shall be subject to the provisions of this Section 7.10. Subject to the terms of this Section, City shall use good faith diligent efforts to prevent disclosure of the Confidential Information to any third parties, except as may be required by the California Public Records Act (Government Code Section 6253 *et seq.*) or other applicable local, state or federal law (collectively, "**Public Disclosure Laws**"). Notwithstanding the preceding sentence, City may disclose Confidential Information to its officials, employees, agents, attorneys and advisors, but only to the extent necessary to carry out the purpose for which the Confidential Information was disclosed.

Developer acknowledges that City has not made any representations or warranties that any Confidential Information received from Developer will be exempt from disclosure under any Public Disclosure Laws. In the event the City's legal counsel determines that the release of the Confidential Information is required by Public Disclosure Laws, or order of a court of competent jurisdiction, City shall notify Developer of City's intention to release the Confidential Information. If the City Attorney, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Public Disclosure Laws, City may redact, delete or otherwise segregate the Confidential Information that will not be released from the non-exempt portion to be released. Developer further acknowledges that in connection with City Council's consideration of any DDA as contemplated by this Agreement, City will need to present a summary of Developer's financial projections, including anticipated costs of development, anticipated project revenues, and returns on cost and investment.

If any litigation is filed seeking to make public any Confidential Information, City and Developer shall cooperate in defending the litigation, and Developer shall pay City's reasonable out-of-pocket costs of defending such litigation and shall indemnify City against all costs and attorneys' fees awarded to the plaintiff in any such litigation. Alternatively, Developer may elect to disclose the Confidential Information rather than defend the litigation. Developer's obligations under this Section 7.10 shall survive the expiration or termination of this Agreement.

The restrictions set forth herein shall not apply to Confidential Information to the extent such Confidential Information: (a) is now, or hereafter becomes, through no act or failure to act on the part of City or its representatives, generally known or available; (b) is known by the City

at the time of receiving such information as evidenced by City's public records; (c) is hereafter furnished to City by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by City without any breach of this Agreement and without any use of or access to Developer's Confidential Information as evidenced by City's records; (e) is not clearly marked "CONFIDENTIAL/PROPRIETARY INFORMATION" as provided above (except where Developer notifies City in writing, prior to any disclosure of the Confidential Information, that omission of the "CONFIDENTIAL/PROPRIETARY INFORMATION" mark was inadvertent), or (f) is the subject of a written permission to disclose provided by Developer to City.

7.11 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Site, including the City Parcel, or proposed Project with respect to this Agreement or any dispute or act arising from it. The provisions of this Section shall survive the expiration or other termination of this Agreement.

7.12 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by both parties, shall constitute a binding agreement.

7.13 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of its terms.

7.14 Authority. If Developer is a corporation, limited liability company, partnership, trust, association or other entity, Developer and each person executing this Agreement on behalf of Developer does hereby covenant and warrant that (a) Developer is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) Developer has and is duly qualified to do business in California, (c) Developer has full corporate, partnership, trust, association or other power and authority to enter into this Agreement and to perform all of Developer's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Agreement on behalf of Developer is duly and validly authorized to do so. City and each person executing this Agreement on behalf of City does hereby covenant and warrant that (i) City is a municipal corporation duly established and validly existing under the laws of the State of California, (ii) City has full power and authority to enter into this Agreement and to perform all of City's obligations hereunder, and (iii) each person (and all of the persons if more than one signs) signing this Agreement on behalf of City is duly and validly authorized to do so.

7.15 Limitation of Remedies. In the event of an uncured default by either Party under this Agreement, the non-defaulting Party's exclusive remedy is to terminate this Agreement. In no event shall either Party have the right, and each Party expressly waives the right, to seek monetary damages of any kind (including but not limited to actual damages, economic damages, consequential damages, or lost profits) in the event of a default by the other Party under this Agreement.

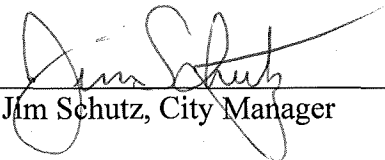
7.16 Governing Law. This Agreement, and the interpretation and enforcement thereof, shall be governed by the laws of the State of California without regard to conflicts of law principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set opposite their signatures. The effective date of this Agreement shall be the date this Agreement is signed by City.


CITY:

CITY OF SAN RAFAEL, a California municipal corporation


DATED: 12/07, 2019

By: 
Jim Schutz, City Manager

ATTEST:


Lindsay Lara, City Clerk

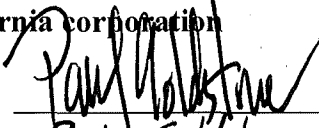
APPROVED AS TO FORM:

By: 
Robert Epstein, City Attorney

DEVELOPER:

GOLDSTONE MANAGEMENT INC., a California corporation

DATED: _____, 2019

By: 
Name: Paul Goldstone
Title: President

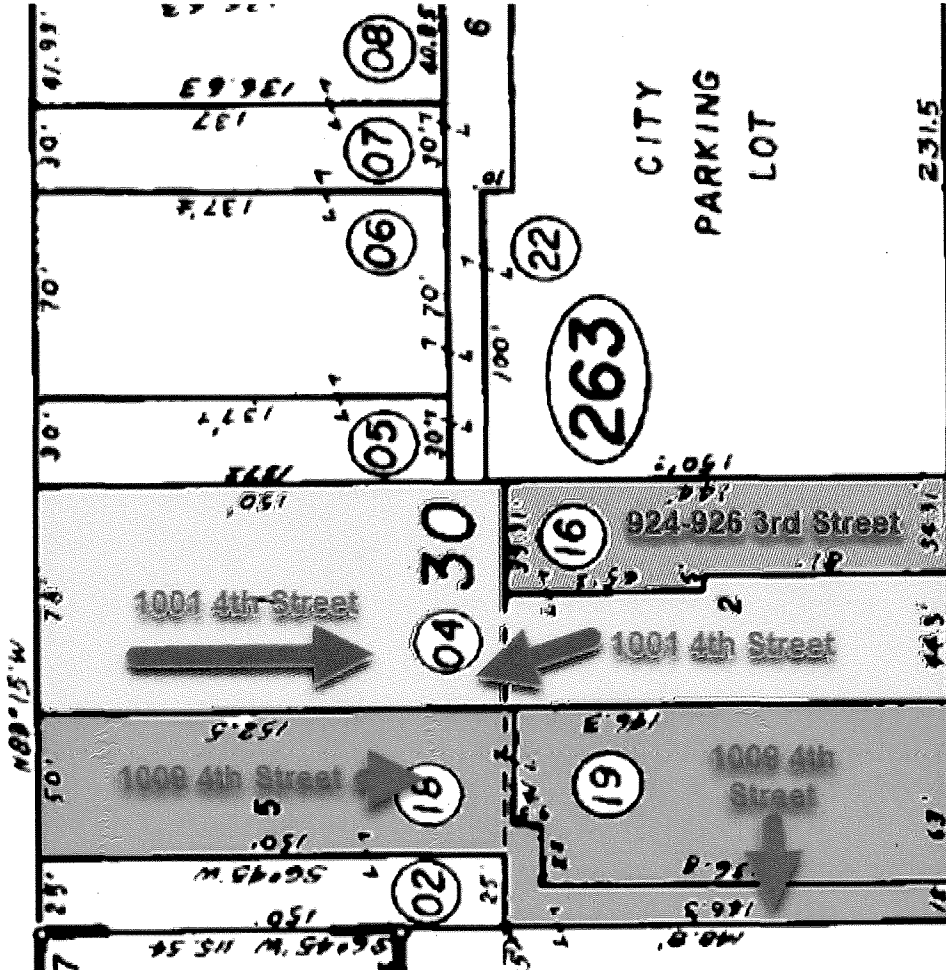
By: _____
Name: _____
Title: _____

EXHIBIT A

DIAGRAM AND LEGAL DESCRIPTIONS OF THE CITY PARCEL
AND DEVELOPER PARCELS

Diagram of all three contiguous Developer properties.

1001 4th Street
1009 4th Street
924-926 3rd Street



Legal Description of all three contiguous properties.

1001 4th Street, San Rafael, CA 94901

Legal Description

The land referred to in this Commitment is described as follows:

Real property in the City of San Rafael, County of Marin, State of California, described as follows:

PARCEL ONE:

ALL THAT PORTION OF LOT ONE (1), BLOCK THIRTY (30) IN THE ORIGINAL TOWNSITE OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, BOUNDED AND DESCRIBED AS FOLLOWS, TO-WIT:
COMMENCING AT A POINT ON THE SOUTHERLY LINE OF FOURTH STREET, DISTANT THEREON 301 .3 FEET EASTERLY FROM THE CORNER FORMED BY THE INTERSECTION OF THE SOUTH LINE OF FOURTH STREET WITH THE EASTERLY LINE OF "A" STREET RUNNING THENCE WESTERLY ALONG THE SOUTHERLY LINE OF FOURTH STREET 77-½ FEET MORE OR LESS TO THE EASTERLY LINE OF LOT CONVEYED BY JACOB ALBERT, ET UX, TO HOWARD C. SPARROW, ET AL, BY DEED DATED JANUARY 11, 1928, RECORDED IN BOOK 138 OF OFFICIAL RECORDS, AT PAGE 217; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF SAID LOT, 150 FEET AND 5 INCHES; THENCE EASTERLY IN A STRAIGHT LINE 77-½ FEET MORE OR LESS TO A POINT ON WESTERLY LINE EXTENDED OF THE TRACT CONVEYED BY OLIVER OLSON, ET UX, TO DORA T. BURNETT, BY DEED DATED NOVEMBER 3, 1922, RECORDED IN BOOK 8 OFFICIAL RECORDS AT PAGE 33, DISTANT ON SAID LINE 151 FEET SOUTHERLY FROM POINT OF COMMENCEMENT; THENCE NORTHERLY ALONG SAID LINE 151 FEET TO A POINT OF COMMENCEMENT.

PARCEL TWO:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF THIRD STREET DISTANT THEREON 224.6 FEET EASTERLY FROM THE INTERSECTION OF THE EASTERLY LINE OF "A" STREET WITH Form No. 1068-2 Commitment No.: 2103-5032124 ALTA Commitment Page Number: 4 First American Title THE NORTHERLY LINE OF THIRD STREET; THENCE NORTH 9° 51' EAST 147.02 FEET; THENCE SOUTH 79° 55' EAST 38.86 FEET ALONG THE SOUTHERLY LINE OF PARCEL 1 ABOVE DESCRIBED; THENCE SOUTH 9° 41' WEST 65.86 FEET; THENCE SOUTH 80° 09' EAST 5 FEET; THENCE SOUTH 9° 41' WEST 81 FEET TO THE NORTH LINE OF THIRD STREET; THENCE WEST AND ALONG THE NORTH LINE OF THIRD STREET 44.3 FEET TO THE POINT OF BEGINNING; BEING A PORTION OF LOT 2 IN BLOCK 30 AS LAID DOWN AND DELINEATED UPON THAT CERTAIN MAP ENTITLED, "PLAT OF THE TOWNSITE OF THE CITY OF SAN RAFAEL", FILED OCTOBER 14, 1873 IN RACK 2, PULL 4, MARIN COUNTY RECORDS.

PARCEL THREE:

COMMENCING AT A POINT IN THE NORTHERLY LINE OF THIRD STREET DISTANT 161 .6 FEET EASTERLY FROM THE CORNER FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF THIRD STREET WITH THE EASTERLY LINE OF "A" STREET; RUNNING THENCE NORTHERLY AND PARALLEL TO THE EASTERLY LINE OF "A" STREET 136.8 FEET, THENCE EASTERLY AT A RIGHT ANGLE A DISTANCE OF 22 FEET, THENCE NORTHERLY AT A RIGHT ANGLE RUNNING PARALLEL TO THE EASTERLY LINE OF "A" STREET A DISTANCE OF 9.5 FEET, THENCE EASTERLY AT A RIGHT ANGLE RUNNING PARALLEL TO THE NORTHERLY LINE OF THIRD STREET, A DISTANCE OF 33 FEET, THENCE SOUTHERLY AT A RIGHT ANGLE RUNNING PARALLEL TO THE EASTERLY LINE OF "A" STREET A DISTANCE OF 146.3 FEET, THENCE WESTERLY AT A RIGHT ANGLE ALONG THE NORTHERLY

EXHIBIT A

LINE OF THIRD STREET A DISTANCE OF 55 FEET TO THE POINT OF COMMENCEMENT.

PARCEL FOUR:

COMMENCING AT A POINT ON THE NORTHERLY LINE OF THIRD STREET DISTANT 224.6 FEET EASTERLY FROM THE CORNER FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF THIRD STREET WITH THE EASTERLY LINE OF "A" STREET (SAID POINT ALSO BEING THE SOUTHWESTERLY CORNER OF LOT 2, BLOCK 30, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PLAT OF THE TOWNSITE OF THE TOWN OF SAN RAFAEL", FILED OCTOBER 14, 1873 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MARIN), AND RUNNING THENCE WESTERLY ALONG THE NORTHERLY LINE OF THIRD STREET A DISTANCE OF 8 FEET TO THE SOUTHEASTERLY CORNER OF THE PARCEL CONVEYED BY WALTER R. CASTRO, ET UX, TO ALA SARA WINTER, BY DEED RECORDED SEPTEMBER 16, 1944 IN BOOK 469 OF OFFICIAL RECORDS, AT PAGE 52, ALSO BEING THE SOUTHEASTERLY CORNER OF PARCEL 3 ABOVE, THENCE NORTHERLY AT A RIGHT ANGLE RUNNING PARALLEL TO THE EASTERLY LINE OF "A" STREET A DISTANCE OF 146.3 FEET ALONG THE EASTERLY LINE OF SAID PARCEL, THENCE EASTERLY AT A RIGHT ANGLE RUNNING PARALLEL WITH THE NORTHERLY LINE OF THIRD STREET, A DISTANCE OF 8 FEET TO THE WESTERLY LINE OF SAID LOT 2 IN BLOCK 30, ALSO BEING THE SOUTHWESTERLY CORNER OF PARCEL 1 ABOVE, THENCE SOUTHERLY AT A RIGHT ANGLE RUNNING PARALLEL TO THE EASTERLY LINE OF "A" STREET A DISTANCE OF 146.3 FEET TO THE POINT OF COMMENCEMENT.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS PURPOSES AS PROVIDED FOR IN THAT DEED EXECUTED BY ALA SARA WESS TO MATTHEW E. HAZELTINE, ET UX, RECORDED APRIL 9, 1954 IN BOOK 860 OF OFFICIAL RECORDS, AT PAGE 70, MARIN COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF THIRD STREET DISTANT THEREON 75 FEET WESTERLY FROM THE SOUTHWESTERLY CORNER OF LOT 2, IN BLOCK 30, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PLAT OF THE TOWNSITE OF THE CITY OF SAN RAFAEL", FILED FOR RECORD OCTOBER 14, 1873 IN RACK 2 OF MAPS AT PULL 4, MARIN COUNTY Form No. 1068-2 Commitment No.: 2103-5032124 ALTA Commitment Page Number: 5 First American Title RECORDS, SAID POINT ALSO BEING THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL CONVEYED TO ALA SARA WINTER BY THE DEED RECORDED SEPTEMBER 16, 1944 IN BOOK 469 OF OFFICIAL RECORDS, AT PAGE 52, MARIN COUNTY RECORDS; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID WINTER PARCEL 136.8 FEET; THENCE EASTERLY AT A RIGHT ANGLE 12 FEET TO A POINT ON THE EASTERLY LINE OF THAT CERTAIN PARCEL CONVEYED TO HAZELTINE BY THE DEED RECORDED APRIL 9, 1954 IN BOOK 860 OF OFFICIAL RECORDS, AT PAGE 70, MARIN COUNTY RECORDS; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID HAZELTINE PARCEL 136.8 FEET TO A POINT ON THE NORTHERLY LINE OF

EXHIBIT A

THIRD STREET, THENCE WESTERLY ALONG SAID NORTHERLY LINE 12 FEET TO THE POINT OF BEGINNING.

APN: 011-263-04 (Affects: Parcel One) and 011-263-19 (Affects: Parcels Two, Three and Four)

1009 4th Street, San Rafael, CA 94901

Legal Description

The land referred to in this Report is situated in the County of Marin, City of San Rafael, State of California, and is described as follows:

Beginning at a point in the Northerly line of Third Street at the intersection thereof with the Easterly line of that certain parcel of land described in Deed from Michael Butler, a widower, to Martha Jane Prior, recorded November 23, 1923 in Liber 30 of Official Records at Page 407; running thence Northerly along said Easterly line, 81 feet to the Northeasterly corner thereof; running thence Westerly along the Northerly line of said parcel of land so described in Deed to Prior, 3 feet to a point in the Easterly line of that certain parcel of land described in Deed from M. Butler, a widower, to Martha Jane Prior, recorded January 23, 1922 in Liber 235 of Deeds at Page 390; running thence Northerly along the Easterly line of said parcel of land described in Deed to Prior, secondly above referred to, 65.86 feet to a point in the Northerly line of Lot 2 in Block 30, as shown on the Map hereinafter referred to; running thence Easterly along said Northerly line of Lot 2 in Block 30, 39.44 feet to the Northeasterly corner thereof; running thence Southerly along the Easterly line of said Lot 2 in Block 30, 149 feet to a point in the Northerly line of Third Street; running thence Westerly along said Northerly line of Third Street, 34.3 feet to the point of beginning. Being a portion of Lot 2 in Block 30, as shown upon that certain Map entitled, "Plot of the Townsite of the Town of San Rafael", filed in the Office of the County Recorder of the County of Marin, State of California, October 14, 1873 in Book 1 of Maps, Pull 4.

APN: 011-263-18 and APN: 011-263-19

924-926 3rd Street, San Rafael, CA 94901

Legal Description

The land referred to in this Report is situated in the County of Marin, City of San Rafael, State of California, and is described as follows:

Beginning at a point in the Northerly line of Third Street at the intersection thereof with the Easterly line of that certain parcel of land described in Deed from Michael Butler, a widower, to Martha Jane Prior, recorded November 23, 1923 in Liber 30 of Official Records at Page 407; running thence Northerly along said Easterly line, 81 feet to the Northeasterly corner thereof; running thence Westerly along the Northerly line of said parcel of land so described in Deed to Prior, 3 feet to a point in the Easterly line of that certain parcel of land described in Deed from M. Butler, a widower, to Martha Jane Prior, recorded January 23, 1922 in Liber 235 of Deeds at Page 390; running thence Northerly along the Easterly line of said parcel of land described in Deed to Prior, secondly above referred to, 65.86 feet to a point in the Northerly line of Lot 2 in Block 30, as shown on the Map hereinafter referred to; running thence Easterly along said Northerly line of Lot 2 in Block 30, 39.44 feet to the Northeasterly corner thereof; running thence Southerly along the Easterly line of said Lot 2 in Block 30, 149 feet to a point in the

EXHIBIT A

Northerly line of Third Street; running thence Westerly along said Northerly line of Third Street, 34.3 feet to the point of beginning.

Being a portion of Lot 2 in Block 30, as shown upon that certain Map entitled, "Plot of the Townsite of the Town of San Rafael", filed in the Office of the County Recorder of the County of Marin, State of California, October 14, 1873 in Book 1 of Maps, Pull 4.

APN: 011-263-16

EXHIBIT A

PARCEL 1-A (Linggi)

⑦

BEGINNING at a point on the Northerly line of Third Street, San Rafael, California, distant thereon westerly 52.37 feet from its intersection with the westerly line of Lootens Place in Block 30, San Rafael Townsite Map, made by H. Austin, and recorded October 11, 1873 on Rack 1, Pull 4, Marin County Records, running thence along said Third Street line westerly 231.23 feet, thence at right angles northerly 150 feet, more or less, to the southerly line of an alley, thence at right angles easterly and along the southerly line of said alley 100.0 feet, thence at right angles southerly 10.0 feet, thence easterly along said alley line 65.0 feet to corner of lot conveyed by Donald Sutherland to Effie C. Burtchaell, by deed dated March 11, 1881, and recorded in Libre "V" of Deeds at page 354, Marin County Records, thence southerly along the westerly line of said Burtchaell lot 49.0 feet to the southwest corner of the said Burtchaell lot; thence easterly along the southerly line of the said Burtchaell lot 57.63 feet; thence southerly parallel to the westerly line of Lootens Place 103.14 feet to the point of beginning.

PARCEL 1-A (LeCam)

②

THAT portion of Lot No. 6, in Block No. 30 of the Townsite of San Rafael, in the City of San Rafael, County of Marin, State of California, as per plat of the Townsite filed for record October 14, 1873 in the office of the County Recorder of the County of Marin, State of California, described as follows to-wit:

BEGINNING at a point on the Westerly line of Lootens Place distant 157 feet southerly from the point of intersection of said Westerly line of Lootens Place with the southerly line of Fourth Street, before widening, said point of beginning being the point of intersection of said westerly line of Lootens Place with the Southerly line of an alley 20 feet in width; thence Westerly along said Southerly line of said alley 110 feet; thence southerly at right angles 40 feet, thence Easterly parallel with said alley 112 feet to said westerly line of Lootens Place, thence Northerly along said last mentioned line 40 feet to the point of beginning.

PARCEL 1-A (Christensen)

③

BEGINNING at a point in the westerly line of Lootens Place distant 40.0 feet southerly along said line from the southerly line of a 20.0 foot lane leading from Lootens Place westerly into Block 30, as said streets and block are shown on Map of San Rafael Townsite, said point of beginning being also the southeast corner of that certain parcel of land conveyed by Donald Sutherland to Effie C. Burtchaell in Deed dated March 11, 1881 and recorded in Libre "V" of Deeds at page 354, Marin County Records, and running thence southerly along the westerly line of Lootens Place 103.14 feet to the intersection of said last mentioned line with the northerly line of Third Street, as shown on the herein mentioned map, thence westerly along said line of Third Street, 52.37 feet, thence northerly and parallel to the westerly line of Lootens Place 103.14 feet, more or less, to the southerly line of the property herein mentioned as being described in Libre "V" of Deeds at page 354, Marin County Records, thence easterly along the southerly line of said parcel so described 52.37 feet to the point of beginning. BEING a portion of that certain property in Block 30, described in Deed dated September 18, 1926 from C. A. Chaquette and Ernestine M. Chaquette, his wife, to Anton Christensen, recorded in the office of the County Recorder of the County of Marin, State of California, on September 25, 1926 in Volume 105, Official Records at page 129.

PARCEL 1-A (Alley)

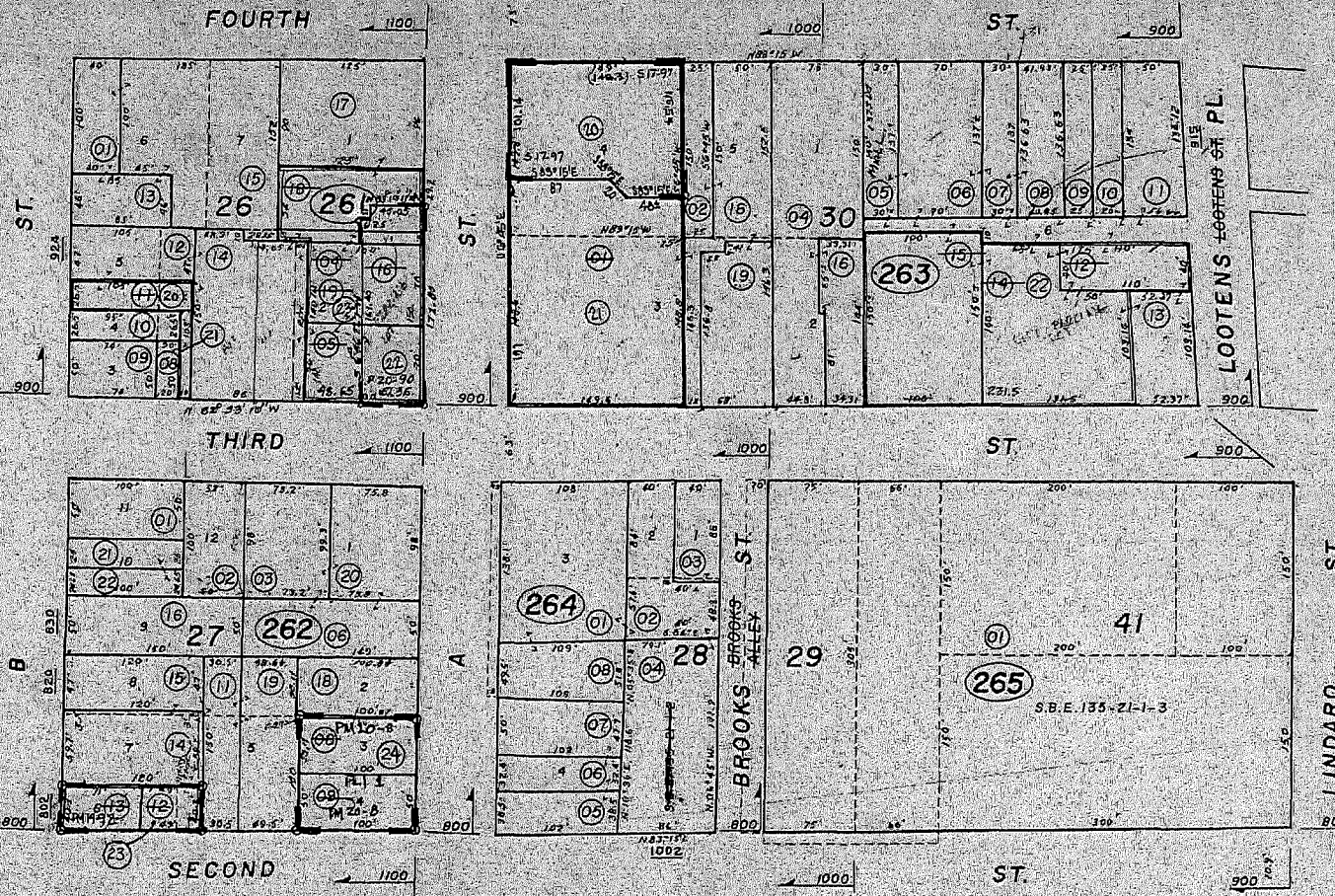
④

BEGINNING at the point of intersection of the westerly line of Lootens Place with the southerly boundary line of the lands described in Deed from Donald Sutherland to Marie E. Sweetser recorded in Liber 25 of Deeds at page 217; running thence westerly along the northerly line of an Alleyway referred to in said Deed and its continuation westerly to the westerly line of Lot 6, Block 30, as shown upon Plat of the Townsite of San Rafael; running thence southerly along the last named line to a point in the northerly line of the lands described in Deed to W. A. Powning recorded in Liber 98 of Deeds at page 194, running thence easterly along the northerly line of said lands conveyed to Powning, a distance of 100 feet; to its northeasterly corner; running thence southerly along the easterly line of said lands conveyed to Powning 10 feet, more or less, to the northwesterly corner of the lands described in Deed to Anton Christensen recorded in Liber 105 of Official Records at page 129; running thence easterly along the northerly line of said lands conveyed to Christensen, 65 feet, more or less, to the northwesterly corner of the lands described in Deed to George LeCam, et al, recorded in Liber 10 of Official Records at page 69, running thence easterly along the northerly line of said lands conveyed to LeCam, et al, a distance of 110.00 feet to the westerly line of Lootens Place, running thence northerly along the westerly line of Lootens Place, a distance of 20 feet, more or less, to the point of beginning.

FOR SAN PEDRO, SANTA MARGARITA Y LAS GALLINAS RANCHO

Tax Area Code
8-00 8-000
8-023

11-26



THIS PAGE REVISED and/or CHECKED	
Date	By
3-6-83	A.L.R.

Townsite of San Rafael, Rack I Pull 4

Bk. 13
01
Subsequent to 3-14-83 refer
to preceding page 26

CITY OF SAN RAFAEL
Assessor's Map Bk. 11 - Pg. 26
County of Marin, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.

EXHIBIT B

SCHEDULE OF PERFORMANCE

<i>Preliminary Stage (6 months)</i>		
1.	Concurrent with execution of Agreement	Developer deposits Preliminary Stage Deposit with City
2.	Promptly following Effective Date	Developer retains its parking consultant
3.	Within 120 days of the Effective Date	Developer submits Parking Plan to City for review
4.	Prior to expiration of Preliminary Stage	City and Developer discuss differences in Parking Plan analysis and endeavor to reach consensus
5.	Promptly following Effective Date	Developer and City commence negotiation and drafting of Term Sheet
6.	Prior to expiration of Preliminary Stage	Developer and City reach agreement on principal business terms of a proposed DDA as evidenced by a non-binding Term Sheet.
7.	Prior to expiration of Preliminary Stage	Developer and City memorialize successful completion of all Preliminary Stage tasks by executing a Preliminary Stage Feasibility Confirmation or Agreement terminates as provided in Section 1.2.
<i>DDA Stage (15 months)</i>		
*DDA Stage applicable only if Developer and City have memorialized successful completion of all Preliminary Stage tasks.		

EXHIBIT B

8.	Upon execution of Preliminary Stage Feasibility Confirmation	Developer deposits DDA Stage Deposit with City
9.	Within 30 days following commencement of DDA Stage	Developer and City prepare a CEQA project description
10.	Prior to expiration of DDA Stage	City's CEQA consultant prepares the CEQA document
11.	Prior to expiration of DDA Stage and, in any event, prior to City Council's consideration of a DDA	Developer and City negotiate and draft a proposed DDA

EXHIBIT B

AMENDMENT NO.1 TO AGREEMENT TO NEGOTIATE EXCLUSIVELY

This Amendment No. 1 ("Amendment") to that certain Agreement to Negotiate Exclusively ("ENA") by and between the City of San Rafael, a municipal corporation ("City"), and Goldstone Management, Inc. ("Developer"), is effective on the Amendment Date identified on the signature page. City and Developer may be referred to individually herein as a "Party", and collectively as the "Parties."

RECITALS

A. On November 18th, 2019, City adopted a resolution approving and authorizing the City Manager to execute the ENA to govern the phases of negotiations for the Parties to negotiate and present to the City Council for approval a proposed Disposition and Development Agreement ("DDA") for Developer to acquire a City-owned public parking garage and develop a mixed-use residential/retail development project at the southeast intersection of Third Street and Lootens Plaza in the City of San Rafael as more particularly described therein. Pursuant to the authorization conferred by the November 18th 2019 resolution, the City executed the ENA with an effective date of December 7th, 2019.

B. Under the terms of the ENA, the Parties outlined a series of phased negotiations towards memorializing the terms of a DDA, which require that the Parties make a determination as to feasibility of the proposed Project, and if the Project is mutually determined to be feasible, execute a Preliminary Stage Feasibility Confirmation by no later than six months following the Effective Date, or June 7th, 2020.

C. In early 2020, following an initial outbreak in Wuhan, China in December of 2019, a pandemic outbreak of the SARS-COV-2 virus spread globally, reaching all 50 of the United States (the "COVID-19 Outbreak"). In March of 2020, to prevent spread of the viral outbreak, the Marin County Health and Human Services Department issued a shelter in place order, which has been extended through May 31, 2020.

D. In light of the ongoing public health crisis under the COVID-19 Outbreak, the Parties wish to extend the Preliminary Stage of the negotiation period contemplated under the ENA for a period of six months. Additionally, the Parties wish to amend the list of items identified under the "Term Sheet" under Section 2.1 of the ENA to require that Developer submit a *pro forma* financial feasibility analysis for the Project as one of the performance milestones required prior to determination of Project feasibility and execution of a Preliminary Stage Feasibility Confirmation.

NOW, THEREFORE, the City and Developer, for the mutual consideration described herein, agree as follows:

AGREEMENTS

1. INCORPORATION BY REFERENCE. Unless otherwise specified, all subsequent references to the ENA are deemed to mean the original ENA as modified by this Amendment.

This Amendment incorporates the ENA by reference, except and only to the extent that any terms or conditions of the ENA are specifically modified by this Amendment. All terms and conditions in the ENA that are not specifically modified by this Amendment remain in full force and effect.

2. AMENDMENT OF SECTION 1.2. The first two sentences of Section 1.2 of the ENA, "Negotiation Period Duration," are hereby amended and restated to read as follows [NOTE: none of the remaining sentences of Section 1.2 is modified by this Amendment]:

"1.2 Negotiation Period Duration.

(a) The negotiations shall be conducted in two stages, the combined duration of which shall not exceed twenty-seven (27) months, plus extensions, if any, as provided in subsection (b) below. ("**Negotiation Period**"). The "**Preliminary Stage**" of the Negotiation Period shall commence on the Effective Date and expire twelve (12) months thereafter, subject to potential extension as provided in subsection (b) below, or on the date the Parties execute a Preliminary Stage Feasibility Confirmation (defined below) whichever is earlier."

3. AMENDMENT OF SECTION 2. Section 2.2 of the ENA, "DDA Stage Tasks," is hereby renumbered as Section 2.3. A new Section 2.2, "Project *Pro Forma*," is hereby added to Section 2, to read as follows:

"2.2 Project *Pro Forma*. In addition to the other Preliminary Stage tasks described in this Agreement and Schedule of Performance, prior to expiration of the Preliminary Stage of the Negotiation Period, Developer shall submit to the City for review a Project *Pro Forma*, demonstrating the financial feasibility of the Project under identified assumptions regarding interest rates, the availability of Project lending capital and construction costs, and including basic information regarding Project revenues and costs, sources and uses of funds, cash flow under basic accrual accounting, and any other information reasonably requested by City."

4. ENTIRE AGREEMENT. The ENA, as modified by this Amendment, constitutes the entire integrated understanding between the Parties concerning the Project. This Amendment, together with the ENA, supersedes all prior negotiations, agreements and understandings regarding the Site and proposed Project, whether written or oral. The documents incorporated by reference into this Amendment are complementary; what is called for in one is binding as if called for in all, except and only to the extent otherwise specified. In the event of any conflict between the provisions of this Amendment and the ENA, the provisions of this Amendment shall control.

5. SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of Developer and City. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and authorized assigns.

IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective on the Amendment Date set forth below.

CITY:

CITY OF SAN RAFAEL, a California municipal corporation

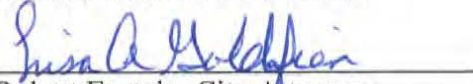
By: 
Jim Schutz, City Manager

ATTEST:


for Lindsay Lara, City Clerk

Date: June 9, 2020
("Amendment Date")

APPROVED AS TO FORM:

for 
Robert Epstein, City Attorney

DEVELOPER:

GOLDSTONE MANAGEMENT, INC., a California corporation

By: 
Paul Goldstone, President

Dated: 5-18, 2020

RESOLUTION NO. 14802

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AN AMENDMENT TO EXTEND THE AGREEMENT TO NEGOTIATE EXCLUSIVELY WITH GOLDSTONE MANAGEMENT INC. REGARDING REDEVELOPMENT OF 1009 AND 1001 FOURTH STREET, 924-926 THIRD STREET, AND THE THIRD STREET AND LOOTENS PLACE PARKING GARAGE

WHEREAS, the City of San Rafael owns the real property and parking garage located at Third Street and Lootens Place ("City Parcel"); and

WHEREAS, the City adopted a goal to "provide a vibrant Downtown" in "our Vision of Downtown" in 1993, which was later incorporated into the goals of the General Plan 2020 as Goal 6. General Plan Goal 6 includes the following implementation policies:

- NH 16 - to substantially expand Downtown's economic success and increase opportunities for retail, office and residential development;
- NH 22 - to create a popular and attractive residential environment that contributes to the activity and sense of community in Downtown; and
- NH 34 - to encourage activities that will promote the Fourth Street Retail Core as being "Alive after Five"; and

WHEREAS, one of the City Council goals is to provide neighborhood and economic vitality by supporting the development of key Downtown sites, and the City Council's Economic Development Committee has adopted "support development of key sites such as 1001-1009 Fourth Street" as one of its eight priorities; and

WHEREAS, Goldstone Management, Inc. ("Developer") has proposed redeveloping the City Parcel and adjoining properties that Developer owns at 1009 and 1001 Fourth Street and 924-926 Third Street, into a mixed-use residential/retail development, including a market hall-style food emporium and a fully automated parking garage ("Project"); and

WHEREAS, Developer entered into an exclusive negotiating agreement ("ENA") with the City dated December 7, 2019 to acquire the City Parcel, and in combination with the Developer's adjacent parcels that have already been assembled, to create a significant mixed-use development, provide much needed housing, entertainment, and food services in the form of a Market Hall, create a strong economic driver that will benefit Downtown businesses, and re-establish the focal point of the Downtown area; and

WHEREAS, due to the COVID-19 outbreak, Developer has requested a six-month extension to the Preliminary Stage of the ENA and the staff report accompanying this Resolution provides additional information about the rationale for the extension; and

WHEREAS, staff engaged the law firm of Burke, Williams & Sorensen, LLP to evaluate the extension request and Watry Design Inc. to review a preliminary parking plan, and their preliminary analysis indicates that the submitted documentation is evidence of progress under the Preliminary Stage for the City to consider further negotiations regarding the potential Project; therefore staff recommends that the City Council approve the requested amendment to the ENA; and

WHEREAS, funds have been appropriated in the Economic Development Department budget for the current Burke, Williams & Sorensen, LLP, Keyser Marston Associates, Inc., and Watry Design, Inc. contracts for consulting services during the extended term of the ENA; and

WHEREAS, the City Council intends and understands that amending the ENA is not committing the City to grant any land use approvals for the Project or to approve any further agreement with the Developer; and

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

1. The City Council hereby finds and determines that the above recitals are true, correct and incorporated herein.

2. The City Council hereby approves and authorizes the City Manager to execute on behalf of the City an amendment to the ENA in substantially the form submitted to the City Council in connection with the consideration of this Resolution, subject to such minor changes as the City Manager and City Attorney may approve, provided, however, that nothing in this Resolution or the amendment of the ENA shall be deemed to commit the City to approve any land use approvals for the Project or to approve any further agreement with the Developer.

3. The City Council authorizes and directs the City Manager and his designees to take such steps as are reasonable and necessary to performance of the City's obligations under the amendment to the ENA and to carry out the terms and conditions of the ENA.

4. This Resolution shall take immediate effect upon adoption.

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 the 1st day of June 2020, by the following vote:

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

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None



LINDSAY LARA, City Clerk



MEMORANDUM – GOLDSTONE ENA ADMINISTRATIVE EXTENSION

To: Jim Schutz, City Manager

From: Danielle O’Leary, Director of Economic Development and Innovation
Simon Vuong, Economic Development Coordinator

Date: Wednesday, December 2, 2010

Subject: Administrative Extension of Agreement to Negotiate Exclusively (ENA) for the Goldstone Project

Reference: Agreement to Negotiate Exclusively (ENA)
Amendment No.1 to ENA

Background:

On December 7, 2019, an Agreement to Negotiate Exclusively (ENA) was entered between the City and the Goldstone Team (Developer) to discuss and negotiate in good faith the specifics of a market-hall style mixed-use residential and retail project with automated parking in exchange for a City parking garage. Since then, City staff, including staff from Economic Development, Community Development, Public Works, Parking Services, as well as city consultants, have been hard at work to deliberate some key items of the project, chiefly the design and access of the automated parking system and how that relates to the proposed shared parking. The pandemic that started earlier this year has delayed the timeframe for negotiations, and an extension was approved (Amendment No.1), moving the expiration date of the preliminary stage six (6) months, from June 6, 2020 to December 7, 2020.

Progress and Status:

At this point in time, we have been meeting in a smaller Parking Subgroup to refine the critical details of how the parking will function, as the feasibility of the parking will be essential to making the project a reality. There are some questions, specifically regarding building height and parking ratio, that still need to be clarified as the City continues to move forward in reviewing and approving the Downtown Precise Plan. Because of this, the request from the Developer for an appraisal has not yet been completed as the development parameters are not set. Since the Downtown Precise Plan has not been approved, staff and city consultants believe it would be prudent to wait until the Downtown Precise Plan has been approved and key site parameters are solidified, including building height, density, and parking ratio, before moving much further along with the preliminary stage of the ENA. The City is also still waiting for a more

comprehensive parking plan and are working within the Parking Subgroup to outline a more definitive submittal schedule. However, the Developer is insisting on an appraisal before the submittal of a parking plan, even a basic one using the underlying zoning (understanding that it may change), to be paid by the Developer and not to exceed \$9,000. A scope of work for the appraisal was previously obtained for approximately \$22,000, and we are in the midst of renegotiating another scope of work for a lower fee.

Request:

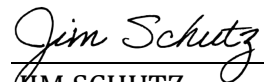
For the above reasons, the prolonged negotiations with the Developer have made adhering to the new December 7, 2020 deadline difficult to meet, and staff believes it is necessary for an Administrative Extension to be granted to continue the negotiations.

The City Manager may exercise an Administrative Extension of the ENA totaling no more than ninety (90) days if he determines that both parties have made substantial progress toward meeting the performance milestones identified in the ENA. City staff is requesting the City Manager extend the ENA, which is set to expire on December 7, 2020, an additional ninety (90) days to March 6, 2021. Additional time is warranted to further the conversations that the Parking Subgroup have undertaken and conduct an appraisal, and we are confident extra time will yield more fruitful conversations.

It is likely that staff will return to City Council to extend the ENA a second time via an Amendment No. 2, prior to the expiration of this Administrative Extension, due to the uncertain timeline of the adoption of the Downtown Precise Plan.

If the City Manager approves of the Administrative Extension, please sign and date below and return to the Economic Development Department. If there are any questions regarding this extension of agreement, please contact Danielle O’Leary x3460 or Simon Vuong at x3134. Thank you.

Approved on December 7, 2020
Month, Date, Year



JIM SCHUTZ
City Manager

Enclosed:

1. Agreement to Negotiate Exclusively (ENA), Executed December 7, 2019
2. Amendment No.1 to ENA, Executed June 6, 2020

****Return to Economic Development*
When Completed***