



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Attorney/Public Works

Prepared by: Lisa Goldfein, Asst. City Attorney

City Manager Approval: _____

A handwritten signature in blue ink, appearing to be 'AS', written over a horizontal line.

TOPIC: SALE OF 30 JOSEPH COURT PROPERTY TO COUNTY OF MARIN

SUBJECT: RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE GRANT DEED AND ESCROW DOCUMENTS FOR SALE OF REAL PROPERTY LOCATED AT 30 JOSEPH COURT TO THE COUNTY OF MARIN

RECOMMENDED ACTION:

Adopt a resolution authorizing the Mayor to sign the grant deed to the County or Marin for real property located at 30 Joseph Court formerly used as Fire Station 53.

BACKGROUND:

The County of Marin and the City of San Rafael have had an ongoing agreement since 1976 to provide fire protection services to a number of unincorporated areas within CSA 19, which are contiguous to the City of San Rafael (Santa Venetia, Los Ranchitos, Country Club, Bayside Acres and California Park).

As part of the 1976 agreement the County leased the land at 3535 Civic Center Drive for a 30-year term, at an annual cost to the City of \$1. The City constructed Fire Station 57, with the County contributing \$85,000 to the construction, which was one half of the cost.

Over the past 40+ years the San Rafael Fire Department extended fire protection coverage to other unincorporated County areas within San Rafael, including Sun Valley, San Quentin Village, China Camp State Recreational Area, the Richmond/San Rafael Bridge, and San Pedro Peninsula/McNear.

At the expiration of the 1976 agreement in 2006, the City and the County continued their relationship by entering into a new "Lease Agreement" and "Fire Protection Services Agreement," each with a term of 10 years scheduled to expire June 30, 2016. In anticipation of the June 30, 2016 expiration date, the City and the County met to discuss alternative service and cost allocation models to best meet current and future fire service requirements. Through a coordinated effort, the City and the County negotiated two new agreements, one for Fire Protection Services and another for leasing of County land at 3535 Civic Center Drive by the City to continue operating Fire Station 57 at that location. The Fire Protection Services agreement and the 40-year Lease Agreement were approved by the City Council on June 20, 2016, and new Fire Station 57 was constructed on that property and was occupied in 2019.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

As partial consideration for this transaction, one of the terms of the Lease Agreement granted to the County of Marin an option to purchase City-owned property at 30 Joseph Court in northern San Rafael for \$1 million upon completion of new Fire Station 57.

ANALYSIS:

The property at 30 Joseph Court is 0.44 acres improved with a one-story building, which was originally used by the City as its Fire Station 53. However, by 2016, the property was being used only to house the San Rafael Fire Department's Medic Unit 53. In planning to rebuild Station 57, the Fire Department planned to move Medic Unit 53 to the new station and determined that it would no longer need 30 Joseph Court for Fire Department purposes after the new Fire Station 57 was completed and occupied.

The County expressed an interest in possibly acquiring 30 Joseph Court in the future, therefore as a term of the Lease Agreement, the City Council agreed to grant the County an option to purchase the property for \$1 million within one year following completion of Fire Station 57. After one mutually agreed extension of the option period, the County exercised the option, at the agreed purchase price of \$1 million, thereby effectively accepting the City's offer to sell 30 Joseph Court to the County.

To execute the sale, City and County staff worked together to develop a purchase agreement, which was approved by the Marin County Board of Supervisors and signed by the President of the Board of Supervisors and by the City Manager on July 20, 2021.

An escrow for the sale has been opened at First American Title Company and is scheduled to close on August 31, 2021. In connection with the escrow, the title company has requested that the City provide a resolution naming the person authorized to sign the Grant Deed and related closing documents on behalf of the City. Staff has prepared the attached resolution authorizing the Mayor to execute these documents.

FISCAL IMPACT:

Under the terms of the option and the purchase agreement, at close of escrow the City will receive \$1 million.

RECOMMENDED ACTION:

Adopt a resolution authorizing the Mayor to execute a Grant Deed and other required escrow documents, in a form approved by the City Attorney, to complete the sale of the property at 30 Joseph Court to the County of Marin.

ATTACHMENTS:

1. Resolution
2. Approved City Council Resolution No. 14142 with attached Fire Protection Services Agreement and Lease Agreement
3. Executed Purchase Agreement for 30 Joseph Court

RESOLUTION NO.

RESOLUTION OF THE CITY OF SAN RAFAEL CITY COUNCIL AUTHORIZING THE MAYOR TO SIGN THE GRANT DEED AND ESCROW DOCUMENTS FOR SALE OF REAL PROPERTY LOCATED AT 30 JOSEPH COURT TO THE COUNTY OF MARIN

WHEREAS, on June 21, 2016, pursuant to City Council Resolution No. 14141, the City of San Rafael and the County of Marin entered into an Agreement for the City to provide fire protection services to County Service Area 19 (the “Fire Protection Services Agreement”), effectively extending an existing longstanding partnership between the two jurisdictions for the provision of fire protection services; and

WHEREAS, on June 21, 2016, pursuant to City Council Resolution No. 14142 and in conjunction with the approval of the Fire Protection Services Agreement, the City entered into a Lease Agreement with the County of Marin providing for the City to lease for 40 years the County-owned property at 3535 Civic Center Drive, and for the City and the County to share in the costs of constructing a new San Rafael Fire Station 57 on that property (the “Lease Agreement”); and

WHEREAS, the City owns a parcel of real property located in Marin County designated as Assessor’s Parcel No. 155-081-08 and commonly known as 30 Joseph Court, San Rafael (hereafter “30 Joseph Court”) which was used in the past as City Fire Station 53, and which was used, upon the start of construction of new Fire Station 57, as a temporary fire station until completion of construction of new Fire Station; and

WHEREAS, as a term of, and as partial consideration for, the Lease Agreement, the City granted the County of Marin an option to purchase 30 Joseph Court following the completion of construction of new Fire Station 57, for a purchase price of \$1 million; and

WHEREAS, the County of Marin timely exercised the option to purchase 30 Joseph Court for \$1 million; and

WHEREAS, pursuant to the exercise of the option, the City and the County of Marin entered into a purchase and sale agreement for 30 Joseph Court on July 20, 2021, and close of escrow on the sale has been tentatively set for August 31, 2021; and

WHEREAS, to complete the sale of 30 Joseph Court to the County of Marin, a Grant Deed to that property, and other related escrow documents, must be executed on behalf of the City of San Rafael; and

WHEREAS, Article VIII, section 1 of the Charter of the City of San Rafael authorizes the Mayor to sign all conveyances by the City;

NOW, THEREFORE BE IT RESOLVED, that the City Council hereby authorizes the Mayor to execute a Grant Deed and related escrow documents, in a form approved by the City Attorney, to sell the property at 30 Joseph Court to the County of Marin.

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 16th day of August 2021, by the following vote, to wit:

AYES: **Councilmembers:**
NOES: **Councilmembers:**
ABSENT: **Councilmembers:**

Lindsay Lara, City Clerk

RESOLUTION NO. 14142

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE COUNTY OF MARIN PROVIDING FOR A 40-YEAR LEASE OF COUNTY PROPERTY AT 3535 CIVIC CENTER DRIVE AND FUNDING OF CAPITAL IMPROVEMENTS OF FIRE STATION 57

WHEREAS, on February 17, 1976, the City of San Rafael (City) and the County of Marin (County) entered into an "Agreement for Fire Protection Services in and Around County Service Area 19" under which the County leased approximately 35,284 square feet of land at 3535 Civic Center Drive on a 30-year lease term to the City, on which the City constructed Fire Station 57 in conjunction with the County, and from which the City has provided fire protection services to County Service Area 19 (CSA 19); and

WHEREAS, in 2006, the City and the County agreed to amend the 1976 Agreement and to extend it for 10 more years; and

WHEREAS, the current 2006 Agreement expires on June 30, 2016; and

WHEREAS, the City and the County desire to continue City's lease of the County property at 3535 Civic Center Drive and the provision of fire protection services by the City to CSA 19; and

WHEREAS, in November 2013, the San Rafael voters passed Measure E, a three-quarter cent transactions and use tax with a term of twenty years. This tax supplanted the former, one-half cent transactions and use tax (Measure S), effective April 1, 2014; and

WHEREAS, in June 2014, the City Council allocated the additional funds from Measure E (i.e., the amounts collected in excess of the prior transactions and use tax), approximately \$3.7 million/year, to be used for public safety facilities improvements and construction; and

WHEREAS, on July 20, 2015, the City Council unanimously approved the Essential Facilities Strategic Plan. Phase One includes a new Public Safety Center (combined police and fire station) and replacement of Fire Stations 52 and 57; and

WHEREAS, as part of the Essential Facilities Strategic Plan, the City intends to construct a new Fire Station 57 on the existing County lease site that is approximately 10,000 square feet with three drive-through bays, including an approximately 1,000 square foot ambulance bay; and

WHEREAS, the City and the County agree that they should share the costs of capital improvements required for the new Fire Station 57; and

WHEREAS, the City shall bear 54% of all Fire Station 57 project costs, including, but not limited to, architectural services, site preparation, construction, access, landscaping, outfitting, equipping said station, and any potential wetland mitigation costs, and in addition will bear all project costs in excess of \$12 million, if any; and

WHEREAS, the City plans to construct an ambulance bay at the new Fire Station 57 to accommodate moving the ambulance from nearby Station 53 (30 Joseph Court) to Station 57, but the County will not contribute to the cost of the ambulance bay because CSA 19 funds are limited to funding activities and infrastructure that relates exclusively to "structural fire protection," thus, the County of Marin agrees to bear 46% of the Fire Station 57 project costs, not to exceed \$5,520,000.

WHEREAS, the City will give the County a one-year option to purchase 30 Joseph Court for \$1 million commencing upon City's occupancy of the newly constructed Fire Station 57; and

WHEREAS, the lease agreement is for a period up to 40 years contingent upon the County's contribution to Fire Station 57 capital improvements.

NOW, THEREFORE, BE IT RESOLVED, that the City Council does hereby authorize the Mayor to execute an agreement with the County of Marin, , subject to final approval as to form by the City Attorney, providing for the continued lease of the property at 3535 Civic Center Drive to City and the sharing of the costs of Fire Station 57 capital improvements as stated in this Resolution

I, ESTHER C. BEIRNE, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on the 20th day of June, 2016, by the following vote, to wit:

AYES: COUNCILMEMBERS: Gamblin, McCullough & Vice-Mayor Colin
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: Bushey and Mayor Phillips

Esther C. Beirne.
ESTHER C. BEIRNE, City Clerk

LEASE AGREEMENT

This Agreement is made and entered into as of the 2/5 day of June, 2016, by and among the COUNTY OF MARIN, a political subdivision of the State of California (hereinafter "County"), COUNTY SERVICE AREA 19 OF THE COUNTY OF MARIN, a political subdivision of the State of California (hereinafter "CSA"), and the CITY OF SAN RAFAEL, a charter city (hereinafter "City").

RECITALS:

A. The City, County and CSA are entering into a Fire Protection Services Agreement for County Service Area 19 and adjoining areas, which is contingent upon the parties entering into this Lease Agreement for the lease of the lands described hereafter in Paragraph 4.

B. The City owns the Fire Station #57 Improvements located on property owned by the County. The County's property that is the subject matter of this Lease Agreement is fully described in Paragraph 4 below (the "Property").

C. The current Lease Agreement for the Property between the City and County, dated June 20, 2006, terminates on June 30, 2016.

D. The County desires to continue to lease the Property to the City, and City desires to continue to lease the Property from the County.

E. The City intends to construct a new Fire Station #57 on the existing site as presented and described in Exhibit A – Fire Station #57 Design, a two company prototype of approximately 10,000 square feet with three drive-through bays, including an approximately 1,000 square foot ambulance bay (the "Improvements").

NOW THEREFORE, the parties agree as follows:

1. Construction of New Fire Station #57.

A. The City shall afford the County Board of Supervisors an opportunity, prior to City's final approval of the design, to review and approve design plans, color(s) and material board(s), and specifications relating to the construction of new Fire Station #57 Improvements on the existing site as described in Exhibit A. All exterior Improvements on the Property shall conform, to the extent applicable, with the County Civic Center Master Plan Guidelines, adopted by the Board of Supervisors on December 20, 2005, on file with the County Clerk, and shown on the County's website at <http://www.marincounty.org/depts/ad/divisions/facility-planning-and-development>.

B. Total project costs are estimated at \$12.0 million, consistent with \$11.7 million per City of San Rafael "Essential Facilities Strategic Plan: Detailed Facility Study - Replacement of Fire Station 52 & Training Tower and Fire Station 57, Volume III, page III-47" prepared by Mary McGrath Architects, 2015, plus an estimated \$300,000 for potential wetlands mitigation, totaling \$12.0 million.

C. City shall bear 54.0% of all project costs, including, but not limited to, architectural services, site preparation, construction, access, landscaping, outfitting, equipping said station, and any potential wetland mitigation costs. City shall bear all project costs in excess of \$12.0 million, if any.

D. In consideration of City's interest in consolidating Medic Unit #53 at 30 Joseph Court into the proposed new Fire Station #57, and also in consideration of CSA's limitation of its property tax revenues for "structural fire protection" services per voter intent in 1974, CSA agrees to bear 46.0% of said project costs, not to exceed \$5,520,000.

Said 46% share is derived from the proportion of the planned 1,000 square foot ambulance bay relative to the overall approximately 10,000 square foot new Fire Station #57 design footprint, for a 10% (or \$1.20 million) direct Emergency Medical Services "discount" from the \$12.0 million total estimated cost per Paragraph 1(B) above to accommodate consolidation of City's Medic Unit #53 into the new Fire Station #57, resulting in an initial \$5.40 million CSA share split equally with City. Said \$5.40 million initial CSA share is increased by an additional \$100,000 CSA contribution consistent with Section 7, "Purchase from City of Improvements Upon Termination", of Lease Agreement expiring June 30, 2016, for a rounded 46.0% CSA share of \$12.0 million total cost, not to exceed \$5,520,000.

E. City further agrees that Section 7, "Purchase from City of Improvements Upon Termination", of the Lease Agreement expiring June 30, 2016, is satisfied in full in consideration of CSA's 46.0% contribution toward construction of the new Fire Station #57 Improvements, and that no separate payment to City is required or to be paid upon expiration of the Lease Agreement expiring on June 30, 2016 for existing improvements.

F. County agrees to cooperate with City to mitigate any wetland issues at Fire Station #57 site on County land, if viable, but City is ultimately responsible for development and any wetland mitigation costs.

G. During the period of construction of Fire Station #57 Improvements, City agrees to fund any improvements, if necessary, to ensure interim operations at 30 Joseph Court in consultation with County given potential subsequent County use of the 30 Joseph Court site.

H. CSA agrees to the payment of its share of costs as set forth in Paragraph 1(D) above, for the construction of new Fire Station #57 Improvements, to be made to the City based on a pro-rating of progress payments by the City for costs of said design and construction, estimated to be no more than quarterly until construction is complete.

2. Option to Purchase 30 Joseph Court.

City agrees to give County the option to purchase 30 Joseph Court for \$1.0 million commencing upon City's occupancy of the newly constructed Fire Station #57, with said option to purchase for \$1.0 million terminating one year thereafter. County has expressed interest in purchasing the site and will commence a due diligence process upon City's occupancy of the new Fire Station #57. County shall exercise the option to purchase by written notice of exercise served on City as provided in Paragraph 15 below. In the event that County does not exercise such option within the one year option period, City may thereafter sell 30 Joseph Court to any other third party or to the County on such terms and at such price as the City may determine, in its sole discretion.

3. Title to Fire Station #57 Improvements.

City and County agree that the City shall continue to hold title to the Fire Station #57 Improvements on the Property until such time as this Agreement shall terminate, June 30, 2056, at which time the County or CSA shall receive title to such improvements as provided in Paragraph 9 hereafter.

4. Lease of Lands.

For and in consideration of the covenants and promises hereunder, County does hereby lease to City, and City does hereby lease from County, the lands consisting of approximately 31,422 square feet, or 0.72 acres, described as the "Proposed Lease" on Exhibit "B" attached hereto (the "Property"), pursuant to the terms set forth herein.

5. Term.

Contingent upon the parties having entered into the Fire Protection Services Agreement, bearing the same date as this Lease Agreement, the term of this Lease Agreement shall commence on July 1, 2016 and shall continue through June 30, 2056, unless either party terminates the Fire Protection Services Agreement per Paragraph 6 of that Agreement, attached hereto and incorporated herein by reference.

Should either party terminate the Fire Protection Services Agreement before June 30, 2056, the other party shall have the option to purchase the remaining amortized value of the other's percentage share of the Improvements, per Paragraph 1(C) or 1(D) above, as applicable, to ensure continuity of fire protection services to the community, assuming a 40-year amortization of the other's percentage share of the up-to \$12.0 million gross project costs at a 3.0% discount rate per year.

In the event the City terminates the Fire Protection Services Agreement, County or CSA shall have the option to purchase the remaining amortized value of the City's percentage share of the Improvements, with one hundred twenty (120) days' notice to the City at any time during the remaining lease term through June 30, 2056, in which case the remaining leasehold title vested with the City per this Lease Agreement shall be terminated and full title to the Improvements shall vest with the County or CSA.

In the event the County or CSA terminates the Fire Protection Services Agreement, City shall have the option to purchase the remaining amortized value of the CSA's percentage share of the Improvements, with one hundred twenty (120) days' notice to the County and CSA at any time during the remaining lease term through June 30, 2056, provided that after June 30, 2056 County or CSA shall receive full title to the Improvements from the City as provided in Paragraph 9 hereafter. Should City exercise said option before June 30, 2056, City shall have the rights to continued use of the Improvements as a fire station during the remainder of the leasehold period, contingent upon City maintaining its rent obligations as provided in Paragraph 6 hereafter, as well as all other provisions of this Lease Agreement for the remainder of the leasehold period.

6. Rent.

On or before the first day of each calendar month during the term of this Agreement, without any prior demand by County, City shall pay to County a monthly rental of \$11,854.75, which amount shall be increased by 3.0% annually, commencing with July 1, 2017.

7. Operation and Maintenance Expenses.

The City, as owner of the Fire Station #57 Improvements on the Property, shall be responsible for all operating and maintenance expenses related to the Improvements, including all utilities. The City shall also be responsible for landscape maintenance on the Property.

8. Future Changes to the Improvements.

After the initial construction of the Improvements as described in Paragraph 1 above, the City may make non-structural alterations, renovations, replacements, or other changes to the interior spaces of Fire Station #57 Improvements that do not affect the total square footage, dimension or height of such building, or the external appearance of the building, without requiring the written consent of the County. The City may also replace the roof on the Fire Station #57 building, make landscape improvements, and make repairs to the existing paved parking lot on the Property, without the written consent of the County. Any other exterior changes to the Improvements on the Property (including structural alterations, renovations, replacements, or other changes to the Fire Station #57 Improvements that affect the total square footage, dimension or height of such Improvements, or the external appearance of the Improvements) shall require the County's written consent, and shall conform, to the extent applicable, with the County Civic Center Master Plan Guidelines, adopted by the Board of Supervisors on December 20, 2005, on file with the County Clerk, and shown on the County's website at <http://www.marincounty.org/depts/ad/divisions/facility-planning-and-development>. City shall provide the County with at least ninety (90) days' advance written notice of any changes to the Property that will cost more than \$100,000 and have a useful life greater than five (5) years ("Special Improvements"). Any changes to the exterior of the Improvements, or any Special Improvements, may require approval by the Frank Lloyd Wright Civic Center Conservancy and/or the Board of Supervisors prior to City's implementation of such changes.

9. Vesting of Improvements Upon End of Term.

Upon completion of this Lease Agreement per Paragraph 5, County or CSA is hereby afforded full title to the Improvements.

10. Interests in Fire Station #57 Improvements Not Transferable

In no event may City sell, transfer or otherwise assign its interest in the Improvements to another party without the prior written consent and agreement of the County and CSA.

11. Destruction or Damage to Improvements.

Notwithstanding Paragraph 5 of this Agreement, if, during the term of this Agreement, the Fire Station #57 Improvements are totally destroyed or damaged to the extent that the Improvements are no longer suitable or adequate for use as a fire station, all rent due under the Agreement shall be totally abated effective as of the date of destruction or damage, and City may elect to either reconstruct or repair the Improvements or to terminate this Agreement by giving written notice to the County within three (3) months following such destruction or damage. If the City elects to reconstruct or repair the Improvements, City shall commence such reconstruction or repair within one (1) year after giving notice of such election, and upon the completion of such reconstruction or repair the full monthly rent

payable under the Agreement shall again become payable for the remaining term of the Agreement. If the City elects to terminate the Agreement due to the destruction or damage of the Fire Station #57 Improvements, City shall clear the Property of the destroyed or damaged Improvements and title to the Property shall be vested free and clear to the County.

12. Indemnification.

City shall defend, protect, indemnify and hold harmless the County against and from any and all claims, suits, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees, costs and disbursements) (collectively "Claims") arising out of the City's negligence or willful misconduct, or the City's operations on the Property under this Agreement, including any Claims under any Federal or State regulations related to accessibility. County shall defend, protect, indemnify and hold harmless the City against and from any and all claims, suits, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees, costs and disbursements) (collectively "Claims") arising out of the County's negligence or willful misconduct related to this Agreement.

13. Hazardous Materials.

City shall be responsible for the disposal in accordance with applicable laws of any hazardous materials placed on the Property by City or City's agents, and shall defend, protect, indemnify and hold harmless the County against and from any claims, suits, liabilities, judgments, costs, demands, causes of action and expenses (including without limitation reasonable attorneys' fees, costs and disbursements) arising from such hazardous materials. County shall be responsible for the disposal in accordance with applicable laws of any other hazardous materials found on the Property, and shall defend, protect, indemnify and hold harmless the City against and from any and all claims, suits, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees, costs and disbursements) arising from such other hazardous materials.

14. Amendments.

This Agreement may only be amended by written consent of all parties.

15. Notices.

All notices or communications hereunder shall be in writing and shall be sent by first class mail, addressed to the other party at the addresses indicated below, or such other addresses as the parties may from time to time designate in writing. Notice shall be deemed given upon placement of the notice into the mail.

To County: County Administrator
County of Marin, Room 325
3501 Civic Center Drive
San Rafael, CA 94903

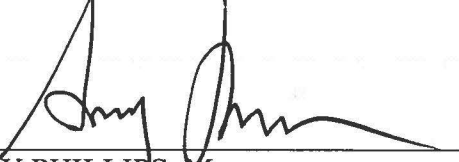
To CSA: County Administrator
County of Marin, Room 325
3501 Civic Center Drive

San Rafael, CA 94903

To City: City Manager
City of San Rafael
P.O. Box 151560
San Rafael, CA 94915-1560

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF SAN RAFAEL



GARY PHILLIPS, Mayor

COUNTY OF MARIN and COUNTY SERVICE
AREA 19



President of the Board of Supervisors

ATTEST:



ESTHER BIERNE, City Clerk

ATTEST:



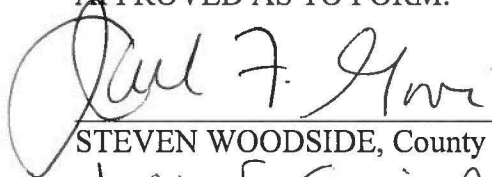
Clerk

APPROVED AS TO FORM:



ROBERT EPSTEIN, City Attorney

APPROVED AS TO FORM:



STEVEN WOODSIDE, County Counsel
JACK F. Gavi, Assistant



ROUTING SLIP / APPROVAL FORM

INSTRUCTIONS: Use this cover sheet with each submittal of a staff report before approval by the City Council. Save staff report (including this cover sheet) along with all related attachments in the Team Drive (T:) → CITY COUNCIL AGENDA ITEMS → AGENDA ITEM APPROVAL PROCESS → [DEPT-AGENDA TOPIC]

Agenda Item #

Date of Meeting: 5/16/2016

From: Danielle Ferrigno

Department: City Manager

Date: 6/10/2016

Topic: COUNTY SERVICE AREA 19 FIRE PROTECTION AND LEASE AGREEMENT

Subject: .1. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE COUNTY OF MARIN TO PROVIDE FIRE PROTECTION SERVICES TO COUNTY SERVICE AREA 19 (CSA 19).

2. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE COUNTY OF MARIN TO ENTER INTO A 40 YEAR LEASE AGREEMENT FOR 3535 CIVIC CENTER DRIVE AND TO FUND CAPITAL IMPROVEMENTS OF FIRE STATION 57.

Type: Resolution Ordinance
 Professional Services Agreement Other: Staff Report

APPROVALS

- Finance Director
Remarks: approved MM - 06/13 and then again on 6/14
- City Attorney
Remarks: LG-Approved 6/14/16.
- Author, review and accept City Attorney / Finance changes
Remarks:

City Manager

Remarks:

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

REAL PROPERTY PURCHASE AGREEMENT
30 JOSEPH COURT, SAN RAFAEL

THIS REAL PROPERTY PURCHASE AGREEMENT ("**Agreement**"), made and entered into this 30th day of July, 2021 (the "**Effective Date**"), by and between CITY OF SAN RAFAEL, a charter city (hereinafter referred to as "**Seller**"), and the COUNTY OF MARIN, a political subdivision of the State of California (hereinafter referred to as "**Buyer**");

W I T N E S S E T H:

WHEREAS, Seller owns the real property and improvements at 30 Joseph Court, San Rafael, CA 94903, Assessor's Parcel Number 155-081-08 (the "**Property**"), and more particularly described in the legal description Exhibit A, attached; and

WHEREAS, pursuant to that certain Lease Agreement by and between Seller, as "City" and Buyer, as "County", dated June 21, 2016, in which Seller granted to Buyer an option to purchase the Property for ONE MILLION DOLLARS (\$1,000,000.00) dollars (the "**Lease Agreement**"), Buyer has investigated and is satisfied as to the suitability of the Property, as applicable, with respect to its current condition, costs, and any or all on-site or surrounding neighborhood conditions, plans and any other material or non-material item ("**Due Diligence**"); and

WHEREAS, Seller desires to sell to Buyer and Buyer wishes to purchase Property upon the terms and conditions set forth below; and

WHEREAS, Buyer has opened an escrow account with First American Title Company, escrow number NCS-981325-C.

NOW, THEREFORE, BE IT MUTUALLY AGREED:

1. Seller hereby agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller the Property for the sum ONE MILLION DOLLARS (\$1,000,000.00) ("**Purchase Price**") on terms and conditions set forth herein.

The Property which Buyer elects to purchase is hereafter referred to as the "**Sale Property**".

(A) The purchase of the Sale Property shall be handled from First American Title Company, National Commercial Services, 1850 Mt. Diablo Blvd., Suite 530, Walnut Creek, CA 94596 ("**FATC**"), escrow Number NCS-981325-C ("**Escrow**"). Seller and Buyer shall execute and deliver to FATC any additional or supplementary instructions as may be necessary or convenient to implement the terms of this Agreement and close the transactions contemplated hereby, provided such instructions are consistent with and merely supplement this Agreement and shall not in any way modify, amend or supersede this Agreement.

(B) The escrow shall close not earlier than forty (40) calendar days or later than fifty (50) calendar days after the Effective Date (unless such close is mutually extended by both Buyer and Seller). If the County Administrator, representing Buyer, and Seller both determine that it is in each party's interest to extend the close of escrow for up to ninety (90) days, then each party will submit to FATC written authorization for the extension. Close of escrow is subject to the conditions in Sections 4 and 5 of this Agreement.

(C) The Sale Property shall include the real property and all of Seller's right, title and interest to all equipment, building systems, and fixtures on, in or attached to the Sale Property, its buildings and grounds as related to the Sale Property's use, function and rehabilitation.

(D) At the Close of Escrow, Seller shall execute and deliver to FATC a Grant Deed providing title free and clear of all liens and encumbrances to the Sale Property. Additionally, the Grant Deed executed and delivered shall be free and clear of all restrictions, specifically including any restrictions related to the use of the Sale Property as a firehouse and incidental purposes. The Grant Deed shall be substantially in the form provided in Exhibit C. Title shall vest at Close of Escrow in Buyer. "**Close of Escrow**" shall be the date that the Grant Deed is recorded.

(E) From and after the date of execution of this Agreement by Seller through the Close of Escrow, Seller shall:

(1) Maintain the Sale Property in its current state until Close of Escrow, excluding ordinary wear and tear and casualty; and

(2) Refrain from performing any grading or excavation, construction, or removal of any improvements, or making any other change or improvement upon or about the Sale Property, except as required by the City of San Rafael or any other applicable governmental authority or any improvements or construction of an emergency nature in Seller's sole discretion, about which Seller shall promptly notify Buyer in writing; and

(3) Refrain from creating or incurring, or suffering to exist, any mortgage, lien, pledge, or other monetary encumbrances in any way affecting the Sale Property or title, without Buyer's written approval, except such consent shall not be required for any such matter currently in existence and for which Buyer has received notice or that will be removed prior to or upon the Close of Escrow; and

(4) Refrain from committing any waste or nuisance upon the Sale Property; and

(5) Observe all laws, ordinances, regulations, and restrictions (collectively, the "**Laws**") affecting the Sale Property and its current use, provided, that, Seller shall not be obligated to take any action with respect to

any pre-existing conditions impacting the Sale Property which do not comply with any applicable Laws; and

(6) Preserve the use, possession, and management of the Sale Property and not execute, extend, or otherwise further encumber the Sale Property with leases or other contracts, including any equipment maintenance or service contracts beyond the expected Close of Escrow, unless first approved in writing by Buyer; and

(7) Pay all charges for service contracts, association fees and dues, taxes and assessments on the Sale Property up to the Close of Escrow. If Buyer and Seller mutually agree to an extension of the time for Close of Escrow, then such agreement shall include an agreement on what date shall be used for the proration of such items.

2. Subject to and conditioned upon the Close of Escrow, Seller shall:

Pay Documentary Transfer Tax, if required, and one half of any Transfer Tax.

3. Buyer shall:

(A) Provide FATC with a copy of the Purchase Agreement upon its execution.

(B) Deposit with FATC the balance the Purchase Price (with FATC to account for all prior Buyer deposits to escrow that are applicable to the Purchase Price, if any, in cash.

(C) Pay all escrow, recording fees, and one half of any transfer tax incurred as a result of the transfer of the Sale Property by Seller to Buyer; and pay the title insurance premium.

4. Seller's obligation to sell and proceed to Close of Escrow for the Sale Property pursuant to this Agreement is subject to the satisfaction or waiver of the following conditions, which are solely for Seller's benefit unless otherwise indicated:

Buyer fully performing in all material respects each and every obligation of Buyer under this Agreement (including, without limitation, the payment of the Purchase Price), and Buyer's representations and warranties set forth in this Agreement being true and correct in all material respects as of the Close of Escrow;

5. Buyer's obligation to purchase and proceed to Close of Escrow for the Sale Property pursuant to this Agreement is subject to the satisfaction or waiver of the following conditions, which are solely for Buyer's benefit unless otherwise indicated:

(A) The issuance by FATC of an ALTA Owners Extended Coverage Policy of Title Insurance (which title policy shall be paid for by Buyer), for the Sale Property at Close of Escrow, including a mechanics "lien-free" endorsement, to be free and clear of

all liens (including Deeds of Trust), encumbrances, encroachments, assessments, easements, and taxes, except and subject only to the following matters:

(1) Real property taxes and assessments for the fiscal year in which escrow closes, subject to proration;

(2) Easements or rights of way over the land portion of the Property for public or quasi-public utilities or public street purposes, if any;

(3) All title exceptions set forth in the Preliminary Report prepared by FATC dated March 19, 2021 and updated March 26, 2021, Order Number NCS-981325-C, except for any monetary liens which are to be removed by Seller;

(4) Any title exceptions which would be disclosed by an accurate survey or an inspection of the Sale Property; and

(B) Seller having performed in all material respects each and every obligation of Seller under this Agreement, and Seller's representations and warranties set forth in this Agreement being true and correct in all material respects as of the Close of Escrow.

6. The following prorations between Seller and Buyer shall be made by FATC computed as of the Close of Escrow:

(A) All real estate taxes and assessments attributable to the Sale Property will be prorated as of the Close of Escrow. Seller shall be charged with all such taxes up to, but not including, the Close of Escrow. If the applicable tax rate and assessments for the Sale Property have not been established for the year in which the Close of Escrow occurs, the proration of real estate and/or personal property taxes, as the case may be, will be based upon the rate and assessments. If the Sale Property is not a separate tax parcel, then the real property taxes and assessments allocable to the Sale Parcel for purposes of calculating the prorations shall be based on a fraction, whose numerator is the gross square footage located upon the Sale Property and whose denominator is the gross square footage located within the tax parcel of which the Sale Property is a part; and

(B) All utility service charges for electricity, heat and air conditioning service, other utilities, maintenance, taxes other than real estate taxes such as rental taxes, other expenses incurred in operating the Sale Property that Seller customarily pays. Seller and Buyer shall obtain billings and meter readings as of the Close of Escrow to aid in such prorations; and

(C) At least two (2) business days prior to the Close of Escrow, the parties shall agree upon all of the prorations to be made and submit a statement to FATC setting forth the same. In the event that any prorations, apportionments or computations made under this Section 6 shall require final adjustment, then the parties shall make the appropriate adjustments promptly when accurate information becomes available and either party hereto shall be entitled to an adjustment to correct the same, but in no event shall such final adjustment occur later than ninety (90) days following the Close of

Escrow. Any corrected adjustment or proration shall be paid in cash to the party entitled thereto.

7. Seller makes the representations and warranties set forth below.

(A) Except as disclosed in the environmental reports Seller has delivered to Buyer, to Seller's actual knowledge, after reasonable inquiry of Seller, Seller has not received written notice or is otherwise aware of the existence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances and/or underground storage tanks in, on or about the Sale Property in violation of applicable law.

(B) Except as otherwise disclosed in writing to Buyer, to Seller's actual knowledge, Seller has not received written notice of any pending or threatened lawsuits or legal action that are likely to have a material, adverse effect on the Sale Property, or Buyer's intended use thereof.

(C) (1) Seller is authorized to execute and deliver this Agreement, and to perform all of its obligations hereunder; (2) this Agreement has been duly authorized on the part of Seller, and is binding upon and enforceable against Seller. Subject to the limitations set forth in Section 10 below, Seller agrees to defend, indemnify and hold Buyer harmless of and from any and all costs, expenses, damages, losses and liabilities arising out of, relating to or resulting from a breach by Seller of any of its representations and warranties set forth in this Section 7(C).

The foregoing constitutes Seller's only representations and warranties under this Agreement and with respect to the transactions described herein, and no oral representations or warranties shall be binding on Seller.

8. Buyer warrants that:

(A) It has not incurred any brokerage or leasing commissions, finder's fees or like compensation presently due and payable or which will become due and payable to any person, firm, corporation or other entity with respect to or on account of the sale of the Sale Property; and

(B) By the Close of Escrow, Buyer will have inspected and evaluated the Sale Property and factors relevant to its use, including without limitation:

(1) The physical condition of the Sale Property, including the interior and exterior, the structure, all utilities and all physical functional aspects of the Sale Property;

(2) All leases, documents and other materials given to Buyer by Seller affecting the operation of the Sale Property; and

(C) (1) Buyer is authorized to execute and deliver this Agreement, and to perform all of its obligations hereunder; (2) this Agreement has been duly authorized on the part of Buyer, and is binding upon and enforceable against Buyer. Subject to the

limitations set forth in Section 10 below, Buyer agrees to defend, indemnify and hold Seller harmless of and from any and all costs, expenses, damages, losses and liabilities arising out of, relating to or resulting from a breach by Buyer of any of its representations and warranties set forth in this Section 8(C).

9. The representations, warranties and indemnities set forth in Sections 7 and 8 shall survive for a period of eighteen (18) months following the Close of Escrow. No claim for a breach of any warranty, covenant or obligation by Seller or Buyer (the "**Defaulting Party**") set forth in Sections 7 and 8 shall be actionable or payable if (i) the other party (the "**Non-Defaulting Party**") fails to notify the Defaulting Party in writing of such breach and commence a "legal action" thereon within such eighteen (18) month period, or (ii) the breach in question results from or is based on a condition, state of facts or other matter which was actually known by the Non-Defaulting Party prior to the Close of Escrow. All other warranties, covenants and obligations described in this Agreement by Buyer and Seller shall survive delivery of the Grant Deed.

10. If prior to the Close of Escrow any portion of the Sale Property is destroyed or materially damaged or subject to a taking by a public or governmental authority, then Buyer shall have the following rights:

(A) If a material portion of the Sale Property is destroyed or materially damaged, then either Buyer or Seller shall have the right, exercisable by giving written notice to the other party within thirty (30) days after receipt of written notice from Seller to Buyer of such damage or destruction, to terminate this Agreement in which event any deposits and all interest accrued thereon shall be immediately returned to Buyer, and any other money or documents in Escrow shall be returned to the party depositing the same.

(B) For purposes of this Section 10, damage to the Sale Property shall be deemed to involve a material portion thereof if the estimated cost of restoration or repair, as estimated by Buyer and Seller in their reasonable discretion, of such damage shall exceed 15% of the Purchase Price; and

(C) Seller agrees to give Buyer prompt written notice of any taking of, proposed taking of, damage to or destruction of the Sale Property.

11. Except as otherwise expressly set forth in this Agreement, and subject to Seller's representations and warranties set forth in this Agreement, Buyer is purchasing the Sale Property in its existing condition, and upon the Close of Escrow will have made or waived all inspections and investigations of the Sale Property and its vicinity which Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Sale Property.

12. In the event that Seller fails to perform any of the material covenants or agreements contained herein which are to be performed by Seller, Buyer may, at its option and as its exclusive remedy, either (i) terminate this Agreement by giving written notice of termination to Seller whereupon FATC will return to Buyer any deposits, and both Buyer and Seller will be relieved of any further obligations or liabilities hereunder, except for those obligations which expressly survive any termination hereof, or (ii) Buyer may seek specific performance of this

Agreement. If Buyer elects the remedy in subsection (ii) above, Buyer must commence and file such specific performance action in the appropriate court not later than forty-five (45) days following such breach of this Agreement.

13. Time is of the essence of all times and dates set forth in this Agreement. All exhibits attached hereto are incorporated herein by this reference.

14. Seller waives any and all claims for relocation assistance by reason of Buyer's purchase and use of the Sale Property.

15. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations, and agreements whether oral or written. Any amendment to this agreement, including an oral modification supported by new consideration, must be reduced to writing and signed by both parties before it will be effective.

16. Buyer may assign this Agreement and the rights under it but only to (i) a governmental entity or entities, or (ii) any other entity pursuant to a public or private financing of the acquisition of the Sale Property and/or for Renovations to the Sale Property (collectively, the "**Permitted Assignees**"), and such assignment must be approved by Seller, which approval shall not be unreasonably withheld. Subject to this Section 16, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators, and assigns. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. The captions and headings of the Articles, Sections, and Paragraphs of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions hereof.

17. Any and all notices required or permitted under this Agreement or by law shall be given in writing either by personal service or by registered or certified mail, postage prepaid. Any such notice shall be effective as of the date it is mailed or delivered. Notices shall be addressed as shown below for each party, except that, if any party gives notice of a change of name or address, notices to that party shall thereafter be given as shown in that notice.

To Seller: City of San Rafael
Attn: City Manager
1400 Fifth Avenue, Room 203
San Rafael, CA 94901

To Buyer: County of Marin
Attn: County Administrator
3501 Civic Center Drive, Suite 325
San Rafael, California 94903

18. Seller and Buyer agree that this Agreement has been mutually drafted and authored by all the parties. Ambiguities or uncertainties in the wording of this Agreement will not be construed for or against any party, and there shall be no presumption that this Agreement or any provision hereof be construed against the party that drafted this Agreement.

19. This Agreement may be executed in counterparts, and all counterparts together shall be construed as one document.

20. Seller and Buyer agree to execute such additional documents and take such actions as may be reasonable and necessary to carry out the intent and/or provisions of the Agreement.

21. If any term or provision or portion thereof of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision or portion thereof to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

22. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

23. Unless the context otherwise requires, all periods terminating on a given day, period of days, or date shall terminate at 5:00 p.m. (Pacific time) on such date or dates, and references to "days" shall refer to calendar days except if such references are to "business days" which shall refer to days which are not Saturday, Sunday or a legal holiday. Notwithstanding the foregoing, if any period terminates on a Saturday, Sunday or a legal holiday, under the laws of the State of California or County of Marin, the termination of such period shall be on the next succeeding business day.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF SAN RAFAEL (SELLER)


KATE COLIN, Mayor

COUNTY OF MARIN (BUYER)


DENNIS RODONI, President of the Board of Supervisors

ATTEST:

ATTEST:

for 
LINDSAY LARA, City Clerk


MATTHEW HYMEL, Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

for 
ROBERT EPSTEIN, City Attorney


BRIAN WASHINGTON, County Counsel
By: STEPHEN RAAB, Deputy

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the County of Marin by a vote of the Board on July 20, 2021; and that a copy has been delivered to the President as provided by Government Code section 25103.

DATED: 7/20/21

Matthew H. Hymel, Clerk, Board of Supervisors

By: 

LIST OF EXHIBITS

- Exhibit A-1: Property parcel map
- Exhibit A-2: Property Legal Description
- Exhibit B: Form of Grant Deed

EXHIBIT A-1
Property Parcel Map: APN 155-081-08

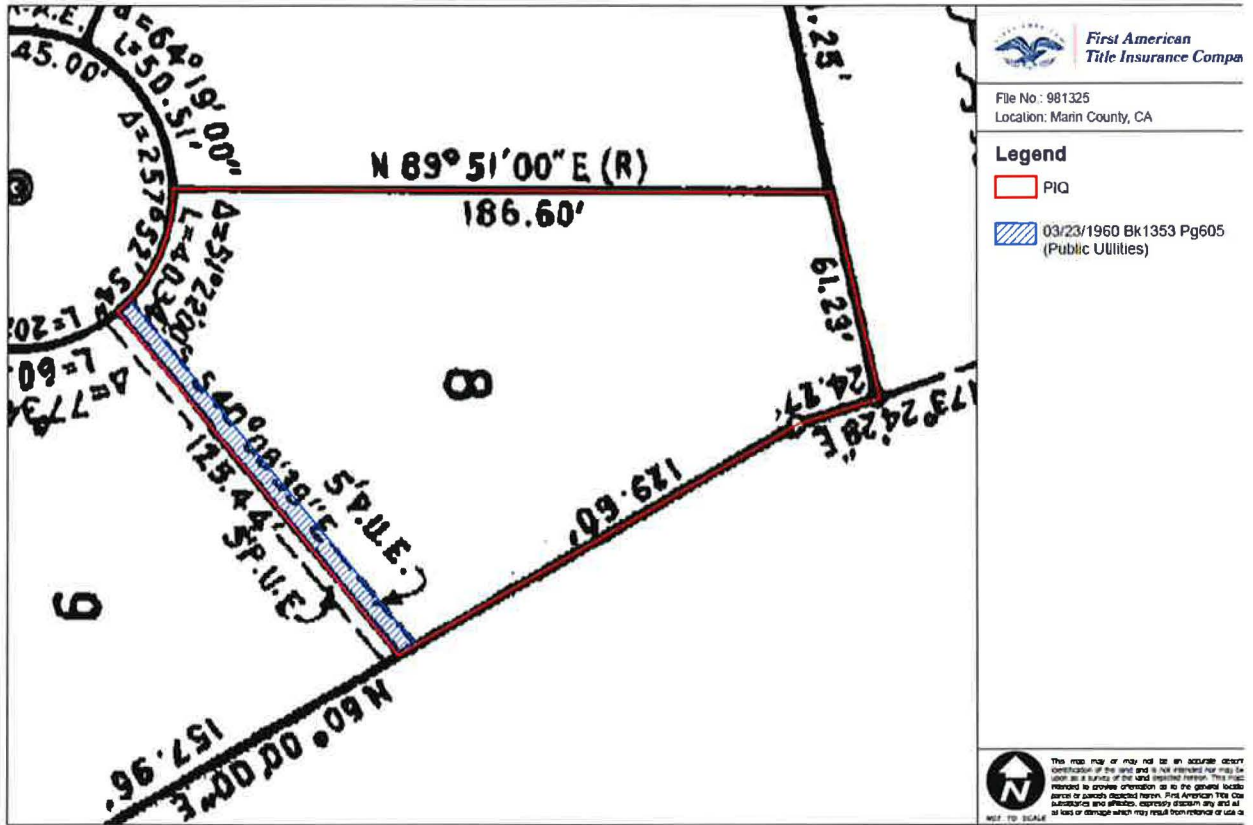


EXHIBIT A-2
PROPERTY LEGAL DESCRIPTION

LEGAL DESCRIPTION

Real property in the City of San Rafael, County of Marin, State of California, described as follows: BEGINNING AT A POINT ON THE NORTHERLY LINE OF LOT 4, AS SHOWN ON THE MAP ENTITLED "MAP OF MARIN PROFESSIONAL CENTER UNIT 1" FILED FOR RECORD MARCH 03, 1958 IN BOOK 9 OF MAPS, PAGE 94, MARIN COUNTY RECORDS; SAID POINT BEING DISTANT THEREON NORTH 73° 24' 28" EAST 24.27 FEET FROM THE INTERSECTION OF THE COURSES "NORTH 60° 00' EAST 420.00 FEET AND NORTH 73° 24' 28" EAST 340.44 FEET" AS SHOWN UPON THE ABOVE ENTITLED MAP; RUNNING THENCE NORTH 12° 13' 00" WEST 61.23 FEET; THENCE SOUTH 89° 51' 00" WEST 186.60 FEET; THENCE ON A CURVE TO THE RIGHT WHOSE CENTER BEARS SOUTH 89° 51' 00" WEST 45.00 FEET THROUGH A CENTRAL ANGLE OF 51° 22' 00" AN ARC DISTANCE OF 40.34 FEET; THENCE SOUTH 40° 08' 39" EAST 123.44 FEET TO A POINT ON THE NORTHWESTERLY LINE OF LOT 4, MAP ABOVE REFERRED TO; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LOT 4, MAP ABOVE REFERRED TO, NORTH 60° 00' EAST 129.60 FEET AND NORTH 73° 24' 28" EAST 24.27 FEET TO THE POINT OF BEGINNING.

ALSO SHOWN AS LOT 8 ON THE MAP ENTITLED "MAP OF COMMONWEALTH LIGHT INDUSTRIAL SUBDIVISION", FILED FEBRUARY 18, 1960 IN BOOK 10 OF MAPS, PAGE 51, MARIN COUNTY RECORD.

APN: 155-081-08

EXHIBIT B
FORM OF GRANT DEED

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

Space Above This Line for Recorder's Use Only _____

A.P.N.: _____

File No.: _____ (_____)

GRANT DEED

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$_____; CITY TRANSFER TAX \$_____;
SURVEY MONUMENT FEE \$_____

- [_____] computed on the consideration or full value of property conveyed, OR
[_____] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
[_____] unincorporated area; [_____] City of _____, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, _____

hereby GRANTS to _____

the following described property in the _____ of _____, County of _____, State of _____:

Dated: _____

Mail Tax Statements To: **SAME AS ABOVE**

A.P.N.:

Grant Deed - continued

File No.: _____ ()

Date: ___/___/___

STATE OF _____ }
COUNTY OF _____ } ss.

On _____, before me, _____ personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

This area for official notarial seal

Signature

My Commission Expires: _____

Notary Name: _____
Notary Registration Number: _____

Notary Phone: _____
County of Principal Place of Business: _____