



## AGENDA

SAN RAFAEL CITY COUNCIL – MONDAY, SEPTEMBER 13, 2021

REGULAR MEETING AT 7:00 P.M.

Watch on Webinar: <https://tinyurl.com/cc-2021-09-13>

Watch on YouTube: [www.youtube.com/cityofsanrafael](http://www.youtube.com/cityofsanrafael)

Listen by phone: (669) 900-9128

ID: 817-3692-0337#

### **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 held virtually using Zoom and is being streamed to YouTube at [www.youtube.com/cityofsanrafael](http://www.youtube.com/cityofsanrafael).

How to participate in the meeting:

- Submit public comment in writing before 4:00 p.m. the day of the meeting to [city.clerk@cityofsanrafael.org](mailto:city.clerk@cityofsanrafael.org).
- Join the Zoom webinar and use the 'raise hand' feature to provide verbal public comment.
- Dial-in to Zoom's telephone number using the meeting ID and provide verbal public comment.

Any member of the public who needs accommodations should contact the City Clerk (email [city.clerk@cityofsanrafael.org](mailto:city.clerk@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.

### **OPEN SESSION - (669) 900-9128 ID: 827-9460-3029# - 5:30 P.M.**

1. Mayor Kate to announce Closed Session item.

### **CLOSED SESSION**

2. Closed Session:

- a. Conference with Labor Negotiators – Government Code Section 54957.6  
Lead Negotiator: Timothy L. Davis (Burke, Williams & Sorensen)  
Agency Designated Representatives: Jim Schutz, Cristine Alilovich, Nadine Hade, Sylvia Gonzalez, Carmen Valdez  
Employee Organization: SEIU - Childcare

### **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, August 16, 2021 (CC)

*Recommended Action - Approve minutes as submitted*

b. **Authorization for Background Checks**

Final Adoption of Ordinance No. 1999: An Ordinance of the City of San Rafael City Council Adding Chapter 2.22 to the San Rafael Municipal Code, Entitled "Background Checks" (PD)

*Recommended Action - Final Adoption of Ordinance 1999*

c. **Future Property Annexation to the City of San Rafael**

Resolution Authorizing the Mayor to Execute an Agreement Between the City and Andrews Living Trust Et. Al. Regarding Future Annexation of Property Located at 345 Highland Avenue (APN 016-011-20) In the Unincorporated Country Club Neighborhood to the City of San Rafael (CD)

*Recommended Action - Adopt Resolution*

d. **Security Services for the Service Support Area**

Resolution Authorizing the City Manager to Execute and Continue as Needed a Month-to-Month Professional Services Agreement with Barbier Security Group to Provide Security Services at the Service Support Area, in an Amount Not to Exceed \$31,770 Monthly (PD)

*Recommended Action - Adopt Resolution*

e. **San Rafael Police Department Unmarked Fleet Replacement 2021**

Resolution Approving and Authorizing the Director of Public Works to Purchase Six Unmarked Toyota Highlander Hybrids, In an Amount Not to Exceed \$282,000 (PW)

*Recommended Action - Adopt Resolution*

f. **Bungalow and Woodland Resurfacing Project**

Resolution Awarding and Authorizing the City Manager to Execute a Construction Agreement for the Bungalow and Woodland Resurfacing Project, City Project No. 11397, To Ghilotti Bros., Inc. in the Amount of \$737,373.77, and Authorizing Contingency Funds in the Amount of \$112,262.23, for a Total Appropriated Amount of \$850,000 (PW)

*Recommended Action - Adopt Resolution*

g. **Southern Height Bridge Replacement**

Resolution Approving and Authorizing the City Manager to Execute a First Amendment to the Agreement with Substrate, Inc. For Additional Construction Management,

Inspection, And Materials Testing Services, In an Additional Contract Amount Not to Exceed \$65,885 (PW)

*Recommended Action – Adopt Resolution*

**h. Third Street / San Rafael High School Crosswalk Project Notice of Completion**

Accept Completion of The Third Street / San Rafael High School Crosswalk Project (City Project No. 11354), And Authorize the City Clerk to File the Notice of Completion (PW)

*Recommended Action – Accept Completion and authorize City Clerk to file Notice of Completion*

**OTHER AGENDA ITEMS**

**6. Other Agenda Items:**

**a. 2021-2022 City Council Redistricting Process**

Informational Report on (1) Legal and Policy Criteria Governing Redistricting; and (2) Preliminary Demographics of Existing Council Districts Based on Census “Legacy” Data (CA)

*Recommended Action – Accept report*

**SPECIAL PRESENTATIONS**

**7. Special Presentations:**

a. Presentation of Proclamation in Recognition of National Suicide Prevention and Awareness (Fin)

b. Presentation of Proclamation in Recognition of Hispanic Heritage Month (HR)

**PUBLIC HEARINGS**

**8. Public Hearings:**

**a. Ground Lease to Centertown II, LP of 855 C Street**

First Introduction: Consideration of an Ordinance Approving And Authorizing The Mayor To Execute A Ground Lease Of The Real Property At 855 C Street, San Rafael (Centertown) To Centertown II, LP (ED)

*Recommended Action – Pass Ordinance to print*

**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](mailto: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, AUGUST 16, 2021**

**REGULAR MEETING AT 7:00 P.M.**

**Watch on Webinar: <https://tinyurl.com/cc-2021-08-16>**

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**ID: 899-2635-9885#**

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Present: Mayor Kate  
Councilmember Hill  
Councilmember Kertz (absent after 8:15 p.m.)  
Councilmember Llorens Gulati

Absent: Vice Mayor Bushey

Also Present: Assistant City Manager Cristine Alilovich  
City Attorney Robert Epstein  
City Clerk Lindsay Lara

### **OPEN SESSION - (669) 900-9128 ID: 853-8238-1398# - 6:30 P.M.**

1. Mayor Kate to announce Closed Session items.

### **CLOSED SESSION**

2. Closed Session:
  - a. Conference with Legal Counsel—Existing Litigation  
Government Code section 54956.9(d)(1)  
Name of case: Karl Bracy v. Officer Joseph Jordan et al., U.S. District Court Northern District of California Case No. 4:20-cv-07585 DMR



Mayor Kate called the meeting to order at 7:01 p.m. and invited City Clerk Lindsay Lara to call the roll. All members of the City Council were present, except for Vice Mayor Bushey.

City Attorney Robert Epstein announced that reportable action was taken in the Closed Session held prior to the meeting. The City Council voted to approve a settlement in the pending case of Karl Bracy v. City of San Rafael, et. al. He indicated the terms of the settlement include the City will pay the sum of \$29,500.00 in exchange for the plaintiff's dismissal of the case with prejudice and release of all claims.

Mayor Kate provided opening remarks, which included the recent, updated UN Climate Report, wildfire prevention, conserving water, back to school time and a land acknowledgment.

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

**OPEN TIME FOR PUBLIC EXPRESSION**

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

**CITY MANAGER'S REPORT:**

3. City Manager's Report:

Assistant City Manager Cristine Alilovich announced:

- COVID-19 update
- County rental assistance update
- City's eviction moratorium update
- Measure A update

**COUNCILMEMBER REPORTS:**

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

4. Councilmember Reports:

- Councilmember Kertz reported on the Social Justice Community Art project, Marin Homeless Policy Steering Committee, Economic Development Subcommittee, and upcoming Age-Friendly Committee/CERT/Fire Department events.
- Councilmember Hill reported on an Ad Hoc Green Micro Grid Solutions Policy Makers Group meeting.
- Councilmember Llorens Gulati reported on a Grand Opening for the De Colores Children's Center and Safety Net Services Hub.
- Mayor Kate reported on National Night Out, Grand Opening of first part of Public Art process at 3301 Kerner Blvd. and a Canal Policy Working Group meeting.

## **CONSENT CALENDAR:**

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

Councilmember Kertz moved and Councilmember Hill seconded to approve the Consent Calendar.

### 5. Consent Calendar Items:

- a. **Approval of Minutes**  
**Approve Minutes of City Council / Successor Agency Regular Meeting of Monday, August 2, 2021 (CC)**  
*Approved minutes as submitted*
- b. **Sale of 30 Joseph Court Property to County of Marin**  
**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 (CA/PW)**  
*Resolution 14962 - 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*
- c. **San Rafael General Plan 2040 Ordinance Adoption**  
**Final Adoption of Ordinance No. 1996: An Ordinance Amending the San Rafael Municipal Code Amending Title 14 (Zoning Ordinance) and Amending the Zoning Map of the San Rafael Municipal Code to: A) Repeal the Existing Downtown Zoning Districts, and Replace with Downtown Mixed-Use (DMU) District; B) Amend, Delete and Replace Certain Zoning Provisions Applicable to Downtown San Rafael; and C) Amend, Delete and Replace Other Zoning Regulations to Comply with State Law and Incorporate Other Minor Changes, Corrections and Updates (CD)**  
*Final Adoption of Ordinance No. 1996*
- d. **San Rafael Downtown Precise Plan Ordinance Adoption**  
**Final Adoption of Ordinance No. 1997: An Ordinance Adopting the Downtown San Rafael Precise Plan – Chapter 9 Downtown Form-Based Code to Serve as the Primary Regulatory City Zoning Code for Downtown San Rafael (CD)**  
*Final Adoption of Ordinance No. 1997*
- e. **Albert J. Boro Community Center Community Use Policy**  
**Resolution Approving the Updated Albert J. Boro Community Center Community Use Policy (LR)**  
*Resolution 14963 - Resolution Approving the Updated Albert J. Boro Community Center Community Use Policy*
- f. **Parks, Events, and Activities Municipal Code Amendments Ordinance Adoption**  
**Final Adoption of Ordinance No. 1998: An Ordinance Amending the San Rafael Municipal Code to Change the Name of Title 19 from “Open Space” to “Public Parks, Property, and Open Space”; to Repeal Chapter 8.10 (Parks and Recreation) and Add a**

**New Chapter 19.20 (Parks and Recreation) to Title 19; to Repeal Chapter 5.70 (Meetings Assemblies and Parades In Public Places) of Title 5 and Add a New Chapter 19.30 (Assemblies and Parades In Public Streets and Rights-Of-Way) to Title 19; to Add New Chapter 19.40 (Expressive Activities In Public Places) to Title 19; to Add New Section 5.60.054 to Chapter 5.60 (Parking Regulations); and Finding the Ordinance Exempt from the California Environmental Quality Act (CA/LR)**

*Final Adoption of Ordinance No. 1998*

**g. Renewal of Abandoned Vehicle Enforcement Program  
Resolution Approving the Request to Extend the Marin County Abandoned Vehicle Abatement Program Service Authority Service Fee Through April 30, 2032 (PS)**

*Resolution 14964 - Resolution Approving the Request to Extend the Marin County Abandoned Vehicle Abatement Program Service Authority Service Fee Through April 30, 2032*

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

**OTHER AGENDA ITEMS**

**6. Other Agenda Items:**

**a. [San Rafael Social Justice Community Art Group Proposal for a Public Art Installation](#)  
Resolution Approving the Design and Installation of a Public Art Mural at Arbor Park (CM)**

Cristine Alilovich, Assistant City Manager, Damien Oyobio, San Rafael Social Justice Community Art Group, Kristen Jacobsen, Youth in Arts, Orin Carpenter, Lead Artist and Owen Martinez-Alejandre, Youth Art Assistant presented the Staff Report.

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment.

**Speakers:** Pam, Reese

Councilmembers provided comments.

Councilmember Kertz moved and Councilmember Llorens Gulati seconded to adopt the resolution.

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

*Resolution 14966 - Resolution Approving the Design and Installation of a Public Art Mural at Arbor Park*

**Councilmember Kertz left the meeting after item 6.a, at 8:15 p.m.**

**SPECIAL PRESENTATIONS**

7. Special Presentations:

a. Presentation by PG&E on Wildfire Planning (PW)

Bill Guerin, Public Works Director introduced Mark van Gorder and Austin Sharp, Pacific Gas and Electric who gave a presentation.

Presenters responded to questions from Councilmembers.

Mayor Kate invited public comment.

**Speakers:** Jennifer, David Smith

Presenters responded to public comment.

Councilmembers provided comments.

b. Presentation of Proclamation in Recognition of National Preparedness Month 2021 (FD)

Mayor Kate presented a Proclamation to Quinn Gardner, Emergency Management Coordinator.

Quinn Gardner, Emergency Management Coordinator provided comments.

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

Fire Chief Darin White provided comments.

**PUBLIC HEARINGS**

8. Public Hearings:

a. **Authorization for Background Checks**

**City Council Authorization for Background Checks for City Employment and City Licenses (PD)**

Police Chief David Spiller presented the Staff Report.

Staff responded to questions from Councilmembers.

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

i. **Consideration of an Ordinance of the City of San Rafael City Council Adding Chapter 2.22 to the San Rafael Municipal Code, Entitled "Background Checks"**

Councilmember Hill moved and Councilmember Llorens Gulati seconded to pass the ordinance to print.

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

*Passed Ordinance No. 1999 to print*

ii. **Resolution Authorizing the City to Access State and Federal Summary Criminal History for New Employee and Licensee Background Information Through the Department of Justice**

Councilmember Hill moved and Councilmember Llorens Gulati seconded to adopt the resolution.

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

*Resolution 14966 - Resolution Authorizing the City to Access State and Federal Summary Criminal History for New Employee and Licensee Background Information Through the Department of Justice*

**OTHER AGENDA ITEMS (continued)**

9. Other Agenda Items:

a. **[San Rafael 2023-2031 Housing Element](#)  
Informational Report on the 2023-2031 Housing Element and Community Engagement Program (CD)**

Alicia Giudice, Community Development Director introduced Barry Miller, Consultant who presented the Staff Report.

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment.

**Speakers:** Reese, Phil Hallstein, Responsible Growth Marin (RGM), David Smith

Staff responded to public comment.

Councilmembers provided comments.

Councilmember Llorens Gulati moved and Councilmember Hill seconded to accept the report.

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

*Accepted report*

**SAN RAFAEL SUCCESSOR AGENCY:**

1. Consent Calendar: - None.

**ADJOURNMENT:**

Mayor Kate adjourned the meeting at 10:01 p.m.

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

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021

\_\_\_\_\_  
KATE COLIN, Mayor

**Agenda Item 5.b**

**ORDINANCE NO. 1999**

**AN ORDINANCE OF THE CITY OF SAN RAFAEL CITY COUNCIL ADDING  
CHAPTER 2.22 TO THE SAN RAFAEL MUNICIPAL CODE, ENTITLED  
“BACKGROUND CHECKS”**

**Section 1. Findings.**

**WHEREAS**, Penal Code Sections 11105(b)(11) and 13399(b)(11) authorize cities to access state and local summary criminal history information for employment, licensing or certification purposes; and

**WHEREAS**, Penal Code Section 11105(b)(11) also authorizes cities to access federal level criminal history by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation; and

**WHEREAS**, Penal Code Section 11105(b)(11) and 13300(b)(11) require the City Council to specifically authorize access to summary criminal information for employment, licensing, or certification purposes; and

**WHEREAS**, the City Council has not yet specifically authorized access to summary criminal information for all employment, licensing, or certification purposes.

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

**Section 2: Addition of Chapter 2.22 to the San Rafael Municipal Code.**

Title 2 of the San Rafael Municipal Code, entitled “Administration” is hereby amended by adding a new Chapter 2.22 entitled “Background Checks” to read in its entirety as follows:

**2.22.010. Background Checks Required.**

California Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize city authorities to access state and local summary criminal history information for employment, licensing, or certification purposes; and authorize access to federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation. Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), such background checks shall be conducted as follows:

- A. A background check is authorized to be conducted prior to any type of employment by the City of San Rafael, including for volunteer and independent contractor positions. No person shall be employed by the City of San Rafael if the applicant has been convicted of an offense that is substantially related to the qualifications, functions, or

## Agenda Item 5.b

duties of the employment position, as determined by the police chief or his/her designee.

- B. A background check is authorized to be conducted prior to issuance of any City license, permit, or certification where this Code prohibits issuance or holding of the license, permit, or certification based on specific criminal conduct on the part of the subject of the record.

**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



## Agenda Item 5.b

The foregoing Ordinance No. 1999 was read and introduced at a regular meeting of the City Council of the City of San Rafael on Monday, the 16<sup>th</sup> day of August 2021, and was ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Hill, Llorens Gulati & Mayor Kate

NOES: Councilmembers: None

ABSENT: Councilmembers: Bushey, Kertz

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 13<sup>th</sup> day of September 2021.



LINDSAY LARA, City Clerk

## **SUMMARY OF ORDINANCE NO. 1999**

### **AN ORDINANCE OF THE CITY OF SAN RAFAEL ADDING CHAPTER 2.22 TO THE SAN RAFAEL MUNICIPAL CODE, ENTITLED “BACKGROUND CHECKS”**

This Summary concerns a proposed ordinance of the City Council of the City of San Rafael, designated as Ordinance No. 1999, which will add new provisions to the San Rafael Municipal Code authorizing the City of San Rafael to conduct criminal background checks in certain situations.

### **SUMMARY OF AMENDMENT TO MUNICIPAL CODE**

Ordinance No. 1999 will add new Chapter 2.22 to the San Rafael Municipal Code entitled “Background Checks.” The California Penal Code authorizes a city, for purposes of employment or licensing, to submit fingerprints to the California Department of Justice, and through the state to the U.S. Department of Justice, with a request to run a check to see whether a person has a criminal history. By this ordinance, the San Rafael City Council would formally authorize the City’s Police Department to request that background check for an applicant for employment with the City of San Rafael before the City finally accepts the applicant for employment. In addition, the ordinance would authorize a similar background check for persons applying for certain City licenses, permits, or certifications, where the application process includes a background check for criminal activity prior to issuance of the license/permit.

Copies of Ordinance No. 1999 will be available for public review as of Friday, August 20, 2021 at the San Rafael City Clerk’s Office, 1400 Fifth Avenue, 2<sup>nd</sup> Floor, Room 209 during regular business hours, 8:30 a.m. to 5:00 p.m., and on the City’s website: <https://www.cityofsanrafael.org>. You may also contact the City Clerk at (415) 485-3066 or the Department of Public Works at (415) 485-3385 for information.

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LINDSAY LARA  
San Rafael City Clerk  
Dated: 08/20/21




**Agenda Item No: 5.c**  
**Meeting Date: September 13, 2021**

**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Community Development**

**Prepared by: Ali Giudice, Director**  
**Leslie Mendez, Planning Manager**

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

**TOPIC: FUTURE PROPERTY ANNEXATION TO THE CITY OF SAN RAFAEL**

**SUBJECT: RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY AND ANDREWS LIVING TRUST ET. AL. REGARDING FUTURE ANNEXATION OF PROPERTY LOCATED AT 345 HIGHLAND AVENUE (APN 016-011-20) IN THE UNINCORPORATED COUNTRY CLUB NEIGHBORHOOD TO THE CITY OF SAN RAFAEL**

**RECOMMENDATION:**  
Adopt resolution.

**BACKGROUND:**  
The property at 345 Highland Avenue (APN 016-011-20) is owned by Jennifer Volpe and Robert Andrews, Trustees of the Andrews Living Trust, and Laura Andrews. The property owners have requested and received approval from the Marin Local Agency Formation Commission (LAFCO) to annex to the San Rafael Sanitation District (SRSD). The purpose of this action is to permit the property to be connected to and served by the SRSD wastewater/sewer system. The subject property is located in the Country Club neighborhood, which is an unincorporated pocket between the Montecito/Dominican and Loch Lomond/Villa Real neighborhoods. Like most properties in this unincorporated area, the subject property is large (almost one acre) and had been historically served by a private wastewater septic system. The unincorporated Country Club neighborhood is served by the County of Marin (County Sheriff services) and local utilities. However, fire and paramedic services are provided by the City of San Rafael Fire Department through a mutual agreement with the County to provide fire protection services to County Services Area (CSA) #19 (online link presented in Attachment 3).

LAFCO’s action to permit the annexation to SRSD is confirmed in LAFCO Resolution 21-05, which was adopted on June 10, 2021. A copy of this resolution is presented in attached Exhibit B of Attachment 2. The LAFCO action included a waiver of the dual annexation policy, which waived the requirement of simultaneous annexation of the property to the City of San Rafael. Nonetheless, the LAFCO action is conditioned to require that the property owners agree to not protest or oppose a future annexation to the

\_\_\_\_\_  
**FOR CITY CLERK ONLY**

**File No.:** \_\_\_\_\_  
**Council Meeting:** \_\_\_\_\_  
**Disposition:** \_\_\_\_\_

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

City of San Rafael. LAFCO Resolution 21-05 requires such agreement be executed between the property owners and the City of San Rafael. The agreement must include the following:

1. The property owners agree on behalf of themselves, their heirs, and their successors that, in the event any future proceedings for the annexation of the subject property is initiated by the City, the owners will neither directly nor indirectly oppose nor protest such annexation.
2. The property owners agree that their obligations under this agreement run with the property. This Agreement will obligate the existing property owners as well as any future property owners to annex to the City if the City initiates annexation proceedings.

### **ANALYSIS:**

The deferral of annexation to the City of San Rafael and the proposed agreement, presented in Attachment 2, would be consistent with San Rafael General Plan 2040 Land Use Element Policy LU-1.6 (Annexation), which reads as follows:

#### *“Policy LU-1.6: Annexation*

*Prior to urban development, unincorporated areas that can be reasonably served through extension of existing City services should first be annexed. Annexation of already developed unincorporated land in the San Rafael Planning Area should be dependent on neighborhood interest, the cost/revenue implications of providing services and assuming liabilities for the area, and the availability of City services.”*

This policy has been interpreted to: a) discourage piecemeal, property-by-property annexations; and b) support the study of the larger unincorporated pockets for possible annexation based on area wide resident interest (in this case the resident interest of the Country Club neighborhood) and review of the area wide service cost implications to the City. For this reason, LAFCO’s action to waive the dual annexation on the condition that the property owners enter into a future annexation agreement with the City has been a common policy and practice. Over the years, similar requests have been made for properties in Country Club, Los Ranchitos, and Bayside Acres, all neighborhoods developed with large residential lots initially served by individual wastewater septic systems that have been phased out for urban sewer service. This practice to waive dual annexation at the time of annexation to SRSD has avoided piecemeal property-by-property annexations to the City of San Rafael.

### **FISCAL IMPACT:**

This action would have no fiscal impact on the City of San Rafael at this time. When or if the subject property is annexed to the City, the fiscal impacts of City services will be analyzed. At present, all services to the site are provided by other agencies, with the exception of fire and paramedic services that are provided by the City of San Rafael through the CSA #19 service agreement between the City and the County of Marin.

### **OPTIONS:**

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

1. Staff’s recommended action (adopt resolution)
2. Adopt resolution with modifications.
3. Direct staff to return with more information.
4. Direct the property owners file a request to annex the subject property to the City of San Rafael.
5. Take no action.

**RECOMMENDED ACTION:**

Staff recommends that City Council adopt the attached resolution authorizing the Mayor to execute an agreement between the City and Andrews Living Trust et al. regarding future annexation of property located at 345 Highland Avenue (APN 016-011-20) in the unincorporated Country Club neighborhood to the City of San Rafael.

**ATTACHMENTS:**

Attachment 1: Draft Resolution

Attachment 2: Proposed Agreement between the City of San Rafael and Lands of Andrews Living Trust et al. Regarding Future Annexation of Real Property at 345 Highland Avenue, APN 016-011-20, to the City of San Rafael

Exhibit A: Legal Description

Exhibit B: Marin LAFCO Resolution 21-05

Attachment 3: County Services Agreement #19 available online:

<https://www.marincounty.org/userdata/bs/agendas/060620/060620-13-AD-agree-AGR.pdf>

**RESOLUTION NO.**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING  
THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY AND  
ANDREWS LIVING TRUST ET. AL. REGARDING FUTURE ANNEXATION OF  
PROPERTY LOCATED AT 345 HIGHLAND AVENUE (APN 016-011-20)  
IN THE UNINCORPORATED COUNTRY CLUB NEIGHBORHOOD TO  
THE CITY OF SAN RAFAEL**

**WHEREAS**, Jennifer Volpe and Robert Andrews, Trustees of the Andrews Living Trust dated June 24, 2016, and Laura Andrews are the owners of real property (“Owners”) located at 345 Highland Avenue, APN 016-011-20 (the “Property”); and

**WHEREAS**, the Owners applied to the San Rafael Sanitation District (“SRSD”) to connect to the SRSD Sewer Line; and

**WHEREAS**, the Property is not within the SRSD boundary and not within the City of San Rafael city limits; and

**WHEREAS**, in order to connect to the SRSD sewer line, it is necessary to ANNEX to the SRSD, which proceeding is subject to approval by the Marin Local Agency Formation Committee (LAFCO); and

**WHEREAS**, application for annexation to the SRSD would normally require concurrent annexation to the City of San Rafael unless that condition is waived or deferred; and

**WHEREAS**, in the LAFCO proceedings the City of San Rafael agreed to defer annexation of the Owners’ Property to the City on the condition that the Owners enter into an agreement that they would not object to any future proceeding for annexation of the Property to the City of San Rafael; and

**WHEREAS**, LAFCO has approved the annexation subject to certain conditions as outlined in LAFCO Resolution No. 21-05, including the condition requested by the City of San Rafael, and the Owners have agreed to these conditions as outlined in the proposed “Agreement between the City of San Rafael and Lands of Andrews Living Trust et al. Regarding Future Annexation of Real Property at 345 Highland Avenue, APN 016-011-20, to the City of San Rafael,” included as an attachment to the staff report supporting this resolution;

**NOW, THEREFORE BE IT RESOLVED**, by the City Council of the City of San Rafael that the Mayor is authorized to sign, on behalf of the City of San Rafael, the “Agreement

between the City of San Rafael and Lands of Andrews Living Trust et al. Regarding Future Annexation of Real Property at 345 Highland Avenue, APN 016-011-20, to the City of San Rafael,” in the form included as an attachment to the staff report supporting 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 13<sup>th</sup> day of September 2021, by the following vote, to wit:

**AYES:            Councilmembers:**

**NOES:            Councilmembers:**

**ABSENT:        Councilmembers:**

---

**Lindsay Lara, City Clerk**

---

**RECORD WITHOUT FEE,  
PER GC 27383 AND  
WHEN RECORDED, RETURN TO:**

City of San Rafael  
City Clerk, Room 209  
1400 Fifth Avenue  
San Rafael, CA 94901  
Attention: Lindsay Lara, City Clerk

---

**AGREEMENT BETWEEN THE CITY OF SAN RAFAEL AND  
ANDREWS LIVING TRUST DATED JUNE 24 2016 AND LAURA ANDREWS REGARDING  
FUTURE ANNEXATION OF REAL PROPERTY AT 345 HIGHLAND AVENUE,  
APN 016-011-20, TO THE CITY OF SAN RAFAEL**

**(Lands of Andrews Living Trust and Laura Andrews being  
Annexed to the San Rafael Sanitation District)**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 between the City of San Rafael (hereafter referred to as “CITY”) and Robert Andrews and Jennifer Volpe, Trustees of the Andrews Living Trust dated June 24, 2016, and Laura Andrews (together referred to hereafter as “OWNERS”) and is based upon the following facts and circumstances:

1. OWNERS hold fee title to that certain real property (“Property”) as more particularly described in Exhibit “A” attached hereto.
2. As a result of the filing of a Petition seeking annexation of the subject Property to the San Rafael Sanitation District, the Marin Local Agency Formation Commission has conducted proceedings and approved the requested annexation, pursuant to its Resolution No. 21-05 adopted on June 10, 2021. Application for such annexation to the San Rafael Sanitation District would normally require concurrent annexation to the City of San Rafael unless waived or deferred.
3. The CITY has agreed to defer annexation of the OWNERS’ Property on the conditions set forth hereinafter in this Agreement, and consistent with the pertinent provisions of LAFCO Resolution No. 21-05 attached hereto as Exhibit “B”.

**NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE  
PARTIES HERETO AS FOLLOWS:**

1. OWNERS agree on behalf of themselves, their heirs, and their successors, that in the event any future proceedings for annexation of OWNERS’ Property shall be initiated by the CITY, OWNERS shall neither directly nor indirectly oppose nor protest such annexation.



2. OWNERS agree that the obligations recited herein shall run with the OWNERS' Property and that the Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the provisions of this Agreement and that the obligations undertaken by OWNERS hereunder shall be binding on all parties having or acquiring any right, title or interest in the Property.

**WHEREFORE**, this Agreement is executed on the dates set forth below.

**OWNERS:**

\_\_\_\_\_  
ROBERT ANDREWS,  
Trustee of the ANDREWS LIVING  
TRUST dated June 24, 2016

Dated: \_\_\_\_\_

\_\_\_\_\_  
JENNIFER VOLPE,  
Trustee of the ANDREWS LIVING  
TRUST dated June 24, 2016

Dated: \_\_\_\_\_

\_\_\_\_\_  
LAURA ANDREWS

Dated: \_\_\_\_\_

**CITY OF SAN RAFAEL:**

By: \_\_\_\_\_  
KATE COLIN, Mayor

Dated: \_\_\_\_\_

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Robert F. Epstein, City Attorney

ATTACH NOTARIZATIONS

**EXHIBIT A**

**EXHIBIT "A"**  
Annexation  
of the  
Lands of Andrews Living Trust et al  
(APN 016-011-20)  
to the  
San Rafael Sanitary District

All that real property situate in the County of Marin, State of California, being the Lands of Ronald Andrews Revocable Living Trust described in Grant Deed recorded August 24, 2017 under Document No. 2017-0033909, described as follows:

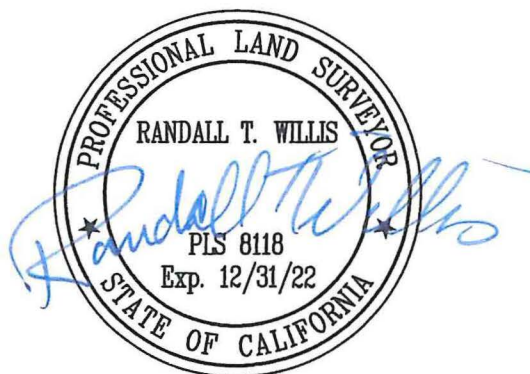
Beginning .at the most Southerly corner of that certain parcel of Land conveyed to Edrick C Noon, et ux, by Deed recorded July 12, 1945 in Book 491 of Official Records at Page 32, Marin County Records, thence along the easterly line of said parcel North 11° 21' 10" East, 205.64 feet; thence leaving said easterly line, North 87° 40' West, 245.84 feet to the most Southerly corner of that parcel of Land conveyed to Marin County Abstract Company by Deed dated January 18, 1951, recorded May 3, 1951 in Book 686 of Official Records page 376, Marin County Records; thence along the Southerly line of said parcel, North 81° 02' West, 24.38 feet to a point in the Westerly line of said Lands of Edrick C Noon, et ux; thence along said Westerly line, South 28° 21' West, 98.40 feet to a point in Northerly Right-of-Way of a 40 foot road, herein called Highland Avenue; thence along said Right-of-Way South 81° 10' East, 9.10 Feet; thence continuing along said Right-of-Way, South 3° 11' East, 15.01 Feet to a point on the Southerly line of said Lands of Edrick C Noon, thence leaving said Right-of-Way along said Southerly line South 67° 49' East, 226.50 feet and South 64° 29' East to the Point of Beginning.

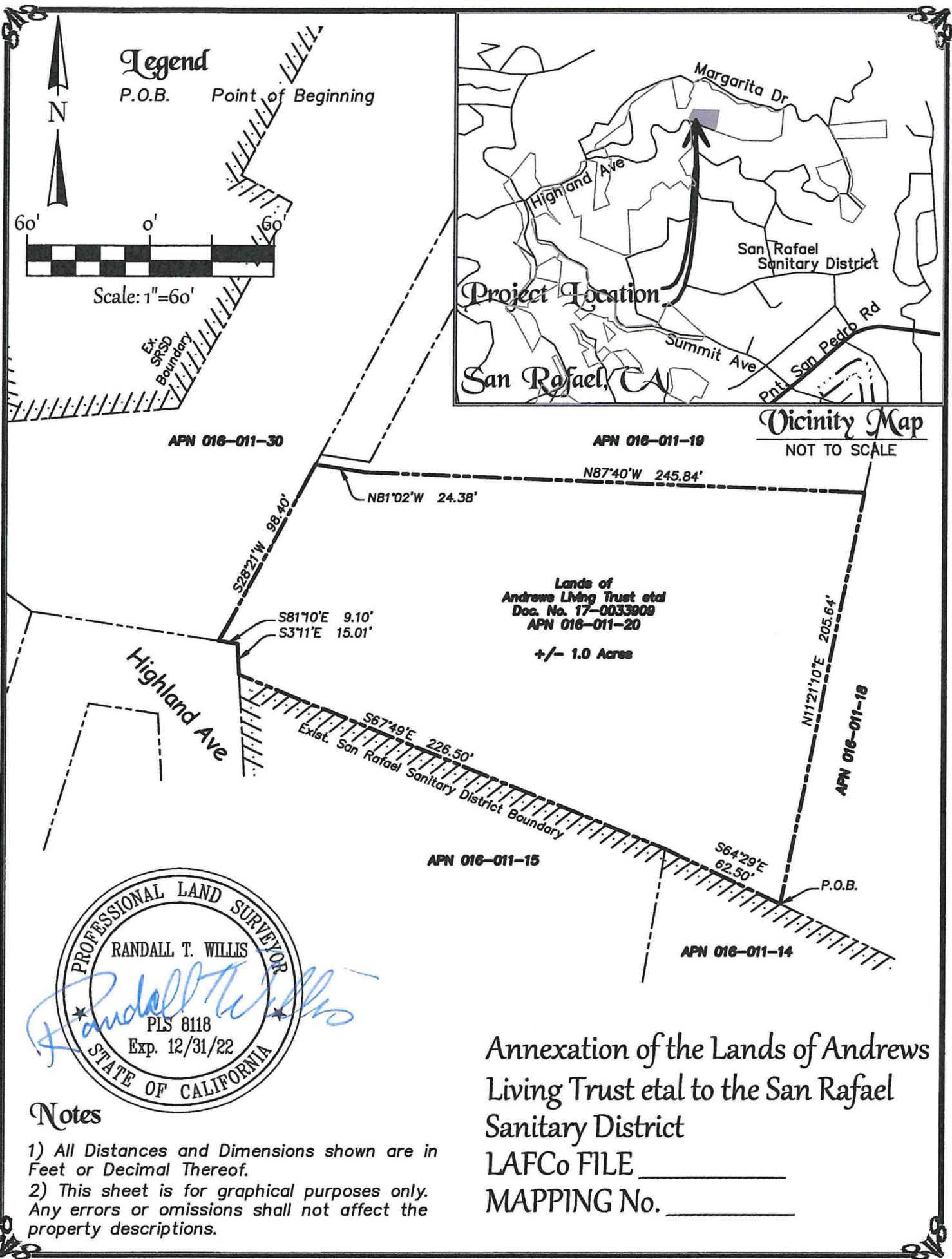
Containing 1.0 Acres, more or less.

Exhibit B Attached

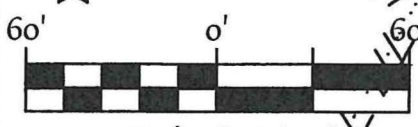
(End of Legal Description)

This real property description has been prepared by me,  
or under my direction, in conformance with the  
Professional Land Surveyors Act.



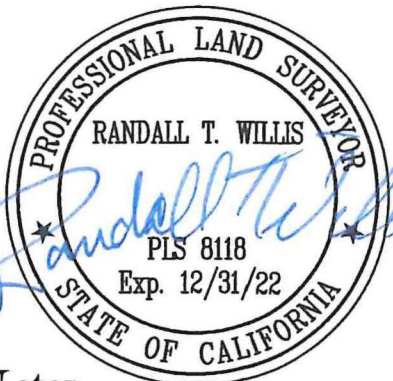


**Legend**  
 P.O.B. Point of Beginning



**Vicinity Map**  
 NOT TO SCALE

Lands of  
 Andrews Living Trust et al  
 Doc. No. 17-0033809  
 APN 016-011-20  
 +/- 1.0 Acres



**Notes**

- 1) All Distances and Dimensions shown are in Feet or Decimal Thereof.
- 2) This sheet is for graphical purposes only. Any errors or omissions shall not affect the property descriptions.

Annexation of the Lands of Andrews Living Trust et al to the San Rafael Sanitary District  
 LAFCo FILE \_\_\_\_\_  
 MAPPING No. \_\_\_\_\_

**EXHIBIT B**

**MARIN LOCAL AGENCY FORMATION COMMISSION**

RESOLUTION 21-05

**RESOLUTION APPROVING AN ANNEXATION OF 345 HIGHLAND AVENUE TO SAN RAFAEL SANITARY DISTRICT WITH WAIVER OF NOTICE, HEARING AND PROTEST PROCEEDINGS**

“Annexation of 345 Highland Avenue (APN 016-011-20) to San Rafael Sanitary District (LAFCo File No. 1354)”

**WHEREAS** Jennifer and Robert Andrews, hereinafter referred to as “Property Owners,” have filed a validated landowner petition with the Marin Local Agency Formation Commission, hereinafter referred to as “Commission,” pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000; and

**WHEREAS** the proposal seeks Commission approval to annex approximately .940 acres of incorporated land to San Rafael Sanitary District; and

**WHEREAS** the affected territory represents an entire lot developed with an existing single-family residence located at 345 Highland Avenue and identified by the County of Marin Assessor’s Office as APN 016-011-20 (“Property”); and

**WHEREAS** the Commission’s staff has reviewed the proposal and prepared a report with recommendations; and

**WHEREAS** the staff’s report and recommendations on the proposal have been presented to the Commission in the manner provided by law; and

**WHEREAS** the Commission considered all the factors required by law under Government Code Section 56668 and 56668.3 and adopted local policies and procedures.

**WHEREAS** the proposal is for an annexation of territory that is uninhabited, and no affected local agency has submitted a written demand for notice and hearing as provided for in Government Code section 56662(a).

**NOW THEREFORE**, the Marin Local Agency Formation **DOES HEREBY RESOLVE, DETERMINE AND ORDER** as follows:

Section 1. The boundaries, as set forth in the proposal, are hereby approved as submitted and are as described and depicted in Exhibits “A” and “B” attached hereto and by this reference incorporated herein.

1. Approve the proposed annexation of 345 Highland Avenue (APN 016-011-20) to the San Rafael Sanitary District (File #1354) as shown and described on Exhibits “A” and “B”.
2. Proceedings for the annexation shall not be completed until the Property Owners execute an agreement (Exhibit C) with the Marin Local Agency Formation Commission wherein:



a. The Property Owners agree on behalf of themselves, their heirs, successors and assigns that, in the event any future proceedings for the annexation of the property to the Town of Tiburon shall be initiated by the Town, the Property Owners shall neither directly nor indirectly oppose or protest such annexation; and

b. That the Property Owners agree that their obligations under the agreement shall run with the Property and that the Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the provisions of the agreement and that the obligations undertaken by the Property Owners shall be binding on all parties having or acquiring any right, title, or interest in the Property.

Section 2. The territory includes .940 acres, is found to be uninhabited, and is assigned the following distinctive short form designation: Annexation of 345 Highland Avenue (APN 016-011-20) to San Rafael Sanitary District (LAFCo File No. 1354)".

Section 3. The proposal is consistent with the adopted spheres of influence of San Rafael Sanitary District.

Section 4. The Executive Officer is hereby authorized to waive notice and hearing, and protest proceedings and complete reorganization proceedings.

Section 5. As Responsible Agency under CEQA for the proposed annexation of APN: 016-011-20 to San Rafael Sanitary District, LAFCo finds that the Project is categorically exempt from the provisions of CEQA pursuant to State CEQA Guidelines Section 15319 (a).

**P SSED ND DOPTED** by the Marin Local Agency Formation Commission on June 10, 2021 by the following vote:

AYES: Arnold, Coler, Connolly, Kious, McEntee, Murray, Savel

NOES:

ABSTAIN:

ABSENT:



Sashi McEntee, Chair

ATTEST:

APPROVED AS TO FORM:



Jason Fried, Executive Officer



Malathy Subramanian, LAFCo Counsel

Attachments to Resolution No. 21-05

- a Exhibit A – Legal Description
- b Exhibit B – Map



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Police

Prepared by: Todd Berringer,  
Police Lieutenant

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

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

**TOPIC: SECURITY SERVICES FOR THE SERVICE SUPPORT AREA**

**SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND CONTINUE AS NEEDED A MONTH-TO-MONTH PROFESSIONAL SERVICES AGREEMENT WITH BARBIER SECURITY GROUP TO PROVIDE SECURITY SERVICES AT THE SERVICE SUPPORT AREA, IN AN AMOUNT NOT TO EXCEED \$31,770 MONTHLY**

**RECOMMENDATION:**

Adopt a resolution authorizing the City Manager to execute and continue as needed a month-to-month agreement with Barbier Security Group to provide security services at the Service Support Area in an amount not to exceed \$31,770 monthly.

**BACKGROUND:**

In mid-2020, in response to the COVID-19 pandemic, the California Department of Transportation (Caltrans) issued interim guidance restricting the removal of encampments on state property. In the fall of 2020, the City began meeting with representatives from Caltrans and representatives from Marin County due to the concern about the pandemic and expanding encampments in the Caltrans right-of-way under the Central San Rafael viaduct. With the assistance of Senator McGuire, City staff began to collaborate with the County of Marin and the State to engage in an effort to mitigate the growing public health and safety issues associated with these encampments. An analysis of January through March of 2021, compared to the same time period a year prior, revealed a nearly 100% increase in the rate of police and fire calls for service to the area.

City staff collaborated with the County of Marin and the State to establish a temporary Service Support Area (SSA) between Fifth and Mission Avenues in June 2021. The SSA provides a safe, alternative location for individuals who are experiencing homelessness where service social service providers can meet with clients in a centralized area. This has been an effective approach toward getting individuals the services, and ultimately the housing need, in a safe environment. All of the property under the freeway is owned and controlled by Caltrans and Caltrans has been supportive of the City, County, and service providers offering wrap around services at the SSA location.

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

**ANALYSIS:**

When the SSA first opened, the City entered into a short-term contract with Barbier Security Group for security services staff thought would be needed to control access to the site. This agreement called for staffing of the site by one uniformed security agent at the SSA, 24 hours per day, seven days per week at a rate of \$42.50 per hour, and additionally included City reimbursement of the company's costs to maintain a portable command center on the site. Barbier Security Group provides a necessary service to the SSA to ensure the safety of the individuals residing at the SSA and the community and to restrict access to the site by unauthorized persons. Additionally, Barbier Security Group maintains the peace and directs service providers to the location of the individuals seeking assistance. There are currently 49 individuals experiencing homelessness currently residing at the SSA.

The services of Barbier Security Group have been reviewed and vetted by City staff and found to be of high quality, and the company to be both responsive and responsible. Staff recommends that the City continue to contract with Barbier Security Group for the secure operation of the SSA. The attached resolution would authorize the City Manager to execute a new month-to-month agreement with Barbier Security Group to provide one uniformed security agent at the SSA, 24 hours per day, 7 days per week at a rate of \$42.50 per hour. The proposed new agreement eliminates the requirement for Barbier Security Group to provide a portable command center but includes City reimbursement in the amount of \$150 per month for their cost to rent a portable toilet for use by security personnel. The resolution would also authorize the City Manager to continue the agreement until he determines that it is no longer needed, at which point it may be terminated on 30 days' notice.

**FISCAL IMPACT:**

The proposed contract for security at the Service Support Area is month-to-month and can be cancelled at any time with 30 days' notice. The cost of security services provided to the SSA will not exceed \$31,770 monthly and staff recommends funds from the American Recovery Plan Act (ARPA) be allocated towards this contract.

**OPTIONS:**

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

1. Adopt the resolution as proposed, approving the agreement with Barbier Security Group.
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 and to continue as necessary a month-to-month agreement with Barbier Security Group to provide security services at the Service Support Area in an amount not to exceed \$31,770 monthly.

**ATTACHMENTS:**

1. Resolution
2. Professional Services Agreement with Barbier Security Group

**RESOLUTION NO.**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE AND CONTINUE AS NEEDED A MONTH-TO-MONTH PROFESSIONAL SERVICES AGREEMENT WITH BARBIER SECURITY GROUP TO PROVIDE SECURITY SERVICES AT THE SERVICE SUPPORT AREA, IN AN AMOUNT NOT TO EXCEED \$31,770 MONTHLY**

**WHEREAS**, in coordination with the State of California, the County of Marin, and local service providers, the City of San Rafael has established a temporary Service Support Area on Caltrans property under the Central San Rafael viaduct between Fifth and Mission Avenues, to assist persons experiencing homelessness in San Rafael in obtaining permanent housing; and

**WHEREAS**, the City requires security services for the Service Support Area; and

**WHEREAS**, these security services are necessary to the City and to the community to ensure the safety of community members who are using the Service Support Area; and

**WHEREAS**, Barbier Security Group has provided the City with similar security services in other parts of the City since 2014 and the City has found their services to be of high quality, and the company to be both responsive and responsible; and

**WHEREAS**, on June 25, 2021, the City Manager entered into a month-to-month agreement with Barbier Security Group to provide the needed security services at the Service Support Area on a temporary basis, and that agreement has been in effect since July 6, 2021; and

**WHEREAS**, the City Council desires to continue to employ Barbier Security Group on a month-to-month basis to provide security services at the Service Support Area and the Barbier Security Group is willing and able to continue to provide said services;

**NOW, THEREFORE BE IT RESOLVED**, that the City Council hereby authorizes the City Manager to execute a month-to-month agreement with Barbier Security Group to provide security services at the Service Support Area, in an amount not to exceed \$31,770 per month and in the form included with the staff report supporting this resolution; and further authorizes the City Manager to continue that agreement until such time as he determines that professional security services are no longer needed at the Service Support Area.

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 13<sup>th</sup> day of September 2021, by the following vote, to wit:

AYES:            COUNCILMEMBERS:

NOES:            COUNCILMEMBERS:

ABSENT:        COUNCILMEMBERS:

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



**AGREEMENT FOR PROFESSIONAL SECURITY GUARD SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”), by and between the CITY OF SAN RAFAEL (hereinafter "CITY"), and BARBIER SECURITY GROUP, a California Corporation (hereinafter "CONTRACTOR").

**RECITALS**

**WHEREAS, CITY**, with the consent of the California Department of Transportation (“Caltrans”), operates a temporary Service Support Area on and around the Caltrans property under the Highway 101 viaduct between Fifth Avenue and Mission Avenue in San Rafael (the “SSA”); and

**WHEREAS, CONTRACTOR** is a private patrol operator licensed under the California Private Security Services Act, and operates a business providing guards and patrol personnel to protect persons and property; and

**WHEREAS, the CITY** has a need for regular professional security guard services in connection with its operation of the SSA; and

**WHEREAS, the CONTRACTOR** has the expertise required to provide such services and is willing to do so on the terms and conditions set forth in this Agreement;

**AGREEMENT**

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

1. **PROJECT COORDINATION.**

A. **CITY’S Project Manager.** Police Lieutenant Todd Berringer is hereby designated the PROJECT MANAGER for the CITY and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement.

B. **CONTRACTOR’S Project Director.** CONTRACTOR shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for CONTRACTOR. Evan Barbier is hereby designated as the PROJECT DIRECTOR for CONTRACTOR. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR, for any reason, the CONTRACTOR shall notify the CITY within ten (10) business days of the substitution.

2. **DUTIES OF CONTRACTOR.**

A. **CONTRACTOR** shall provide the following services to **CITY**:

- **CONTRACTOR** shall furnish fully qualified and trained patrol personnel/uniformed guards (“Guard(s)”) to patrol the SSA, as follows:

**CONTRACTOR** shall provide one Guard 24 hours per day, 7 days per week, who shall carry out duties as set forth below.

- **CONTRACTOR** shall provide an onsite porta-potty for **CONTRACTOR'S** exclusive use.

B. In the event any Guard observes any suspicious criminal activity, bomb threats, evidence of actual or impending theft or damage to property, or evidence of actual or impending harm to persons at or associated with the SSA, the Guard shall immediately notify appropriate local law enforcement agencies, supervisory personnel of **CONTRACTOR**, and the **CITY**.

C. The patrol services provided for by this Agreement shall be performed by qualified, efficient, and discreet employees always maintaining a professional demeanor in strict accordance with recognized best industry practices.

D. **CONTRACTOR** shall have available by telephone a live supervisor 24 hours a day, 7 days a week, who can be reached by a Guard on duty and by the **CITY**, at (415) 747-8473.

E. If for any reason **CITY** advises **CONTRACTOR** that **CITY** believes that any employee of **CONTRACTOR** is not properly carrying out his or her duties, **CONTRACTOR** shall promptly remove that employee from the performance of the services to be provided under this agreement and simultaneously substitute another employee.

### 3. GUARD QUALIFICATIONS AND REQUIREMENTS.

A. Training and Qualifications of Guards. Each Guard who patrols the SSA shall be registered with the California Bureau of Security and Investigative Services, and will, at all times while on duty, carry a valid security guard registration card. In addition, each Guard shall satisfy the following requirements:

i. Each Guard shall have completed a course in the exercise of the power to arrest pursuant to Business & Professions code Section 7583.6.

ii. Each Guard who carries a firearm shall have completed the training course required by Business & Professions Code Section 7583.22 and shall always carry a valid guard registration card and a valid firearm qualification card issued by the Bureau of Security and Investigative Services.

iii. Each Guard who carries a baton shall have obtained a certificate of proficiency from an approved baton training facility pursuant to Business & Professions code section 7583.34.

iv. Each Guard who carries tear gas or other nonlethal chemical agents shall have completed a course of instruction and carry a certificate of proficiency from an approved training facility pursuant to Business & Professions code Section 7583.35.

If **CITY** requests that **CONTRACTOR** sign up or pay for a vendor accreditation, tracking, or monitoring website or service (“Accreditation Service”), **CITY** agrees to reimburse **CONTRACTOR** for all expenses relating to such Accreditation Service, including but not limited to all application fees, set up fees, annual fees, all expenses incurred by bill pay services, services fees, and charges for credit card payments within ten (10) days of receipt of written notice from **CONTRACTOR**.

B. Uniforms and Equipment. While patrolling the SSA, all of **CONTRACTOR’S** Guards shall be completely outfitted with a uniform bearing a patch on each shoulder having the words “Private Security” and the name of **CONTRACTOR**, shall wear a badge bearing the name of **CONTRACTOR**, and shall carry reasonably necessary equipment, including baton, handcuffs, pepper spray, taser and firearm, as mutually agreed in writing between **CITY** and **CONTRACTOR**.

4. DUTIES OF CITY.

**CITY** shall pay the compensation as provided in Paragraph 5, coordinate with **CONTRACTOR** on scheduling of security services in a timely manner, and otherwise cooperate as necessary for the performance of **CONTRACTOR’S** services hereunder.

5. COMPENSATION.

A. For the full performance of the Guard services described herein by **CONTRACTOR**, **CITY** shall pay **CONTRACTOR** on an hourly basis at the rate of \$42.50 per Guard per hour. Should **CITY** request one or more additional Guards at any time on less than 48 hours’ notice, **CITY** shall pay **CONTRACTOR** compensation on an hourly basis at the rate of \$63.75 per Guard per hour. A four-hour minimum is required for all Guard shifts. The applicable legal overtime rate shall be charged if **CITY** requests that a specific Guard work more than 40 hours in one work week or more than eight hours on any day, and for all services on all Federal and State holidays.

B. In addition, **CITY** shall reimburse **CONTRACTOR** in the amount of \$150 per month for the provision of one porta-potty at the SSA for **CONTRACTOR’S** exclusive use.

C. **CONTRACTOR** may adjust the service pricing by no more than 3% on an annual basis, effective on the first anniversary of the Effective Date, and on each anniversary of the Effective Date during the term of this Agreement.

D. Total payments for services provided pursuant to this agreement shall not exceed \$31,770 per month.

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

6. TERM OF AGREEMENT.

The term of this Agreement shall begin on the Effective Date and will continue in full force

and effect until it is terminated as provided in Section 7 of this Agreement.

7. TERMINATION.

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

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

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

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

8. OWNERSHIP OF DOCUMENTS.

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

9. INSPECTION AND AUDIT.

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

10. ASSIGNABILITY.

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

11. INSURANCE.

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

i. A commercial general liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/three million dollars (\$3,000,000) aggregate, for death, bodily injury, personal injury, or property damage.

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

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

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

i. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additional insureds, to the extent of **CONTRACTOR'S** contractual indemnification obligations, for both ongoing and completed operations, under the policies.

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

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

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

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

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

vii. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall

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

viii. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to **CITY** or any other additional insured party. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the **CONTRACTOR** under this agreement.

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

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

## 12. INDEMNIFICATION.

A. **CONTRACTOR** shall, to the fullest extent permitted by law, indemnify, release, defend with counsel approved by **CITY**, and hold harmless **CITY**, its officers, agents, employees and volunteers (collectively, the "**City Indemnitees**"), from and against any claim, demand, suit, judgment, loss, liability or expense of any kind, including but not limited to attorney's fees, expert fees and all other costs and fees of litigation, (collectively "**CLAIMS**"), arising out of **CONTRACTOR'S** breach of its obligations under this Agreement, and/or its negligence or willful misconduct. To the extent that liability is caused by the negligence or willful misconduct of the **City Indemnitees**, the **CONTRACTOR's** indemnification obligation shall be reduced in proportion to the **City Indemnitees'** share of liability for its negligence or willful misconduct. In the event the **City Indemnitees** are made a party to any action, lawsuit, or other adversarial proceeding arising from **CONTRACTOR'S** performance of or operations under this Agreement, **CONTRACTOR** shall provide a defense to the **City Indemnitees** or at **CITY'S** option reimburse

the **City Indemnitees** their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

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

C. Notwithstanding the foregoing, except with respect to fraud or willful misconduct by **CONTRACTOR**, **CONTRACTOR'S** indemnity obligations pursuant to this Agreement shall not exceed the amount of its applicable insurance coverage.

13. NONDISCRIMINATION.

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

14. COMPLIANCE WITH ALL LAWS.

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

15. NO THIRD PARTY BENEFICIARIES.

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

16. NOTICES.

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

TO **CITY'S** Project Manager:

Lt. Todd Berringer  
San Rafael Police Department  
1375 Fifth Avenue  
San Rafael, CA 94901

TO **CONTRACTOR**'s Project Director:     Evan Barbier  
Barbier Security Group  
369-B Third Street #440  
San Rafael, CA 94901

17.     INDEPENDENT CONTRACTOR.

For the purposes, and for the duration, of this Agreement, **CONTRACTOR**, its officers, agents and employees shall act in the capacity of an Independent Contractor, and not as employees of the **CITY**. **CONTRACTOR** and **CITY** expressly intend and agree that the status of **CONTRACTOR**, its officers, agents and employees be that of an Independent Contractor and not that of an employee of **CITY**. In providing services under this Agreement, all of **CONTRACTOR'S** Guards shall at all times be subject to the direct supervision and control of **CONTRACTOR**, and **CONTRACTOR** will have sole responsibility for paying their salaries, taxes (including, but not limited to, federal and social security taxes and federal and state unemployment taxes) and all other expenses relating to each of them.

18.     HIRING CONTRACTOR'S GUARDS.

To the fullest extent allowed by law, **CITY** agrees that it shall not, either during the Term of this Agreement or for a period of one year following termination of this Agreement (the "Non-Solicitation Period"), solicit or hire for its own employment any of **CONTRACTOR'S** employees/Guards who perform services at any time in carrying out the terms of this Agreement. Without limiting **CONTRACTOR'S** other rights and remedies under this Agreement, including without limitation the right to seek recovery damages for a breach of this Agreement, if **CITY** solicits or hires an employee of **CONTRACTOR** contrary to this Agreement during the Non-Solicitation Period, **CITY** shall be obligated to pay **CONTRACTOR** a finder's fee equal to fifty percent (50%) of each such employee's first year's total compensation with **CITY** (prior to any withholdings or deductions), due and payable within 30 days of **CONTRACTOR'S** written request for such payment or commencement of the employee's employment with **CITY**, whichever is earlier.

19.     EXCUSABLE DELAYS AND FAILURES.

Neither party shall be liable for any delay or failure in its performance under this Agreement (except for payment obligations) caused by events beyond the reasonable control of the party, including but not limited to, terrorism, war, riots, labor strikes, interruption of utility services, fire, floods, earthquakes, and other natural disasters.

20.     ENTIRE AGREEMENT -- AMENDMENTS.

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

B.     This written Agreement shall supersede any and all prior agreements, oral or written,



regarding the subject matter between the **CONTRACTOR** and the **CITY**.

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

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

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

21. SET-OFF AGAINST DEBTS.

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

22. WAIVERS.

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

23. COSTS AND ATTORNEY'S FEES.

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

24. CITY BUSINESS LICENSE / OTHER TAXES.

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

25. SURVIVAL OF TERMS.

Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled and shall apply to both Parties' respective successors and assigns.

26. APPLICABLE LAW.

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

27. COUNTERPARTS AND ELECTRONIC SIGNATURE.

This Agreement may be executed by electronic signature and in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. Counterpart signature pages may be delivered by telecopier, email or other means of electronic transmission.

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

**CITY OF SAN RAFAEL**

**CONTRACTOR**

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

By: H. Evan Barbier

Name: H. Evan Barbier

ATTEST:

Title: CEO and Founder

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

[If Contractor is a corporation, add signature of second corporate officer]

By: Carla Barbier

APPROVED AS TO FORM:

Name: Carla Barbier

Title: Treasurer & Co-Founder

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



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Public Works

Prepared by: Bill Guerin,  
Director of Public Works

City Manager Approval: 

**TOPIC: SAN RAFAEL POLICE DEPARTMENT UNMARKED FLEET REPLACEMENT 2021**

**SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO PURCHASE SIX UNMARKED TOYOTA HIGHLANDER HYBRIDS, IN AN AMOUNT NOT TO EXCEED \$282,000**

**RECOMMENDATION:** Adopt a resolution approving and authorizing the Director of Public Works to purchase six unmarked Toyota Highlander Hybrids, in an amount not to exceed \$282,000.

**BACKGROUND:** The San Rafael Police Department's (SRPD) unmarked fleet consists of 14 vehicles. The Ford Taurus is the predominant vehicle used with model years ranging from 2012 to 2019. The table below illustrates the current unmarked fleet.

Unit Number	Year	Make	Model	Mileage	Notes
265	2016	Ford	Taurus	24,000	OK
266	2012	Ford	Taurus	119,000	Needs Replacement
283	2012	Ford	Taurus	128,512	Needs Replacement
285	2012	Ford	Taurus	104,255	Needs Replacement
279	2014	Ford	Taurus	46,821	OK
272	2014	Ford	Taurus	87,475	OK
273	2015	Ford	Taurus	43,141	OK
275	2015	Ford	Taurus	92,780	Needs Replacement
276	2015	Ford	Taurus	77,327	OK
277	2015	Ford	Taurus	56,676	OK
280	2015	Ford	Taurus	64,402	OK
281	2015	Ford	Taurus	100,122	Needs Replacement
286	2015	Ford	Taurus	85,733	OK
274	2019	Ford	Taurus	29,238	Needs Replacement (Totalled in Collision)

The City's Fleet Policy and Procedures document (Attachment 2) suggests a usable life of eight years for unmarked police vehicles. This suggested life is also used to determine the amount of funds deposited into the vehicle replacement fund (Fund #600) per year. Based on this suggested usable life three vehicles were eligible for replacement in 2020 and another two will

**FOR CITY CLERK ONLY**

Council Meeting:

Disposition:

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

be eligible in 2022. While the suggested usable life provides an estimate on when a vehicle will need replacement, mileage and overall vehicle condition along with ongoing maintenance cost factor heavily in the recommendation to replace vehicles in the fleet. Based on these factors, the Department of Public Works (DPW) recommends the replacement of five vehicles as well as a sixth vehicle that was totaled in a collision. It is unclear if the City will receive compensation for the totaled vehicle, as the driver at fault did not have adequate coverage for all damages. Staff also recommends that SRPD reassign lower mileage vehicles to higher mileage drivers to help balance out fleet mileages.

### **Replacement Vehicle Options**

Ford Motor Company no longer manufactures the Taurus sedan. After discussing vehicle capability, size, and functional needs with SRPD, it was determined that a mid-size SUV would best fulfill the needs of department staff. In support of the City's green initiatives, hybrid/electric vehicles available to purchase through the state contract are given first consideration. Due to the need for 24-hour operational readiness and lack of home charging infrastructure needed for these take home vehicles, it is recommended to purchase a hybrid vehicle as opposed to plug in or fully electric. Of the hybrid vehicles that meet the specifications needed that are available to purchase through the state contract (Toyota Highlander Hybrid and Ford Explorer Hybrid), DPW recommends the purchase of the Toyota Highlander for the reasons below:

- The Toyota Highlander (\$47,000) is less expensive than the Ford Explorer (\$57,000).
- The Toyota Highlander shows an 8 MPG advantage compared to the Ford Explorer.
- Toyota has a well-known reputation of being a very reliable vehicle with minimal work needed besides regular maintenance.
- Toyota vehicles typically have a higher resale value compared to other makes resulting in reduced fleet cost in the long term.

<b>Vehicle</b>	<b>MPG</b>	<b>Estimated Total Replacement Cost (per vehicle Cost)</b>
Current Ford Taurus (not available)	22	\$186,000 (\$31,000)
Ford Explorer Hybrid	27	\$342,000 (\$57,000)
Toyota Highlander Hybrid	35	\$282,000 (\$47,000) (Includes tax and upfit cost)

**ANALYSIS:** Using data from the City's maintenance and fuel programs, a cost analysis was performed to determine financial impacts of vehicle replacement versus ongoing maintenance of older vehicles. The chart below shows significant savings in cost per mile if vehicles are replaced with new. This savings is due to multiple factors including:

- The decreased maintenance needed of newer vehicles.
- The initial and extended factory warranties of vehicles purchased new.
- The increase in miles per gallon of the newer hybrid vehicle.

**SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 3**

<b>Vehicle</b>	<b>2020 Average Miles Driven</b>	<b>2020 Average Maintenance Cost</b>	<b>2020 Average Fuel Cost</b>	<b>2020 Average Total Cost</b>	<b>2020 Average Cost per Mile</b>
Current Ford Taurus	11,000	\$1,327	\$1,500	\$2,827	\$0.25
Ford Explorer Hybrid	11,000	\$500	\$1,270	\$1,770	\$0.16
Toyota Highlander	11,000	\$500	\$945	\$1,445	\$0.13

Pursuant to Chapter 2.55 of the San Rafael Municipal Code, competitive bidding is not required for purchases through a cooperative purchasing agreement such as the state contract being used here.

**FISCAL IMPACT:** There are sufficient funds available in the Vehicle Replacement Fund #600 to purchase six Toyota Highlander Hybrids, for an amount not to exceed \$282,000.

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

1. Adopt a resolution approving and authorizing the Director of Public Works to purchase six Toyota Highlander Hybrids, for an amount not to exceed \$282,000.
2. Do not adopt a resolution and provide further direction to staff.

**ATTACHMENT:**

1. Resolution
2. Fleet Management Policy and Procedures

**RESOLUTION NO.**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING AND AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO PURCHASE SIX UNMARKED TOYOTA HIGHLANDER HYBRIDS, IN AN AMOUNT NOT TO EXCEED \$282,000**

**WHEREAS**, the San Rafael Police Department's unmarked fleet consists of 14 vehicles;  
and

**WHEREAS**, the City's Fleet Policy and Procedures document suggests a usable life of eight years for unmarked police vehicles; and

**WHEREAS**, based on this document and vehicle mileages, the Department of Public Works recommends the replacement of six vehicles consisting of five with the highest mileages and one that was totaled in a collision; and

**WHEREAS**, the City has determined that the Toyota Highlander Hybrid is the most cost-effective option; and

**WHEREAS**, the City is able to purchase the needed vehicles through a state cooperative purchasing program and formal competitive bidding is therefore not required for this purchase by the City's Municipal Code; and

**WHEREAS**, there are sufficient funds available in the Vehicle Replacement Fund (Fund #600) to purchase these vehicles;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN RAFAEL** that the City Council hereby approves and authorizes the Director of Public Works to purchase six Toyota Highlander Hybrids, for an amount not to exceed \$282,000.

**I, LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on the 13<sup>th</sup> day of September 2021, by the following vote, to wit:

AYES:           COUNCILMEMBERS:

NOES:           COUNCILMEMBERS:

ABSENT:        COUNCILMEMBERS:

**LINDSAY LARA, City Clerk**



## CITY OF SAN RAFAEL POLICIES AND PROCEDURES

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

### FLEET MANAGEMENT POLICY AND PROCEDURES

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

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

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

#### **POLICY:**

##### **General Provisions**

##### **Fleet Manager**

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

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

##### **Department Budgeting for Additional Vehicle Acquisition**

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

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

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

### Vehicle Acquisition

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

### Vehicle Replacement Funding

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

### Vehicle Replacement Schedule

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

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

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



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

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

### **Disposition of Surplus Vehicles**

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

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

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

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

#### *Unscheduled Repairs*

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

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

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



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Public Works**

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

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

File No.: 16.01.252

**TOPIC: BUNGALOW AND WOODLAND RESURFACING PROJECT**

**SUBJECT: RESOLUTION AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT FOR THE BUNGALOW AND WOODLAND RESURFACING PROJECT, CITY PROJECT NO. 11397, TO GHILOTTI BROS., INC. IN THE AMOUNT OF \$737,373.77, AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$112,626.23, FOR A TOTAL APPROPRIATED AMOUNT OF \$850,000**

**RECOMMENDATION:** Adopt the resolution awarding and authorizing the City Manager to execute a construction agreement for the Bungalow and Woodland Resurfacing Project to Ghilotti Bros., Inc. in the amount of \$737,373.77 and authorizing contingency funds in the amount of \$112,626.23, for a total appropriated amount of \$850,000.

**BACKGROUND:** Bungalow Avenue located in San Rafael's Picnic Valley Neighborhood is a concrete roadway which was constructed before 1925. The lower section of roadway between Woodland Avenue and Picnic Avenue received an asphalt overlay on top of the concrete road several decades ago. Concrete roadways have a longer lifespan than asphalt roadways, thus contributing to how expensive they are to replace. The project will do a grind and overlay with the addition of fabric on the lower section of Bungalow for the rehabilitation. On the concrete roadway section along the Bungalow loop from Picnic Avenue to Picnic Avenue, the project will do spot repairs and replace specific sections of the concrete roadway. The project will focus on the areas of roadway closest to Picnic Avenue. In addition to roadway rehabilitation this project will include pedestrian safety and ADA compliance upgrades at the corner of Bungalow Avenue and Woodland Avenue, including an approximately 120-foot-long sidewalk gap closure on the West side of Bungalow to complete pedestrian access to Woodland Ave.

As part of a Safer Routes to School study in the Picnic Valley neighborhood, it was recommended to add a crosswalk east of the Woodland & Bungalow intersection at Lovell Avenue. This project will add an accessible curb ramp on the south side of Woodland Avenue and crosswalk striping across Woodland Avenue. This will help facilitate the school paths of travel to Davidson Middle School and Laurel Dell Elementary School.

The project also includes pavement rehabilitation and curb ramp accessibility improvements on Woodland Avenue from Bayview Street to Lindaro Avenue. The San Rafael Sanitation District

**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

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

(SRSD) is currently in construction on the sewer main replacement in this neighborhood, including this section of Woodland Avenue. The Department of Public Works (DPW) partnered with SRSD to resurface the portion of Woodland Avenue after the sewer main is installed. This partnership will save both agencies funding resources and reduce impacts to the community by scheduling the projects sequentially to each other.

On August 16, 2021, the project was advertised in accordance with San Rafael's Municipal Code.

**ANALYSIS:** On September 2, 2021, the following bids were received:

<b><u>NAME OF BIDDER</u></b>	<b><u>AMOUNT</u></b>
Ghilotti Bros., Inc.	\$737,373.77
Maggiora & Ghilotti, Inc.	\$747,737.00
Team Ghilotti, Inc.	\$767,141.00
CF Contracting	\$798,000.00

The construction bids have been reviewed by Public Works staff and the low bid from Ghilotti Bros., Inc. in the amount of \$737,373.77, was found to be both responsive and responsible. City staff recommends awarding the construction contract to Ghilotti Bros., Inc. for the amount bid, and also recommends the City Council authorize a construction contingency of approximately 15 percent in an amount of \$112,626.23, for a total authorized amount of \$850,000.

**PUBLIC OUTREACH:** City Staff sent letters to property owners along the project limits to inform them of the project in the spring of 2021. In addition, Staff posted updates on Nextdoor, the DPW news blogs, and created a project specific page on the City's [website](#) for the community to receive updates.

**FISCAL IMPACT:** Staff proposes to appropriate construction funding for this project utilizing \$850,000 in Transportation of Marin Measure AA, Gas Tax funds (Fund #206).

**OPTIONS:**

1. Adopt the resolution as presented.
2. Do not award the contract and direct staff to rebid the project. If this option is chosen, rebidding will delay construction by approximately two months.
3. Do not award the contract and provide direction to staff.

**RECOMMENDED ACTION:** Adopt the resolution awarding and authorizing the City Manager to execute a construction agreement for the Bungalow and Woodland Resurfacing Project to Ghilotti Bros., Inc. in the amount of \$737,373.77 and authorizing contingency funds in the amount of \$112,626.23, for a total appropriated amount of \$850,000.

**ATTACHMENTS:**

1. Resolution awarding the construction agreement to Ghilotti Bros., Inc.

**RESOLUTION NO.**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT FOR THE BUNGALOW AND WOODLAND RESURFACING PROJECT, CITY PROJECT NO. 11397, TO GHILOTTI BROS., INC. IN THE AMOUNT OF \$737,373.77, AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$112,262.23, FOR A TOTAL APPROPRIATED AMOUNT OF \$850,000**

**WHEREAS**, on the 2<sup>nd</sup> day of September 2021, pursuant to due and legal notice published in the manner provided by law, inviting sealed bids or proposals for the work hereinafter mentioned, as more fully appears from the Affidavit of Publication thereof on file in the office of the City Clerk of the City of San Rafael, California, the City Clerk of said City did publicly open, examine, and declare all sealed bids or proposals for doing the following work in said City, to wit:

**“Bungalow and Woodland Resurfacing Project”**

**City Project No. 11397**

in accordance with the plans and specifications therefore on file in the office of the Department of Public Works; and

**WHEREAS**, the bid of \$737,373.77 from Ghilotti Bros., Inc., at the unit prices stated in its bid, was and is the lowest and best bid for said work and said bidder is the lowest responsible bidder; and

**WHEREAS**, staff has recommended that the project budget include a contingency amount of \$112,626.23;

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

1. The plans and specifications for the “Bungalow and Woodland Resurfacing Project”, City Project No. 11397 on file in the Department of Public Works, are hereby approved.
2. The City Manager is authorized and directed to execute a contract with Ghilotti Bros., Inc. for the bid amount, subject to final approval as to form by the City Attorney, and to return the bidder’s bond upon the execution of the contract.

3. Funds for project totaling \$850,000, which includes the construction award amount and contingency, will be appropriated for City Project No. 11397, using \$850,000 in TAM Measure AA, Gas Tax funds (Fund #206).
4. The Director of Public Works is hereby authorized to take any and all such actions and make changes as may be necessary to accomplish the purpose of this resolution.

I, **Lindsay Lara**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 13<sup>th</sup> day of September 2021 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

File No.: 16.01.252

LINDSAY LARA, City Clerk



**SAN RAFAEL**  
THE CITY WITH A MISSION

**Agenda Item No: 5.g**

**Meeting Date: September 13, 2021**

**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Public Works**

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

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

**TOPIC: SOUTHERN HEIGHTS BRIDGE REPLACEMENT**

**SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO THE AGREEMENT WITH SUBSTRATE, INC. FOR ADDITIONAL CONSTRUCTION MANAGEMENT, INSPECTION, AND MATERIALS TESTING SERVICES, IN AN ADDITIONAL CONTRACT AMOUNT NOT TO EXCEED \$65,885**

**RECOMMENDATION:** Adopt a resolution approving and authorizing the City Manager to execute a first amendment to the agreement with Substrate, Inc. for additional construction management, inspection, and materials testing services in an amount not to exceed \$65,885, increasing the total not-to-exceed amount under the agreement to \$490,885.

**BACKGROUND:** Caltrans routinely inspects bridges across the state to ensure the public's safety. Through this process, the Southern Heights Bridge was identified as needing reconstruction to meet current design, structural, and safety standards. In August 2020, the City retained Substrate, Inc. to help facilitate the construction of this project by providing construction management, inspection, and materials testing services. In October 2020, the City awarded the construction contract to Disney Construction, Inc. On December 14<sup>th</sup>, 2020, Disney Construction, Inc. began construction with an initial estimated completion in September 2021.

**ANALYSIS:** As of August 2021, the project completion date has been shifted back a total of 25 working days to account for delays related to rain and COVID-19 (10 days) and added change order work (15 days). These added working days have moved the estimated completion date to the end of October 2021 thus necessitating this amendment to the original agreement with Substrate, Inc. to ensure that they are able to

**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

continue providing construction management and inspection services for this project. The consultant will be reimbursed \$45,591 for these extra working days.

Additionally, more materials testing has been required on this project than originally estimated. The following is a summary of each test required by Caltrans and an explanation for why this was not included in the original estimate.

1. Skid Test

Caltrans has an approved method of testing surface skid resistance on bridge decks. In recent years, Caltrans normally conducts the test themselves since the testing equipment is very specialized and no consultant labs have been certified to perform it. On other projects, Caltrans has waived this required testing for bridges that are not on the National Highway System (NHS) which is why this test was not originally budgeted for by Substrate, Inc. Recently however, Caltrans notified the City that it would require this test despite Southern Heights being a non-NHS bridge but could not perform the testing themselves. Caltrans staff recommended that the City hire a consultant to perform this testing using the nationally approved procedure instead of the Caltrans method. The estimated cost of this testing is \$9,044.

2. HRC Coupler and Welded Hoop Testing

The pile cages used for the bridge columns had to be spliced because they were not able to be transported to the site in full length due to a roadway constriction caused by a small landslide at 20 Meyer Road. The landslide occurred on November 14, 2020, after the original agreement with Substrate, Inc. was executed. This testing is required by Caltrans as quality assurance for the welded hoops used to connect the two segments of the pile cages and costs \$11,250.

**FISCAL IMPACT:** The proposed first amendment will increase the professional services agreement total by \$65,885. This amount will be appropriated in the Capital Project Fund 401. City staff will seek reimbursement of these expenses through the Caltrans Highway Bridge Program grant.

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

1. Adopt the resolution as presented.
2. Do not adopt the resolution and provide further direction to staff.

**RECOMMENDED ACTION:** Adopt a resolution approving and authorizing the City Manager to execute a first amendment to the agreement with Substrate, Inc. for additional construction management, inspection, and materials testing services in an amount not to exceed \$65,885.

**ATTACHMENT:**

1. Resolution

2. First Amendment to the Professional Services Agreement with Substrate, Inc. for Professional Services for the Southern Heights Bridge Replacement Project, and corresponding Exhibit A (revised scope of work)



**RESOLUTION NO.**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL  
APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST  
AMENDMENT TO THE AGREEMENT WITH SUBSTRATE, INC. FOR ADDITIONAL  
CONSTRUCTION MANAGEMENT, INSPECTION, AND MATERIALS TESTING  
SERVICES, IN AN ADDITIONAL CONTRACT AMOUNT NOT TO EXCEED \$65,885**

---

**WHEREAS**, pursuant to City Council Resolution No. 14846, the City of San Rafael and Substrate, Inc. entered into a Professional Services Agreement dated September 17, 2020 for construction management, inspection, and materials testing services associated with the City's project to reconstruct the Southern Heights Bridge, for an amount not to exceed \$425,000 (the "Agreement"); and

**WHEREAS**, the City requires additional construction management, inspection, and materials testing services from Substrate, Inc. to cover the 25 working days that have been added due to weather, COVID-19, change orders, and additional testing for unanticipated items; and

**WHEREAS**, staff received a proposal from Substrate, Inc. for the additional required services in a total amount not to exceed \$65,885; and

**WHEREAS**, staff has reviewed the proposal and found it to be complete and within industry standards; and

**WHEREAS**, \$65,885 will be appropriated in Capital Project Fund 401 pending reimbursement from the Caltrans Highway Bridge Program grant;

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

**RESOLVES** as follows:

1. The Council hereby approves and authorizes the City Manager to execute a first amendment to the Agreement with Substrate, Inc. for additional construction management, inspection, and materials testing services in connection with the Southern Heights Bridge Replacement Project, in the amount of \$65,885 and a revised total contract value not to exceed \$490,885, in the form included with the staff report supporting this resolution, subject to final approval as to form by the City Attorney.

2. The Director of Public Works is hereby authorized to take any and all such actions and make changes as may be necessary to accomplish the purpose of this resolution.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on the 13<sup>th</sup> day of September 2021, by the following vote, to wit:

**AYES:            COUNCILMEMBERS:**

**NOES:            COUNCILMEMBERS:**

**ABSENT:        COUNCILMEMBERS:**

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**LINDSAY LARA, City Clerk**

**FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH  
SUBSTRATE, INC. FOR PROFESSIONAL SERVICES FOR THE  
SOUTHERN HEIGHTS BRIDGE REPLACEMENT PROJECT**

---

**THIS FIRST AMENDMENT** to the Professional Services Agreement by and between the **CITY OF SAN RAFAEL** (hereinafter "**CITY**"), and **SUBSTRATE, INC.**, (hereinafter "**CONSULTANT**"), is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**RECITALS**

**WHEREAS**, pursuant to City Council Resolution No. 14846, the **CITY** and **CONSULTANT** entered into a Professional Services Agreement dated September 17, 2020 for construction management, inspection, and materials testing services associated with the **CITY'S** project to reconstruct the Southern Heights Bridge, for an amount not to exceed \$425,000 (the "Agreement"); and

**WHEREAS**, the **CITY** requires additional construction management, inspection, and materials testing services from the **CONSULTANT** to cover the 15 working days that have been added due to change orders and additional testing for unanticipated items, and the **CONSULTANT** is willing to provide such services;

**AMENDMENT TO AGREEMENT**

**NOW, THEREFORE**, the parties hereby agree to amend the Agreement as follows:

1. Article III of the Agreement, entitled "STATEMENT OF WORK" is hereby amended to include the additional services set forth in **CONSULTANT'S** proposal entitled "Revised Scope of Services" dated August 19, 2021, attached to this First Amendment as Exhibit "A" and incorporated herein by reference.
2. Article V of the Agreement, entitled "ALLOWABLE COSTS AND PAYMENTS" is hereby amended to include additional compensation payable to **CONSULTANT** for the services described in Exhibit "A" to this First Amendment, on a time and materials basis in accordance with the "Revised Cost Proposal Summary & Schedule" included in Exhibit "A", in a

not-to-exceed amount of \$65,885, and to change the total not-to-exceed amount under the Agreement to \$490,885.

- 3. Except as specifically amended herein, all the other provisions, terms, and obligations of the Agreement between the parties shall remain valid and shall be in full force.

**IN WITNESS WHEREOF**, the parties have executed this Third Amendment on the day, month, and year first above written.

**CITY OF SAN RAFAEL**

**CONSULTANT: SUBSTRATE, INC.**

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

By: \_\_\_\_\_  
*Sundeep Jhutti*

Name: \_\_\_\_\_  
Sundeep Jhutti

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

ATTEST:

and

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

By: \_\_\_\_\_  
*Sundeep Jhutti*

Name: \_\_\_\_\_  
Sundeep Jhutti

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

APPROVED AS TO FORM:

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



Substrate, Inc

Mr. Theo Sanchez  
Project Manager  
San Rafael - Department of Public Works  
1400 Fifth Avenue, CA 94901

August 19, 2021

**Subject: Request for Contract Amendment to Cost Proposal to Provide Construction Management Services for the Southern Heights Bridge Replacement Project – City Project Number – 11282 Fed BRLO-5043 (038)**

Dear Mr. Sanchez:

Substrate, Inc has been committed to ensure Disney Construction finishes this project, without sacrificing quality and, it on its way for a completion in the Fall of 2021 – with an estimated substantial completion date of October 31, 2021.

However, as you know, the original cost proposal was based on the contract determined **190 WD**, and currently, the project has **extended to 205 WD due to adding of 15 Change Order Days**. In addition, there were 2 days added due to COVID19 plus 8 rain/wet grade days to date. **The total is 25 Days beyond what was anticipated during the original cost proposal.**

In addition to the days, there were **Specific Required Federal Tests** were not assumed to during the original cost proposal. One Test was the **Skid Test (CT-342)** that was asked to be waived at the beginning of this project as this has been accepted in the past from Caltrans for Non-NHS Municipal Bridge, however, was not waived as a requirement for this project. **This testing comes at a cost of \$9,044.**

The other testing included HRC Coupler Pull Testing (which is required for CT Quality Assurance). This test was required because of the landslide at 20 Meyer Rd, which required the pile cages to be spliced to get around it (see CCO #6). Finally, the pull testing for the Welded Hoops was not foreseen at the time of the original estimate and this scope of work was added to **Miller Pacific Engineering's subcontract**, as they had Smith-Emery perform this work. **This Amendment was for \$11,250 for the HRC Coupler Sampling and Testing and Welded Hoop Testing.**

These needs exceed our currently budget to successfully complete the inspection work, the punchlist items, final progress payments, project filing and closeout, additional federal forms to be filled out, preparation for post construction audit, and post-construction audit paperwork. **This figure includes all work to me performed till project closeout and all remaining inspection work assuming that Disney obtains a substantial completion date of October 31, 2021.**

Therefore, we have submitted our revised Cost Proposal at “**Specific Rates of Compensation**”, which indicates an amendment amount of **Not to Exceed \$65,885**. This cost proposal is valid till **October 31, 2021**. Thanks,

Sincerely,

A handwritten signature in blue ink that reads "Sandeep J. Smith".

Substrate, Inc, President  
415-246-4920  
[sunny@substrateinc.com](mailto:sunny@substrateinc.com)



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## ***Revised Scope of Services***

We at Substrate, Inc have found that the successful delivery of a project, begins by providing expert staff support in all three phases of the construction project delivery:

- **Phase 1 – Pre-Construction Services**
- **Phase 2 – Construction Services**
- **Phase 3 - Post-Construction Services**

In each phase, the project will be administered in accordance with Federal and State Procedures, specifically, the Caltrans Local Assistance Program Manual, the Caltrans Construction Manual, and the Caltrans Standard Plans and Specifications. A thorough understanding of Local, State and Federal procedures is a must for any local agency project and this project is no different.

Keep in mind that Substrate, is extremely familiar with Oversight projects and will assist the City in managing the contract in accordance with City Specifications, Caltrans Specifications, and/or Local Assistance Procedures Manual. It is imperative that the construction management firm administer the contract in accordance with Federal and State Procedures, specifically, the Caltrans Local Assistance Procedures Manual, and Caltrans Construction Manual when there are federal funds involved.

The Caltrans Local Assistance Procedures Manual has been prepared to aid California local agencies scope, organize, design, construct and maintain their public transportation facilities when they seek Federal Highway Administration (FHWA) funded federal-aid or state funding. The manual describes the processes, procedures, documents, authorizations, approvals and certifications, which are required in order to receive federal-aid and/or state funds for many types of local transportation projects.

Since almost all of our projects and clients are local agencies, Substrate staff has significant experience with State and Federal Procedures; we manage each phase of our projects (pre- construction, construction and post construction) in accordance with Federal and State Procedures, specifically, the Caltrans Local Assistance Procedures Manual, and Caltrans Construction Manual. We are especially familiar with Chapter 15, Advertise and Award Project, which covers the topics beginning with project supervision, contract time, subcontractors, Engineer's daily reports, projects files, construction records and procedures, safety provisions, labor compliance, equal opportunity employment, disadvantaged business enterprise, contract change orders, material sampling and testing, and traffic safety in the highway and street zones. We also use the guidelines set forth in Chapter 17, Project Completion, to ensure a seamless project closeout.

## ***Revised Scope of Services***

We have revised our Scope of Service to match current needs:

### **Phase 1 – Preconstruction Management Services**

Substrate will provide the following services including, but not limited to:

- Coordinate, conduct, and attend the Pre-Construction Conference.
- Review the Contractor's Submittals.
- Set up and conduct a meeting with the Engineer of Record to discuss ideas to expedite work.
- Develop list of anticipated Contractor submittals with milestones by which the submittal will be made and the timeframe allowed for review.
- Take Pre-Construction Photographs and documentation of Pre-Construction Conditions.

### **Phase 2 – Construction Management Services**

Working under the direction of the City, our staff will provide the following tasks for your project(s):



- 
- Assist in administration of Contract Documents;
  - Conduct quality assurance inspection in accordance with Contract Documents and in accordance with the Caltrans Construction Manual.
  - Provide materials testing and testing frequencies in accordance with the Caltrans Construction Manual;
  - Monitor Project safety;
  - Coordinate and manage the Project public outreach program;
  - Provide communication and coordination between City, Contractor, Caltrans, regulatory permitting agencies, and utility companies;
  - Coordinate with City design engineer to review Contractor submittals;
  - Provide documentation and reporting in accordance with the Caltrans Local Assistance Procedures Manual;
  - Maintain a daily inspector's report that records the hours worked by laborers and equipment. The report will include a narrative description of the Contractor's operation and location of work and any other pertinent information. Daily report forms will be in compliance with the Caltrans Construction Manual;
  - Enforce labor compliance by preparing daily reports with required information, monitoring certified payrolls and doing spot check labor surveys and interviews;
  - Review Project environmental documentation and compliance of Storm Water Pollution Prevention Plan (SWPPP) in accordance with the Caltrans Construction Manual. Coordinate routine inspections with City staff as needed;
  - Coordinate source inspection as required;
  - Provide review and inspection of Contractor's work for compliance with Contract Documents on a daily basis;
  - Monitor and document corrective actions taken by the Contractor needed for work deemed non-compliant with the Contract Documents;
  - Review Contractor's compliance with all regulatory permits and mitigation measures;
  - Review Contractor's compliance with workplace safety and health standards and notification of non-compliance
  - Review Contractor's survey layouts;
  - Coordinate and monitor Contractor's detours, lane closures, and staging plans;
  - Review and manage Contractor change orders;
  - Review and manage insurance claims;
  - Provide review and analysis of Contractor's construction Project management schedule; and
  - Process monthly quantity verifications and Contractor pay estimates.
  - Maintain Project records in accordance with Caltrans Construction Manual and Local Assistance Procedures Manual.
  - **Additional Inspection Services required for 25 WD time extension and Punchlist Activities assuming Substantial Completion date of October 31, 2021, and one-week punchlist.**
  - **Sampling and Testing of HRC Couplers for CIDH Cages performed by MPEG.**
  - **Sampling and Testing of Welded Hoops for CIDH Cages performed by MPEG.**
  - **Caltrans Skid Test (CT-342) perform by ARA.**

### Phase 3 – Post - Construction Management Services

Substrate, Inc will provide the following services to the City:

- Coordinate and prepare final inspection and punch-list. Monitor and verify completion of punch list items;
- Prepare Red-Line As-builts;
- Prepare final reporting in accordance with the Caltrans Local Assistance Procedure Manual and City



**Substrate, Inc**

requirements.

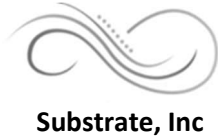
- Provide Project files to the City.
- Prepare and make recommendations for final progress payment and acceptance;
- Finish Post-Construction Checklist for Caltrans.
- Complete all audit paperwork for upcoming Federal Audit.
- Attend post-construction Audit with Caltrans.
- Complete all CM related federal forms and completion records per LAPM Chapter 17.
- Package all Deliverables



**SOUTHERN HEIGHTS BOULEVARD BRIDGE REPLACEMENT PROJECT - CITY OF SAN RAFAEL**

**REVISED COST PROPOSAL SUMMARY & SCHEDULE**

Name	Company	Classification	Cons Services		Subtotal Labor Hrs 2021	Bill Rates 2020/2021	Total
			Oct-21	Nov-21			
Sunny Jhutti, PE, SE	Substrate, Inc	RE/Structure Rep	64	24	88	\$ 176.83	\$ 15,561.04
Edwin Eckberg	Substrate, Inc	Full Time Inspector	160	40	200	\$ 150.15	\$ 30,030.00
Materials Testing	Miller Pacific	Subconsultant Tester				Labor+ODC	\$ 11,250.00
Skid Test (CT-342)	ARA	ODC Vendor				ODC	\$ 9,044.00
						Subtotal	\$ 65,885.04
Assumptions: Known 25 WD added to contract. Anticipated Contract Substantial Completion Date of October 31st						<b>NTE (Labor + ODC)</b>	<b>\$ 65,885.00</b>
One week of project close out in November. Punchlist Inspection and File Completions.							
MPEG Amendment 1 - HRC Coupler Sampling and Testing. Welded hoops Testing						Total Plus Amendment	\$ 490,885.00
Skid Test (CT-342) by ARA							
Date: 8/19/2021							



**SUB CONSULTANT AGREEMENT –  
Amendment #1**

Between

**Substrate, Inc**

And

**Miller Pacific Engineering Group**

For

**Materials Inspection Services**

**Southern Heights Blvd Bridge Replacement Project**

**City of San Rafael**

**Project No. BRLO 5043(038)**

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**SUB CONSULTANT AGREEMENT**

This **Sub Consultant Agreement**, effective [October 8, 2020](#) by and between Dynamic Dzyne Associates, Inc dBA Substrate, Inc, a California corporation having an office located at 270 Crest Rd in Novato, California 94945 herein after referred to as “Consultant”, and [MPEG](#), having an office located at [504 Redwood Blvd, Suite 220, Novato, CA 94947](#) hereinafter referred to as “Sub Consultant”.

**WITNESSETH:**

**WHEREAS**, Consultant has been contracted to provide construction management services to the [City of San Rafael \(Client\)](#) for [Southern Heights Blvd Bridge Replacement Project](#) referred to as (the “Project”); and

**WHEREAS**, Consultant and Sub Consultant mutually desire to enter into an agreement for Sub Consultant to perform certain of the Prime Contract services in accordance with the terms and conditions of this Subcontract Agreement.

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, THE PARTIES AGREE AS FOLLOWS:

**ARTICLE 1. DEFINITIONS**

It is understood that when the following words and phrases are used herein, each shall have the meaning set forth below:

- Sub Consultant: [Miller Pacific Engineering Group \(MPEG\)](#)
- Consultant: Substrate
- Client: [City of San Rafael \(CSR\)](#)
- Project Manager: [Sunny Jhutti, PE, SE](#), or his successor as appointed or designated in writing by the Consultant.
- Contractor: The Construction Contractor selected to perform the construction of the Project.
- Prime Contract: [Contract Agreement between Substrate, Inc and City of San Rafael](#)
- Sub Consultant Agreement: Referred to as Subcontract Agreement or Subcontract
- Project: A discrete, defined undertaking with specific time, budget and technical performance goals as detailed in the contract documents and otherwise known as [Southern Heights Blvd Bridge Replacement](#).
- Sub Consultant(s): Subconsultant(s) are those persons/firms retained by Consultant to assist in performing and providing the Services as listed in [“Exhibit A” the Prime Contract Agreement with City of San Rafael](#).
- Scope of Work: “Scope of Services” as defined in the Prime Contract and in the individual Work Authorization, [“Exhibit B”](#) attached in this Sub Consultant Agreement.

## **ARTICLE 2. DESCRIPTION OF SERVICES**

Sub Consultant accepts the relationships of trust and confidence established between Sub Consultant and Consultant by this Sub Consultant Agreement. Sub Consultant agrees to furnish its best efforts at all times and in a professional manner in performing the Work. The Work performed by Subconsultant under this Subcontract shall conform to the standard of care set forth in the Prime Contract, or in the absence of such standard in the Prime Contract, to generally acceptable professional standards.

The general scope of work for this subcontract shall be as described in the Prime Contract, as it now exists or may be modified, including but not limited to those services set forth in the Prime Contract hereto.

All of Sub Consultant's Work will be subject to Consultant acceptance after such Work has been checked and approved by Sub Consultant. Unless otherwise agreed by Consultant, Sub Consultant shall sign all drawings and calculations as checked and approved prior to submitting for Consultant review. Notwithstanding Consultant acceptance of the Work or any pertinent data, Sub Consultant shall be and remain fully responsible for the Work, the adequacy and completeness of the Work and any such drawings and calculations, and Sub Consultant shall not be relieved from any duties or responsibilities under this Subcontract on account of such acceptance by the City of San Rafael.

## **ARTICLE 3. TASK ORDERS AND WORK AUTHORIZATIONS**

Consultant reserves the right to request resumes and background information of the qualified individuals assigned to the project by Sub Consultant. Consultant and/or CSR will determine the most qualified individuals from the resumes submitted, and reserves the right to interview individuals as deemed necessary to make a suitable selection. Consultant and/or CSR may, at their sole discretion, reject individuals with or without cause, request additional resumes for consideration, or select personnel from the resumes submitted for consideration.

## **ARTICLE 4. INDEPENDENT CONTRACTOR**

Sub Consultant is retained as an individual independent contractor, not an employee or agent of Consultant or CSR, and shall be responsible for its own work. The personnel furnished by Subconsultant to perform the Sub Consultant's scope of work shall be deemed to be exclusively employees of Sub Consultant; and said employees shall be paid and controlled by the Sub Consultant for all services performed in connection with this Subcontract. Sub Consultant shall be fully responsible for all obligations and reports covering Social Security, Unemployment Insurance, Worker's Compensation, Income Tax, Prevailing Wages and other reports and deductions required by any applicable State or Federal law or any and all other laws and regulations governing such matters.

## **ARTICLE 5. PERIOD OF SERVICE**

The period of service shall begin on October 1, 2020 on an "as-needed" basis. Services may be terminated in accordance with the applicable provisions of this Subcontract. During the period of service, Sub Consultant agrees that all communications with the Client (City's Director Public Works, or his designee) relating to

contractual matters, payments, staffing needs and project management matters require a written approval from the Consultant. However, for technical work the Sub Consultant are required directly to communicate with the Consultant or its designee. The Consultant will not be responsible for Sub Consultant's technical field work performed by Sub Consultant employees including work site safety and all construction engineering, inspection, and other work performed by the Sub Consultant. Failure to comply with Article 5, the Consultant reserves its right to exercise Article 14 Termination (Termination for Cause).

#### ARTICLE 6. COMPENSATION

Fixed Hourly Rate under this Sub Consultant Agreement shall be as described under the terms of the Exhibit 10H, and Form 10A, "**Exhibit B**" to this Subcontract. In no event shall compensation exceed the total amount of this Subcontract or the combined total amount of all executed Task Orders and Work Authorizations for this Subcontract Amendment. Total compensation for this **contract amendment is not to exceed \$11,250.00**. Scope of work is listed in Exhibit A of the Prime Consultant Agreement, but it includes Source Inspection Material Testing pursuant to the 2018 Caltrans Standard Specifications. The project is Federally Funded.

Additional Testing includes: **Sampling and Testing of HRC Couplers and Sampling and Testing of CIDH Pile Cage Welded Hoops.**

At such time that it is determined that eighty percent (80%) of the stated Subcontract amount is, or will be, exhausted by the issued Task Orders and Work Authorizations under this Agreement, plus any outstanding claim for additional services or costs by the Sub Consultant, Sub Consultant shall inform the Project Manager in writing and in a timely manner of their request for additional funds, providing a projection to completion. Additional amounts will be authorized at the sole discretion of the Project Manager.

All compensation paid to Sub Consultant shall comply with all the provisions listed in "**Exhibit A**" of the Prime Contract Agreement for the Project.

#### ARTICLE 7. CHANGES/AMENDMENTS

Consultant may, at any time, make changes in the work within the general scope of this Sub Consultant Agreement and Work Authorizations and/or executed Task Orders. All changes to this Sub Consultant Agreement or its Work Authorizations, including, but not limited to, the scope of services, schedule, Period of Service, compensation and other attachments/exhibits, shall be issued in writing by Consultant. Any costs incurred by Sub Consultant without proper contractual authorization or direction from an authorized representative of Consultant shall be considered non-reimbursable.

In the event any direction from Consultant is considered by Sub Consultant to be a change or an additional Work Authorization or Task Order, Sub Consultant shall notify Consultant in writing of the impact on cost, schedule and scope and shall include other relevant information. Consultant may reject any request for an adjustment if it is asserted more than twenty (20) days after the Subconsultant received the direction. No adjustments shall be allowed if asserted after final payment under this Subcontract.

#### ARTICLE 8. INDEMNIFICATION

Notwithstanding any provision of this Agreement to the contrary, Sub Consultant agrees to indemnify, hold harmless, and defend Consultant and the **CSR** from and against all claims, demands, damages, losses, costs, expenses (including attorneys' fees), fines, or penalties arising out of, related to, or as a consequence of, or alleged to arise out of, relate to, or be a consequence of any negligent act, error, or omission to act on the part of the Sub Consultant or its employees, agents, or independent contractors, or the invitees of any of them.

#### ARTICLE 9. WORKSITESAFETY

In addition to any safety requirement set forth in the Subconsultant Agreement or established by the Client, Sub Consultant agrees that for all services performed by agents or employees of Sub Consultant at the worksite

designated by this Sub Consultant Agreement, that the person(s) assigned to supervise, manage or provide said services shall have knowledge of Cal OSHA Work Site Safety Requirements prior to undertaking the performance of said services, and Sub Consultant shall assure that Cal OSHA Work Site Safety Requirements are followed in the performance of said services. Should a claim or alleged violation of a Cal OSHA Safety Requirement arise regarding an undertaking or service provided by the Subcontractor as set forth in its scope of work, Sub Consultant shall be primarily liable for said claim, and will indemnify, defend and hold Consultant harmless against such claim of a safety violation, or any cause of action based upon an allegation of a violation of a Cal OSHA Safety Requirement, as set forth in Article 8.

#### **ARTICLE 10. INVOICING PROCEDURES AND RECORDS**

Payment shall be subject to receipt of detailed invoices and subject to approval of Consultant's Project Manager or his designee. Receipt of payment from CSR for Sub Consultant's work is a condition precedent on payment by Consultant to Sub Consultant. Consultant will pay Sub Consultant only after receipt of certified payrolls and within thirty (30) days of receiving payment from CSR for Sub Consultant's work. Sub Consultant hereby acknowledges that it relies on the credit of CSR, not Consultant, for payment of its work. Consultant shall take all steps which are in its judgment reasonable and appropriate to collect all fees due from CSR. Sub Consultant shall retain without restriction and may exercise at its sole discretion whatever rights, including design professional and mechanic's lien rights, which it may have to collect its fees directly from CSR or others. Consultant shall be liable for Sub Consultant's fees only after and to the extent Consultant has collected the Prime Contract fees, however, it being the intention of the parties that ultimately Sub Consultant should recover its fees, if at all, from CSR with Consultant serving as an intermediary, and not to put Consultant at risk for the nonpayment of Sub Consultant fees generated for the benefit of CSR.

Acceptance by Sub Consultant of final payment for services covered under this Sub Consultant Agreement shall operate as a release of Consultant from all claims against Consultant for additional compensation arising from services provided under this Sub Consultant Agreement.

Sub Consultant shall submit monthly invoices in the form specified by Consultant no later than the fifth (5th) day of each month for inclusion in Consultant invoice to CSR. Sub Consultant shall provide employee timesheets, certified payrolls and fringe benefit statements with each invoice, pursuant to and in compliance with State Labor Laws.

In compliance with Federal regulations, the Sub Consultant shall maintain timesheets and records showing standard payroll rates and other cost documentation related to the performance of this Sub Consultant Agreement, as well as other related documentation. For purposes of auditing the Sub Consultant's costs, written data supporting actual costs shall be made available within a reasonable time during the Sub Consultant Agreement period and for a period of three (3) years thereafter.

#### **ARTICLE 11. SUBCONTRACTING**

Sub Consultant is not authorized to subcontract any portion of this work. Any future approval for subcontracting will be specifically authorized by Consultant in an Amendment to this Sub Consultant Agreement and include additional Sub Consultant Agreement provisions related to lower tier subcontractors.

#### **ARTICLE 12. SUCCESSORS AND ASSIGNEES**

Sub Consultant shall not assign, sublet, sell, transfer or otherwise dispose of any interest in this Sub Consultant Agreement without prior written approval of Consultant.

This Sub Consultant Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assignees, but shall not inure to the benefit of any third party or other persons, other than CSR.

**ARTICLE 13. SUSPENSION OF WORK**

Consultant may, as a result of a Suspension of Work Order from CSR, by written order to Sub Consultant, require Sub Consultant to suspend, delay, or interrupt all or any part of the Work called for by this Sub Consultant Agreement. Any such order shall be specifically identified as a "Suspension of Work Order" issued pursuant to this Article. Consultant may order a Suspension of Work to the Sub Consultant at any time giving the Sub Consultant a two (2) day notice if actions taken by Sub Consultant is deemed disruptive to the work ordered by the Client.

**ARTICLE 14. TERMINATION**

***Termination for Convenience***

Consultant shall have the right to terminate this Subcontract at any time by giving at least ten (10) days advance written notice to Sub Consultant. If the Sub Consultant Agreement is terminated for any reason other than cause, Consultant will pay Sub Consultant in accordance with the terms and conditions of the Sub Consultant Agreement all sums actually due and owing from Consultant for all services performed and expenses incurred up to the date of the written notice of termination. No additional costs will be paid to the Sub Consultant to effect such termination.

***Termination for Cause***

This Sub Consultant Agreement may be terminated for cause upon two (2) days written notice should Subconsultant fail substantially to perform in accordance with the terms of this Subcontract. If the Subcontract is terminated for cause, Consultant shall pay Sub Consultant in an amount to cover all services performed and expenses incurred in full accordance with the terms and conditions of this Sub Consultant Agreement up to the effective date of termination.

***Failure to Complete Subcontract***

In the event that the Sub Consultant fails to complete the Sub Consultant Agreement within the specified time or within authorized extensions, the Sub Consultant Agreement may be terminated and Consultant shall not thereafter pay or allow to the Sub Consultant any further compensation for any labor, supplies, or material furnished under Sub Consultant Agreement. Consultant may proceed to complete such work either by re-subcontracting or otherwise and the Sub Consultant shall be liable to Consultant for all loss or damage which it may suffer on account of the Sub Consultant failure to complete Sub Consultant Agreement within such time.

The termination of the Prime Contract shall automatically terminate this Sub Consultant Agreement as well. Regardless of why this Agreement is terminated, if necessary or appropriate to facilitate Consultant fulfilling of its Prime Contract obligations, then Sub Consultant shall permit Consultant to take possession of whatever drawings, working papers, calculations or other documents and things, including those fixed in any electronic medium, which have been provided to or generated by or on behalf of Sub Consultant concerning the Project.

**ARTICLE 15. OWNERSHIP OF DOCUMENTS**

Sub Consultant agrees that all documents, reports, materials, or other subject matter, including the original thereof, developed, prepared, procured, or produced in the rendition of the services under this Sub Consultant Agreement shall be the property of Consultant, unless otherwise set forth in the Prime Contract, and all such documents, reports, materials, or other subject matter shall be delivered to Consultant upon completion of this Sub Consultant



Agreement, or upon any termination or cancellation thereof, prior to final payment. Sub Consultant may retain at its own expense a record copy of all such documentation.

**ARTICLE 16. INFORMATION, RECORDS AND REPORTS**

Sub Consultant shall provide all information and reports required by Federal regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Consultant or CSR. Sub Consultant shall permit CSR and/or Consultant to inspect and audit all data and records of Sub Consultant relating to performance under this Sub Consultant Agreement. Sub Consultant undertakes not to use any software for which the proper license has not been duly obtained and filed with the Consultant.

**ARTICLE 17. FINDINGS CONFIDENTIAL**

Any documents, reports, information, or other data and materials available to or prepared or assembled by Sub Consultant or subcontractors under this Sub Consultant Agreement shall not be made available to any person, organization, or entity by Sub Consultant without consent in writing from Consultant unless required by law or court order.

**ARTICLE 18. CONFLICT OF INTEREST**

Sub Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Sub Consultant Agreement.

**ARTICLE 19. INCORPORATION OF CITY OF SAN RAFAEL AGREEMENT**

To the extent applicable to the work to be performed by Sub Consultant under this Sub Consultant Agreement; the provisions of the Prime Contract, addenda, amendments and other documents forming a part of the Prime Contract are hereby incorporated into this Subcontract with the same force and effect as though set forth in full. Sub Consultant shall be bound to Consultant to the same extent that Consultant is bound to CSR, by all of the terms and provisions of Prime Contract Agreement, and by all decisions, rulings, and interpretations of CSR or its authorized representative. A copy of the Prime Contract Agreement is attached as *Exhibit A*.

In the event of direct conflict between CSR Agreement, as defined above, and the provisions of this Sub Consultant Agreement, the greater requirement of the Sub Consultant shall control, or if that is an inapplicable standard, then the Prime Contract shall control.

**ARTICLE 20. GOVERNING LAW/DISPUTES**

This Subcontract shall be governed by and construed under the laws of the State of California.

Consultant and Sub Consultant shall attempt to resolve any and all disputes concerning the Agreement first by informal face-to-face negotiations, and then by formal mediation. Mediation fees, if any, shall be divided equally among the parties involved. In all events, however, Sub Consultant shall expeditiously carry out Consultant directions concerning the Project; and Sub Consultant hereby waives any right to cease or suspend its performance at any time when so doing would hinder Consultant ability to meet its obligations concerning the Project. In the event litigation and/or disputes develop between Consultant and Sub Consultant concerning or arising out of this

Sub Consultant Agreement, then the prevailing party shall be entitled to recover from the other reasonable attorney's fees and litigation costs. The "prevailing party" means the party determined by the court to have most nearly prevailed, even if such party did not prevail in all matters, not necessarily the one in whose favor a judgment is rendered.

**ARTICLE 21. SUBCONSULTANT'S INSURANCE**

- A. Without limiting Sub Consultant's indemnification obligations, Sub Consultant shall provide, pay for, and maintain in force at all time during the performance of the services insurance to protect himself, Consultant, and the Client: from claims arising under Workman's (Worker's) Compensation; from claims for damages because of bodily injury including personal injury, sickness or disease or death of any person; from claims for damages resulting from injury to or destruction of property, including loss of use thereof; and from claims arising out of the performance of professional services, or as a consequence thereof, caused by error, omission, or negligent act for which Subcontractor, its employees, agents, subcontractors, and material suppliers, or the invitees of any of them, may be responsible.
- B. Sub Consultant shall provide, pay for, and maintain in force at all times during the performance of the services insurance **in compliance with the insurance requirements of the Prime Contract.** In the event the Prime Contract does not contain any insurance requirements, or to the extent such insurance requirements contained in the Prime Contract are less than the following insurance requirements, Sub Consultant shall provide, pay for, and maintain the following insurance:
  - i. Workers' Compensation Insurance as may be required by all state and federal workers' compensation acts, the Federal Longshoremen's and Harbor Workers' Compensation Act, the Outer Continental Shelf Act and such other acts as may be applicable to the Work performed hereunder.
  - ii. Employers' Liability Insurance with amounts required by law or \$100,000 whichever is greater.
  - iii. Commercial General Liability Insurance covering liabilities for death and personal injury and liabilities for loss of or damage to property with combined single limit of One Million (\$1,000,000.00) Dollars per occurrence and Two Million (\$2,000,000.00) Dollars in the aggregate.
  - iv. Automobile Public Liability Insurance with a minimum One Million (\$1,000,000.00) Dollars per occurrence coverage for both bodily injury and property damage.
  - v. Professional Liability Insurance with limits of liability not less than One Million (\$1,000,000.00) Dollars per occurrence and (\$1,000,000.00) Dollars in the aggregate.
- C. Sub Consultant shall submit to Consultant certificates of insurance evidencing such policies upon the signing of this Subcontract. The certificates provided to Consultant shall specifically state that Consultant shall be given thirty (30) days notice prior to cancellation or material change in policy coverage.
- D. Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, Subcontractor shall name Consultant and the Client as additional insured on all insurance policies required above.
- E. Sub Consultant shall also require its subcontractors, if any, who will perform work on the Project to procure and maintain the insurance specified above, naming Consultant and the Client as an additional insured, and to furnish Consultant proof thereof.

**Sub Consultant Obligations**

Sub Consultant shall not violate or knowingly permit to be violated any conditions of the policies of issuance provided to CSR under the term of this Agreement and shall at all times satisfy the requirements of the issuance companies issuing them.

For insurance purposes, Sub Consultant agrees to keep and maintain an accurate and classified record of its payroll, to furnish to CSR and to the insurance company or companies full and accurate payroll data information in accordance with the requirements of the insurance company or companies, and to permit its books and records to be examined and audited periodically by the insurance company or companies or CSR and their respective representatives.

Sub Consultant acknowledges and understands that Consultant in reliance on the provisions of this Sub Consultant Agreement, is placing its trust and confidence in Sub Consultant, and that Sub Consultant's duties toward the Consultant is that of a fiduciary. Therefore, Sub Consultant agrees not to: (1) directly or indirectly, hire, solicit or encourage an employee of Consultant to leave the employ of Consultant; (2) directly or indirectly, hire, solicit or encourage any other consultant to cease work with Consultant or (3) directly or indirectly solicit or encourage a client of Consultant to refrain from doing any business with Consultant.

#### **Notices, Costs, Losses**

All policies of insurance that Sub Consultant is required under the terms of this Sub Consultant Agreement to secure and maintain shall be endorsed to provide that the insurance company shall notify CSR, Consultant and the named insured, at least thirty (30) days prior to the effective date of any cancellation or modification of such policies.

The cost of the premiums for the insurance specified above to be secured and maintained by Sub Consultant shall be considered a part of the Sub Consultant costs and has been taken into account in determining the Compensation and hourly rates specified in "Exhibit A" of this Sub Consultant Agreement.

Sub Consultant shall require all policies of insurance that are in any way related to the Project and secured and maintained by Sub Consultant to include clauses providing that each underwriter shall waive all of its rights of recovery, under subrogation or otherwise, against CSR and the Consultant.

#### **ARTICLE 22. PROHIBITED INTEREST**

No member, officer, agent, or employee of CSR or Consultant during his or her tenure or for one year thereafter shall have any interest, direct or indirect, or shall be approached directly or indirectly regarding prospective employment by Sub Consultant without specific written authorization by Consultant. Violation of this article will result in termination of this Sub Consultant Agreement for cause.

#### **ARTICLE 23. NON-WAIVER**

No failure or waiver or successive failures on the part of either party hereto, their successors or permitted assignees, in the enforcement of any condition, covenant, or article of the Sub Consultant Agreement shall operate as a discharge of any such condition, covenant or article nor render the same invalid, nor impair the right of either party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assignees.

#### **ARTICLE 24. NOTICES OR DEMANDS**

Any notice or demand to be given any one party to the other shall be given in writing per person service, telegram, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States Mail, postage prepaid, certified, return receipt requested and addressed to such party as follows:

Consultant  
Substrate, Inc  
270 Crest Rd  
Novato, CA 94945  
Attn: Sundeep Jhutti, PE, SE

Sub Consultant:  
Miller Pacific  
Engineer Group  
504 Redwood Blvd, Suite 220  
Novato, CA 94947  
Attn: Scott Stephens

Either party may change the address at which such party desires to receive written notice of such change to any other party. Any such notice shall be deemed to have been given and effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not detract or delay the giving of notice.

**ARTICLE 25. PATENTS AND COPYRIGHTS**

No drawings and specifications, as instruments of services developed by Sub Consultant as part of its work under this Sub Consultant Agreement, shall be the subject of an application for patent, copyright or trademark by or on behalf of Sub Consultant.

**ARTICLE 26. SEVERABILITY**

If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Sub Consultant Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**ARTICLE 27. NO THIRD PARTY RIGHTS**

Nothing contained herein shall be deemed to create any contractual relationships between the Sub Consultant and CSR or any of the other contractors, subcontractors, or material suppliers on the Project, nor shall anything contained herein be deemed to give any third party any claim or right of action against Consultant or Sub Consultant which does not otherwise exist without regard to the Sub Consultant Agreement, other than CSR.

**ARTICLE 28. EXTENT OF AGREEMENT**

This Sub Contract Agreement, including the Work Authorizations(s), represents the entire and integrated agreement between Consultant and Sub Consultant and supersedes all prior negotiations, representations or agreements, whether written or oral.

IN WITNESS WHEREOF, the parties have made and executed this Sub Consultant Agreement as of the day and year first written above.

**Substrate, Inc**

**Miller Pacific Engineering Group**



**Signature**

Sundeep Jhutti

**Signature**

Scott Stephens

**Print Name**

President

**Print Name**

President

**Title**

1/21/2021

**Title**

January 21, 2021

**Date**

**Date**

**ATTACHMENTS:**

*Exhibit A: Prime Contract*

*Exhibit B: Proposal*



August 4<sup>th</sup>, 2021

Sunny Jhutti, PE, SE  
Resident Engineer  
Substrate, Inc - <https://substrateinc.com/>  
Structural Engineering | Construction Management  
415.246.4920

**REF: Pavement Non-Destructive Friction Testing in San Rafael, CA**

Dear Mr. Jhutti,

ARA is pleased to provide the following proposal for friction testing. ARA will mobilize its 1295 Pavement Friction Tester to conduct non-destructive friction testing (NDT).

The goal is to determine the Skid Numbers on the road. Due to the short length of the bridge, it is likely only one to two test values can be recorded with each pass of the friction test rig.

Please note that it is **VERY important** that the road be free of personnel and equipment for 300-500ft before the test area and 300ft after the test area to allow safe acceleration and deceleration of the friction testing equipment. If the roads are open to traffic we do not require traffic control.

Please call if you have any further questions. Thank you for the opportunity to offer our services.

Sincerely,

**Applied Research Associates**

Phillip R. Donovan, PhD, PE  
Principal Engineer  
Applied Research Associates  
165 S. Chestnut St  
Ventura, CA 93001  
Phone: (719)649-9505

William R. Vavrik, Ph.D., P.E.  
Vice President



## 1 PROJECT UNDERSTANDING

Applied Research Associates, Inc. (ARA) understands that you would like friction testing conducted on a bridge on Southern Heights Blvd in San Rafael, CA. Testing is to be completed in 1 lane in each direction.

Skid resistance testing will be conducted in all lanes using our 1295 PFT. The testing and will be performed in accordance with ASTM E274 and then correlated to the California Coefficient of Friction Number (f).

We will provide a written report showing tests results in electronic (PDF) format by email. We will come to the site with a full tank of water to complete the testing.

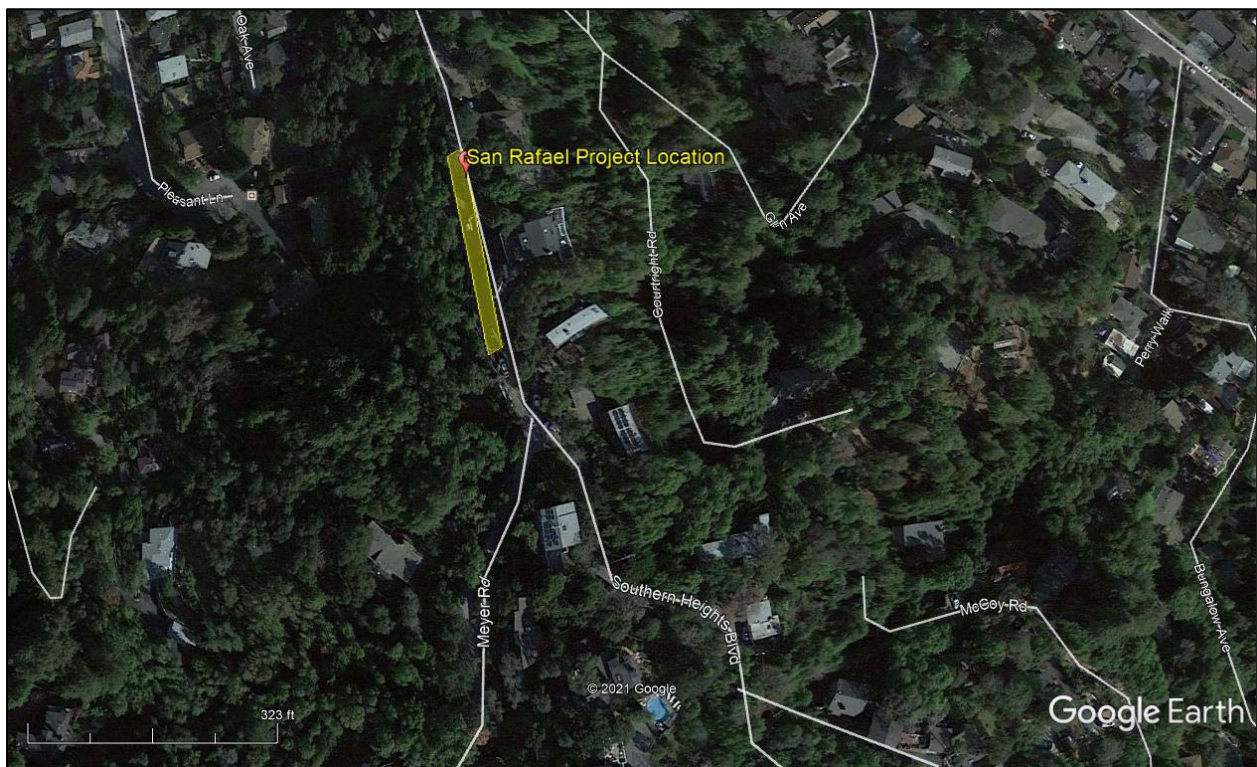


Figure 1. Friction Testing Location

## 2 SCOPE OF SERVICES

ARA will provide Friction testing and data analysis.

Skid resistance testing will be conducted in all lanes using our 1295 PFT. The testing and will be performed in accordance with ASTM E274 and then correlated to the California Coefficient of Friction Number (f).

The ASTM E501 standard rib tire will be used for the testing and water will be applied to the pavement ahead of the test tire to provide a 0.5 mm water film depth in accordance with E274. Please note that the typical test speed is 40mph for ASTM E274, but because the speed limits are lower for these roads, the testing will be completed and reported at the posted speed limits.

The skid number (SN) for each test will be reported as well as the average for each uniform section.

The correlation equation between the SN40R value and the California Coefficient of Friction Number (f) is from the State of California Report Number 633126-7 Skid Tester Correlation Study from October of 1971.

$$SN40R = 15.1 + 81.5f \text{ or } f = \frac{SN40R - 15.1}{81.5}$$

A summary of the non-destructive testing plan for the road is shown below:

ARA Equipment	Pavement Friction Tester (PFT)
Type of testing	ASTM E274 Skid resistance
Frequency	Minimum test frequency of 250ft, minimum of 3 tests per lane
Estimated number of test points	6 – 10 points
Testing time (hours)	3-5 hours

The PFT tank should not have to be filled with water in the field. Typically, no traffic control is needed for the skid resistance testing unless required by California DOT. If traffic control is required it shall be provided by the prime contractor in accordance with California DOT requirements. Note that, depending on the test speed, we may require up to 500ft at the beginning and the ending of the test area for safe acceleration and deceleration.

After collecting and analyzing the data, a letter report will be provided including the SN and California Coefficient of Friction for the reporting frequency shown in the above table. All data will be referenced with a distance from the start point of the section and GPS coordinates. A Google Earth file will be provided showing the location of the collected data.

### 3 PROJECT SCHEDULE

It is anticipated that testing will be completed in 1 day. Please note we require 3 weeks' notice to proceed to schedule the equipment and technician for the testing.

### 4 DELIVERABLES

A letter report will be provided including the SN and California Coefficient of Friction results. All data will be referenced with a distance from the start point of the section and GPS coordinates. A Google Earth file will be provided showing the location of the collected data.

### 5 PROJECT PRICE

ARA will provide the services noted in this proposal on a firm fixed price basis according to the following price. **Please note that there are two prices shown, one if this project is combined with a second project and one if we have to mobilize individually for this test.**





COMBINED MOBILIZATION with another project		
Bridge Friction Testing on Southern Heights Blvd in San Rafael, CA		
Task	Item	Price
Task 1 - Friction Testing	Item 1 - Project Management	\$825
	Item 2 - Mobilization	\$2,992
	Item 3 - Friction Data Collection	\$3,579
	Item 4 - Data Processing	\$1,029
	Item 5 - Data Submittal	\$621
<b>Total</b>		<b>\$9,044</b>
INDIVIDUAL MOBILIZATION		
Bridge Friction Testing on Southern Heights Blvd in San Rafael, CA		
Task	Item	Price
Task 1 - Friction Testing	Item 1 - Project Management	\$825
	Item 2 - Mobilization	\$3,520
	Item 3 - Friction Data Collection	\$3,579
	Item 4 - Data Processing	\$1,029
	Item 5 - Data Submittal	\$621
<b>Total</b>		<b>\$9,572</b>

ARA will invoice after submittal of the results for payment to be made within 30 days of receipt of invoice (Net 30).

**6 GROUND RULES AND ASSUMPTIONS**


ARA’s offering is based on the following ground rules and assumptions. Should any of these be adjusted during negotiations, the proposed offer, including pricing may be subject to change.

1. ARA anticipates a fixed price contract.
2. The assumed period of performance is summer 2021.
3. ARA will submit one invoice after the submittal of the results to the client with payment terms of net30.
4. ARA anticipates that the terms and conditions part of this proposal will govern.
5. One (1) testing day is a normally a total of eight (8) working hours either day or night. An additional \$51.09 per hour (\$408.72 per 8-hour shift) will be added for night testing. Each additional hour of testing would involve \$333. Overtime rates (\$51.09 added to standard rate) will be charged for each additional hour exceeding the 8-hour day or 40-hour week. Standby time will be charged at \$245 per hour.
6. ARA requires the following support for the effective completion of this project:
  - a. Any permits will need to be provided by the prime contractor.
  - b. Traffic control will need to be provided by the prime contractor.
  - c. The testing requires dry pavement. Any standby time during wet pavement conditions where there is standing water will be charged in accordance with the rates shown above. Scheduling requires two weeks’ notice to proceed.
7. This proposal is valid for a period of 90 days from the date of the proposal. We reserve the right to review our scope if an agreement to provide our services has not been reached within the 90-day period.



## 7 ACCEPTANCE OF PROPOSAL

Your signature below indicates your acceptance of this proposal in accordance with the scope, price, schedule, and the terms and conditions contained herein, and will create a binding agreement between you and ARA. This acceptance will act as a notice to proceed.

Acceptance and Authorization	
Name (print)	Sundeep Jhutti
Title	President
Signature:	
Date:	8/15/2021



## TERMS & CONDITIONS

Applied Research Associates, Inc. (ARA) agrees to perform the specified work with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances. The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to be bound accordingly.

### 1. INDEPENDENT CONTRACTOR

ARA will act as an independent contractor and not as Client's agent for any purpose whatsoever, and will have no authority to make any commitments on behalf of Client or to bind Client in any way whatsoever.

### 2. PROJECT SUPERVISION AND ASSIGNMENT

ARA shall have wide discretion in the methods used to perform any assigned tasks unless specified otherwise. ARA will cooperate with the Client to the extent possible to arrange for consultations between the Client, ARA personnel, and others engaged in rendering services to the Client related to ARA's performance under this agreement. ARA agrees that no tasks shall be performed or expenses incurred without specific authorization of the Client.

### 3. OWNERSHIP OF DOCUMENTS

All data, information, software, hardware, and documents produced by ARA under this agreement shall remain the property of ARA and may not be used by the Client for any endeavor outside of the scope of this agreement without the written consent of ARA, unless otherwise noted in this agreement.

### 4. ACCESS TO PROJECT SITE

If required for the performance of this effort, ARA will be granted timely access to the project site as needed. If traffic control or protection is required, it shall be provided by the Client or specific provisions will be made for ARA to provide traffic control or protection at an additional price. ARA will take precautions to minimize damage when performing its work, but ARA is not responsible for any items destroyed as a necessary part of the work.

### 5. PAYMENT

ARA will invoice monthly and at the completion of the project, with payment due net 30 days. Interest will be charged on amounts outstanding more than 30 days. The interest rate will be 1½ percent per month, compounded until paid. In the event of late payment, the Client agrees to pay all collection costs, legal expenses and attorneys' fees incurred by ARA in collecting payment, including interest. In the event that some portion of the invoice is disputed, payment for the undisputed portion of the invoice will be made within 30 days. If the Parties are unable to reach agreement regarding the disposition of the disputed portions of the invoice within 21 days, the matter will be resolved according to the Dispute Resolution clause of this agreement.

### 6. HIDDEN CONDITIONS OR HAZARDOUS MATERIALS:

If ARA has reason to believe that a hidden condition may exist, ARA shall notify the client who shall authorize and pay for all costs associated with the investigation of such condition and if necessary, all costs necessary to correct such condition. If (a) the client fails to authorize such investigation of the correction after due notification, or (b) ARA has no reason to believe that such condition exists, the Client is responsible for all risks associated with this condition, and ARA shall not be responsible for the existing condition nor any resulting damages to persons or property. ARA shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form.

### 7. TERMINATION OF SERVICES:

This agreement may be terminated upon 10 days written notice by either party. In the event of termination, the Client shall pay ARA for all services performed to the date of termination, all reimbursable expenses and reasonable termination expenses.

### 8. CONFIDENTIALITY

Each party agrees not to use the other's proprietary information for any purpose other than for the performance of this Agreement. Proprietary information is defined as information concerning techniques, processes, inventions, research and development, and cost data in written form with each sheet thereof marked with an appropriate legend indicating its proprietary nature and delivered by one party to another. Any other use of such proprietary information by the recipient shall be made only upon receipt of the prior written consent from an authorized representative of the other party.



## 9. INDEMNIFICATION

Each party (indemnitor) shall indemnify and hold harmless the other party (indemnitee) from and against any and all (including third party) claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the performance of services, to the proportional extent that any such claims, damage, loss or expense is caused by the negligent act or omission and/or liability of the indemnitor, anyone directly or indirectly employed by the indemnitor.

## 10. CONSEQUENTIAL DAMAGES

Neither Party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

## 11. FORCE MAJEURE

Neither party shall be liable for any failure of or delay in performance of its obligations under this Subcontract to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body, failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, or inability to obtain labor, materials, power, equipment, or transportation (collectively referred to herein as "Force Majeure"). Each party shall use its reasonable efforts to minimize the duration and consequences of any failure of or delay in performance resulting from a Force Majeure event.

## 12. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, excluding its principles of conflicts of laws. The United Nations Convention for the International Sale of Goods is expressly excluded from this Agreement, and shall have no force or effect on the parties.

## 13. DISPUTE RESOLUTION

Any controversy or claim arising out of or relating to this agreement, or breach thereof, which may be properly submitted to arbitration, shall be settled by arbitration. The substantially prevailing party shall be entitled to recover from the non-prevailing party all costs and expenses and attorney's fees it incurred in connection with any suit or legal or administrative action or appeal with respect to this order or the transaction under it.

## 14. NO THIRD PARTY RIGHTS

This Agreement shall not create any rights or benefits to parties other than Client and ARA. No third party shall have the right to rely on ARA opinions rendered in connection with the Services without ARA written consent and the third party's agreement to be bound to the same conditions and limitations as Client.

## 16. COMPLETE AGREEMENT; MODIFICATIONS

This Agreement constitutes the entire Agreement of the parties hereto, and all previous communications between the parties, whether written or oral with reference to the subject matter of this Agreement, are hereby canceled and superseded. No modification of this Agreement shall be binding upon the parties hereto, unless such is in writing and duly signed by the respective parties hereto.





**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Public Works**

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

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

**TOPIC: THIRD STREET / SAN RAFAEL HIGH SCHOOL CROSSWALK PROJECT NOTICE OF COMPLETION**

**SUBJECT: ACCEPT COMPLETION OF THE THIRD STREET / SAN RAFAEL HIGH SCHOOL CROSSWALK PROJECT (CITY PROJECT NO. 11354), AND AUTHORIZE THE CITY CLERK TO FILE THE NOTICE OF COMPLETION**

**RECOMMENDATION:** Accept completion of the Third Street / San Rafael High School Crosswalk Project and authorize the City Clerk to file the Notice of Completion.

**BACKGROUND:** Third Street between San Rafael High School and Montecito Plaza Shopping Center, about 350 feet east of Union Street, has been a popular place to cross for high school aged students. Because of the volume and speed of traffic on Third Street, it was determined that the most appropriate traffic control would be a hybrid signal with a pedestrian refuge island to traverse Third Street. A hybrid signal means that the signal heads stay dark unless actuated by a pedestrian wishing to cross Third Street. The City of San Rafael and the San Rafael City Schools applied for and were successful in receiving \$400,000 in Measure A Safe Pathways funding through the Transportation Authority of Marin (TAM). The City and SRCS agreed to split any amount over the \$400,000 grant.

The Third Street/San Rafael High School Crosswalk Project included many safety improvements at this new crossing location. A two-stage crosswalk was added across Third Street, with a pedestrian refuge island in the middle. Curb extensions (or bulb-outs) were added to shorten the crossing length for pedestrians and increase sight lines between vehicles and pedestrians. Lastly, a hybrid traffic signal was added, which stays dark unless activated by a pedestrian.

The project was advertised in accordance with San Rafael’s Municipal Code on June 25, 2020 and sealed bids were publicly opened and read aloud over a Zoom webinar on July 29, 2020 at 10:30 AM to comply with COVID-19 guidelines. On [August 17, 2020](#), the City Council adopted a resolution authorizing the City Manager to enter into an agreement with the low bidder, Sposeto Engineering, Inc. in the amount of \$389,939 and approving a construction contingency of \$60,061 for a total appropriation in an amount of \$450,000. Construction commenced on October 26, 2020, and all work was completed on August 6, 2021.

**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

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**FOR CITY CLERK ONLY**

**File No.:**

**Council Meeting:**

**Disposition:**

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 Third Street/San Rafael High School Crosswalk Project and authorize the City Clerk to file the Notice of Completion.

**ATTACHMENTS:**

1. Notice of Completion

Recording Requested By:  
The City of San Rafael

When Recorded Mail To:  
Lindsay Lara, City Clerk  
1400 Fifth Avenue, Room 209  
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 City of San Rafael ("City")
3. City's address is 1400 5<sup>th</sup> Avenue, 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: sidewalk improvements, addition of crosswalk, new hybrid traffic signal, new median pedestrian refuge island, and the installation of ADA curb ramps, and vertical curb and gutter.
6. The name of the original Contractor for the Project is: Sposeto Engineering, Inc.
7. The Project was accepted as complete on: < \_\_\_\_\_, 20\_\_ >.
8. The Project is located at: Third Street, in front of San Rafael High School and the easterly driveway of Montecito Plaza.

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: CITY ATTORNEY**

**Prepared by: Lisa Goldfien,  
Assistant City Attorney**

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

**TOPIC: 2021-2022 CITY COUNCIL REDISTRICTING PROCESS**

**SUBJECT: INFORMATIONAL REPORT ON (1) LEGAL AND POLICY CRITERIA GOVERNING REDISTRICTING; AND (2) PRELIMINARY DEMOGRAPHICS OF EXISTING COUNCIL DISTRICTS BASED ON CENSUS “LEGACY” DATA**

**RECOMMENDATION:**

By motion, accept the informational report.

**BACKGROUND:**

In 2018, the City Council adopted “by-district” voting for City Council elections, in which each member of the Council must reside in a district and is elected only by the voters within that district. After several public hearings to receive public input regarding the composition of the districts, guidelines for the preparation of draft district maps, and considering 14 different draft district maps prepared either by the City’s demographic consultant or by members of the public, the City Council adopted [Ordinance No. 1956](#) on [April 16, 2018](#), establishing a by-district electoral system and election sequence for four City Council districts according to the map designated as “[Canal 3B](#)”.

The City’s first general municipal election using the new City Council districts was held on November 3, 2020, for the City Council seats in District Districts 1/South and 4/North. The first elections in Districts 2/West and 3/East will be held on November 8, 2022.

Even though the City created its four electoral districts only three years ago, Elections Code § 21621 requires that the redistricting process occur again following each federal decennial census to rebalance the districts’ populations in light of the most recent data available. The most recent decennial census was conducted in 2020, and the Bureau released its “PL94-171” redistricting data on August 12, 2021. The California Statewide Database at UC Berkeley is currently “adjusting” the Census Bureau’s data to account for legislatively-required reallocation of incarcerated felons within the State. (See Elec. Code § 21621(a)(2).) Those adjusted data are expected to be released in late-September.

At its [July 19 meeting](#), the City Council received a presentation regarding the redistricting process from the City’s special counsel, Chris Skinnell of Nielsen Merksamer Parrinello Gross & Leoni, and its

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**FOR CITY CLERK ONLY**

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

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



demographic consultant, Kristen Parks of National Demographics Corporation, after which the Council approved the timeline for the redistricting process. This presentation is the next step in the process.

**ANALYSIS:**

Mr. Skinnell and Ms. Parks will be present at the City Council meeting to provide information regarding (1) the substantive criteria governing the readjustment of the district boundaries, and (2) a preliminary view of the demographics of the existing districts based on the unadjusted Census Bureau PL94-171 data.

The following is a summary of the main substantive legal requirements for the redistricting process:

- 1) The districts must be “substantially equal in population as defined by the Supreme Court.
- 2) The districts must comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.)
- 3) The districts must comply with constitutional restrictions on “racial gerrymandering.”
- 4) Subject to the constitutional and federal law requirements noted in paragraphs (1) – (3), voting districts must be established according to four statutory criteria, ranked in order of priority:
  - To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.
  - To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A “community of interest” is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.
  - Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.
  - To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

The unadjusted PL94-171 data indicate that the current districts’ “total deviation” is approximately 9.97%—right on the cusp of the 10% maximum allowable deviation prescribed by the Supreme Court. This deviation is driven primarily by Districts 3 and 4. District 3 is approximately 4.93% underpopulated, and District 4 is approximately 5.04% overpopulated. Districts 1 and 2 are closer to balance. District 1 is approximately 1.59% underpopulated, and District 2 is approximately 1.48% overpopulated.

**COMMUNITY OUTREACH:**

No community outreach has occurred yet, other than the July 2021 City Council meeting. However, during the redistricting process, staff intends to establish a City website with all pertinent documents in both English and Spanish, and to conduct one or more community meetings to acquaint the public with the process and the online mapping tool. Staff also intends to include an online training for use of the online mapping tool.

**FISCAL IMPACT:**

There is no fiscal impact from the recommended City Council action. Completion of the redistricting process will incur expenses of approximately \$50,000 in consulting attorney's fees and \$60,000 in consulting demographer's fees (including the online mapping tool), in addition to regular staff time. Sufficient funds have been included in the budget to cover these expenses.

**OPTIONS:**

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

1. Accept the informational report.
2. Direct staff to return with more information.
3. Take no action.

**RECOMMENDED ACTION:**

Move to accept the informational report regarding the City Council redistricting process.

**ATTACHMENTS:**

1. PowerPoint Presentation

# 2020 Census Preparing for Redistricting

A Presentation to the  
**San Rafael City Council**

September 13, 2021

# Recap of Process & Timeline

## Key Dates – Beginning and End

- **August 12, 2021:** Census Bureau released PL94-171 redistricting data
  - Usually released in Feb/March of year following Census
- **Late-September:** anticipated release of adjusted data by Statewide Database
  - Have to wait 1-3 weeks after data are released before maps can be drawn
- **March 21, 2022:** anticipated completion date (to allow ample time for implementation by the Marin County Elections Office)
  - If necessary, additional action can be taken at Board Meeting on Feb. 2, 2022
- **April 17, 2022:** Legal deadline for completion of redistricting process.

# Redistricting Process: Anticipated Council Meetings/Hearings

September 20, 2021 Council Meeting	Presentations at Council meeting re (1) legal and policy criteria governing redistricting, and (2) preliminary demographics of existing council districts based on Census legacy data or appropriate estimates.
November 8, 2021 Council Meeting	Demographer provides updated demographic analysis of existing districts with final adjusted Census numbers; Council conducts first public hearing to solicit testimony regarding criteria to be used for redistricting, especially communities of interest.
January 18, 2022 Council Meeting	Council conducts second public hearing to solicit testimony regarding criteria to be used for redistricting, especially communities of interest; Council adopts criteria for redistricting, identifies communities of interest, instructs demographic consultant to prepare draft district plans.
February 21, 2022 Council Meeting	Demographic consultant to present initial draft district plan(s). Council holds public hearing on draft plan(s). Council may order modifications to any of the plan(s).
March 21, 2022 Council Meeting	Demographer presents one or more additional draft plans and modified plans, incorporating public testimony as appropriate; Council holds public hearing on draft plans, votes to choose one plan, adopts resolution setting actual boundaries. If the Council instead orders modifications to any of the plans, another public hearing will be required.

**\* Dates are subject to change**

## Process: Effect on Current Councilmembers

- No councilmember's term cut short (*see* Elec. Code § 21626(a)), but
- When his or her term ends, an incumbent can only run from the new district in which he or she resides.

# Legal & Policy Criteria



## Federal Criteria:

- Equal Population
- Voting Right Act
- No Racial Gerrymandering

## Statutory Criteria:

1. Geographically contiguous
2. Minimize division of neighborhoods and “communities of interest” to the extent practicable
3. Easily identifiable boundaries (major streets, etc.)
4. Compactness of population

## Traditional Criteria:

- Keep incumbents in their current districts/respect voters’ choices/avoid head-to-head elections
- Minimize election year changes
- Future population growth

## Federal Criteria: Equal Population

- Overriding criterion is total population equality, *see Reynolds v. Sims*, 377 U.S. 533 (1964).
- Unlike congressional districts, local electoral districts do not require perfect equality—some deviation acceptable to serve valid governmental interests.
- Total deviation less than 10% presumptively constitutional. (Caution: the presumption *can* be overcome!)

# Federal Criteria: Equal Population (cont.)

Total Population:	414,076		1	2	3	4	5
Ideal:	82,815	Pop.	84,687	82,167	83,661	80,568	82,997
Deviation Range:	4,115	Dev.	1,868	-648	846	-2,247	182
Total Deviation %:	4.97%	Dev. %	2.26%	-0.78%	1.02%	-2.71%	0.22%

1. Divide the **total population** by the **number of seats** to get the **ideal population**
2. Subtract the **smallest district's population** from the **largest**
3. Divide #2 by #1 to get the **total plan deviation**

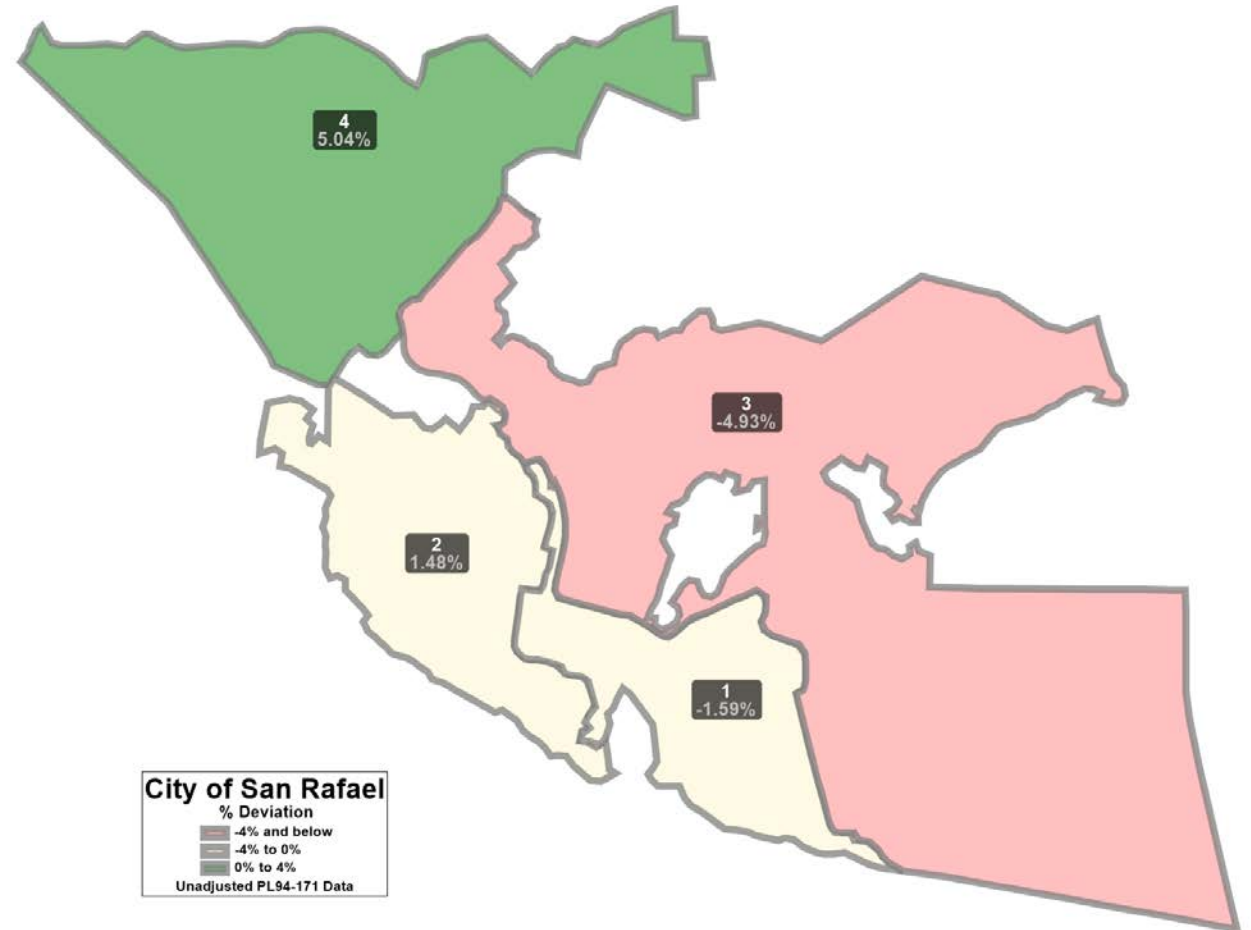
## Population Equality: State Law

- Elec. Code § 21621(a)(2): “[A]n incarcerated person ... shall not be counted towards a city’s population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the city ...”

# *Preliminary* Demographics

Dist.	Est. Pop.	Dev.*	% Dev.
1	15,074	-244	-1.59%
2	15,544	226	1.48%
3	14,563	-755	-4.93%
4	16,090	772	5.04%
<b>Total</b>	<b>61,271</b>	<b>1,527</b>	<b>9.97%</b>

\* Ideal District Population:  
15,318 total persons

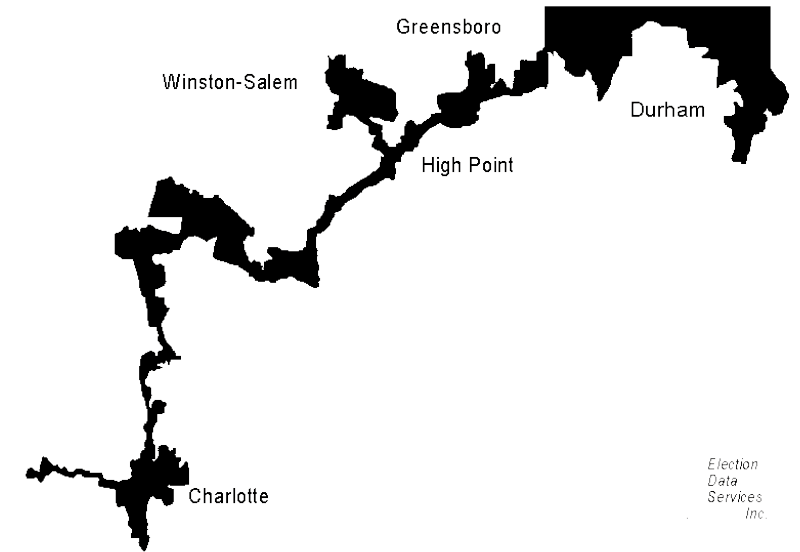


## Federal Criteria: Voting Rights Act

- Section 2 of the federal Voting Rights Act prohibits electoral systems (including district plans), which dilute racial and language minority voting rights by denying them an equal opportunity to nominate and elect candidates of their choice.
- “Language minorities” are specifically defined in federal law to mean persons of American Indian, Asian American, Alaskan Natives or Spanish heritage.
- Creation of minority districts required only if the minority group can form the majority in a single member district that otherwise complies with the law. *Bartlett v. Strickland*, 556 U.S. 1 (2009).

# Federal Criteria: No Racial Gerrymandering

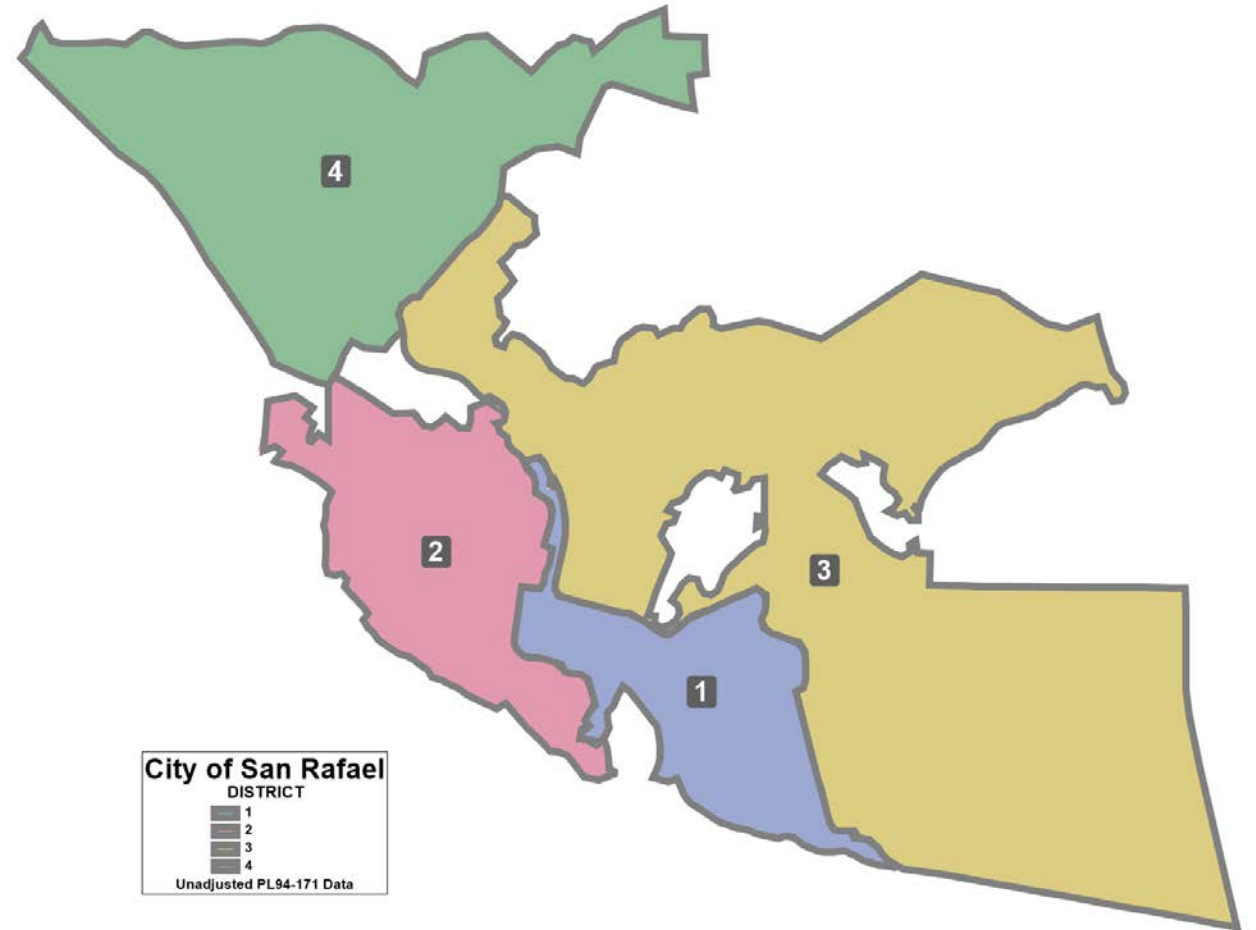
- The Fourteenth Amendment restricts the use of race as the “predominant” criterion in drawing districts and the subordination of other considerations. *Shaw v. Reno*, 509 U.S. 630 (1993); *Miller v. Johnson*, 515 U.S. 900 (1995).
  - Such predominant use must be justified as narrowly tailored to fulfill a compelling state interest – *i.e.*, strict scrutiny
- Bizarrely shaped electoral districts can be evidence that racial considerations predominate, but bizarre shape is not required for racial considerations to “predominate.”
- Fourteenth Amendment does not, however, prohibit all consideration of race in redistricting. *Easley v. Cromartie*, 532 U.S. 234 (2001).
- **Focus on communities of interest.**



# *Preliminary* Demographics

Dist.	% Latino CVAP	% NH Black CVAP	% NH Asian CVAP	% NH White CVAP
1	38.64%	2.55%	11.95%	46.26%
2	7.19%	3.41%	4.78%	84.10%
3	8.74%	2.79%	8.00%	78.07%
4	7.70%	1.11%	8.13%	81.46%
Total	11.33%	2.46%	7.50%	77.33%

“CVAP” = citizen voting age population





# State Law Criteria (FAIR MAPS Act):

Used to be discretionary (even in 2018); now mandatory & ranked:

1. Contiguity
2. Geographic integrity of Neighborhoods/Communities of Interest (COIs)
3. Easily identifiable natural and artificial boundaries
4. Compactness of population

## Elections Code § 21621(c):

(c) The council shall adopt district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A “community of interest” is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

# COIs: What Are They?

- State Law Definition: “a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation”
- Application:
  - Must have a common social or economic interest
  - That has a connection to City policy
  - Can be geographically described
  - And benefits from being in a single district
- NOT a community of interest: “Communities of interest do not include relationships with political parties, incumbents, or political candidates.”

# COIs: What Could They Include?

- Lifestyle: *e.g.*, community character, recreation, shared social gatherings
- Economy: *e.g.*, major employer/industry, commercial areas
- Demography: *e.g.*, race\*, income, education, language, immigration status, housing, etc.
- Geography: *e.g.*, urban/suburban/rural, mountainous, coastal
- Political subdivisions: CSDs, planning areas, etc.
- Place-based issues/needs: *e.g.*, public safety (wildfire concerns), environmental (air pollution)

# COIs: 2011 State Commission Examples

- “Its primary **shared economic interest is agriculture**, both valley agricultural bases, such as wheat, corn, tomatoes, alfalfa and various tree crops, and the wine-growing regions of Napa, Lake, and Sonoma counties.”
- The district “includes communities of Crestline to Big Bear that share the **common lifestyle of the mountain forest area** of the county and **similar interests in wildlife and emergency services concerns regarding wildfire danger.**”
- “This district also joins a **community of interest made up of Asian Americans and Pacific Islanders with shared economic and social ties based on income status, housing, language, and immigration status**, including a large Hmong immigrant community.”
- “It includes the communities that surround Folsom Lake with its **shared recreational interests.**”
- “This district includes the **core neighborhoods containing the Lesbian Gay Bisexual Transgender (“LGBT”) community**, as well as several **lower-income, immigrant and working-class neighborhoods.**”
- “This district is characterized by the interests of the western Coachella Valley, and includes tourism, a **retirement community with needs for health care access**, and bedroom communities.”
- “The district reflects **shared concerns about education, safety, and economic interests, along with transportation interests** among cities that share the 605 Freeway as a major corridor”
- “This district is characterized by common interests of the communities of western Riverside County, **animal-keeping interests of Jurupa Valley and Norco**; and shared interests between Eastvale, Norco, and Corona. Corona and Norco **share a common school district.**”
- “Cities and communities surrounding LAX **work together in addressing jet noise mitigation** issues and managing airport traffic.”

# Communities of Interest: Identifying Them

- Demographic data: *e.g.*, American Community Survey data, etc.
- Official county and city neighborhood maps/business districts
- Neighborhood groups/neighborhood watch groups/NextDoor groups/HOA Associations
- Welcome signs/gateway monument signs
- Online mapping tools

## • **Community testimony**

What bonds your community – what do you see as the common links in your community?

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Where is your community located – what are the boundaries of your community?

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Why should the community be kept together – or separate from another area?

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*“[T]he identification of a ‘community of interest,’ a necessary first step to ‘preservation,’ requires insights that cannot be obtained from maps or even census figures. Such insights require an understanding of the community at issue, which can often be acquired only through direct and extensive experience with the day-to-day lives of an area’s residents.” Favors v. Cuomo, 2012 U.S. Dist. LEXIS 36910, \*27 (E.D.N.Y. Mar. 19, 2012) (footnote omitted).*

## Possible Role of Other Traditional Criteria

- Minimize shifting voters from one election year to another/retaining core of existing districts
  - Voters currently in districts scheduled to vote in 2022 could be redistricted into a 2024 district, meaning there would be a six-year gap between their voting in Board elections
- Avoid head-to-head contests
- Anticipating future growth?
- Other political subdivisions' boundaries (*e.g.*, community service districts, school districts)

# Questions?

**City of San Rafael**  
In Recognition of  
**Suicide Prevention Awareness Month 2021**

- WHEREAS, September is known as National Suicide Prevention Month and is intended to help raise awareness surrounding suicide prevention resources available in the community; and
- WHEREAS, suicidal thoughts can affect anyone regardless of age, gender, race, orientation, income level, religion or background; and
- WHEREAS, according to the Centers for Disease Control, each year more than 48,000 people die by suicide – that’s one death every 11 minutes; and
- WHEREAS, suicide is the 2<sup>nd</sup> leading cause of death for people ages 10 – 34, the 10<sup>th</sup> leading cause of death in the US; and
- WHEREAS, 90% of people who die by suicide have experienced symptoms of a mental health condition; and
- WHEREAS, organizations like the National Alliance on Mental Illness and National Suicide Prevention Lifeline (800-273-TALK) work to help individuals in crisis and provide resources to shed light on this highly stigmatized topic; and
- WHEREAS, the benefits of preventing and overcoming mental health challenges, suicide attempts and loss, and substance abuse are significant and valuable to individuals, families, and our community at large; and
- WHEREAS, in these challenging times, education of suicide prevention and awareness are more needed than ever.

NOW, THEREFORE, I, Kate Colin, Mayor of San Rafael, do hereby proclaim the month of September 2021 as Suicide Prevention Awareness Month and in doing so, urge all residents and community members to strive to build safe and supportive environments and eliminate the stigma surrounding mental health issues that too often prevents people from seeking the care they need.



A handwritten signature in blue ink, appearing to read "Kate", is positioned above a horizontal line.

Kate Colin  
Mayor



**City of San Rafael**  
In Recognition of  
**HISPANIC HERITAGE MONTH 2021**

WHEREAS, as a community we recognize the contributions offered by a rich community tapestry of all ages, gender, race, orientation, religious traditions, etc.; and

WHEREAS, we celebrate National Hispanic Heritage Month annually from September 15 to October 15 by honoring the histories, traditions, and contributions of American citizens whose ancestors came from Latin America and Spain; and

WHEREAS, Marin County and San Rafael today embrace a growing and vibrant multicultural Latino community, with roots in Mexico, Central and South America, the Caribbean, and Spain, with many Spanish names still gracing our City, including San Rafael, Terra Linda, Las Gallinas, Santa Venetia, and San Pedro; and

WHEREAS, over thirty percent of the population of San Rafael is of Hispanic, Latino & Indigenous descent, and these residents contribute to the economic, cultural and historic fabric of our City; and

WHEREAS, over twenty percent of City of San Rafael employees have Hispanic heritage and they contribute to the strength and diversity of the overall city workforce; and

WHEREAS, the City of San Rafael is proud to recognize its Hispanic/Latino leadership, including the Hispanic Chamber of Commerce of Marin, Canal Alliance, Latino Council, Voces del Canal, the Multicultural Center of Marin, and others; and

WHEREAS, it is important to increase Hispanic cultural awareness and diversity by paying tribute to the valuable contributions made by Hispanic Americans to our business, cultural, and educational communities.

NOW, THEREFORE, I, Kate Colin, Mayor of San Rafael, do hereby proclaim September 15 through October 15, 2021 as Hispanic Heritage Month in the City of San Rafael and urge its residents to join in observing and recognizing the accomplishments of Hispanic Americans.



A handwritten signature in blue ink, appearing to read "Kate", is written over a horizontal line.

Kate Colin  
Mayor



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Economic Development**

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

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

**TOPIC: GROUND LEASE TO CENTERTOWN II, LP OF 855 C STREET**

**SUBJECT: ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A GROUND LEASE OF THE REAL PROPERTY AT 855 C STREET, SAN RAFAEL (CENTERTOWN) TO CENTERTOWN II, LP**

**RECOMMENDATION:**

Pass to print an ordinance approving and authorizing the Mayor to execute a “Ground Lease (Centertown Project)” substantially in the form attached, which grants Centertown II, LP a California limited partnership, a 99-year ground lease of the City-owned property at 855 C Street, and to sign all documents reasonably required to terminate the current ground lease in favor of Centertown Ltd., a California limited partnership (and affiliate of Centertown II, LP), and authorizing the Mayor and City Manager to execute all other documents reasonably required to carry out the intent and purposes of the foregoing.

**BACKGROUND:**

On August 17, 2020, the City Council adopted Resolution No. 14851, approving and authorizing the City Manager to execute an Option to Lease, which granted Centertown II, LLC, an affiliate of Centertown II, LP, an option to lease this same City-owned property at 855 C Street. The background to Resolution No. 14851, including the original (current) lease to Centertown, Ltd. (an affiliate of Centertown II, LLC and Centertown II, LP), and the need to raise funds to rehabilitate the property, is described in the [agenda report for the August 17, 2020](#) San Rafael City Council meeting.

**ANALYSIS:**

This Ground Lease is the next stage of the transaction contemplated by [Resolution No. 14851](#). As contemplated by that Resolution, Centertown II, LP has, subject to closing, obtained the necessary funding to rehabilitate the property.

From the City’s perspective, the essential business terms of the Ground Lease are as follows:

**FOR CITY CLERK ONLY**

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

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

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

- Term: 99 years. Under the current schedule, the commencement date will be on or about October 22, 2021, although that could change.
- Premises: City-owned land at 855 C Street, previously leased to Centertown, Ltd. (an affiliate of Centertown LP). The improvements, previously owned by Centertown, LTD, will be owned by its successor Centertown II, LP. The prior lease with Centertown, Ltd. will be terminated.
- Base Rent to City: One-time payment of \$83,000 (appraised land value) plus \$1.00 per year (both payable at closing), plus a \$5,000 per year monitoring fee (escalated per CPI).
- Use: Rehabilitating, constructing, owning and operating a residential development and related uses, including at least 60 dwelling units. Consistent with the current ground lease, at least 48% of the units (i.e., 28 of the 60) must be rented to households earning not more than 80% of the area median income in the San Francisco Bay Area, adjusted for household size (“lower income”). Other funders have even stronger restrictions. For example, CTCAC requires 100% of the units (other than the manager’s) to be leased to tenants at or below 60% of Marin County AMI. As described in the Seifel Consulting, Inc. report included with the Resolution No. 14851 agenda report, all Centertown residents at the time were lower income households, and many of them were extremely low.
- City Loans: As described in the Resolution No. 14851 agenda report, the various City outstanding loans will be consolidated into a single loan. The City is not expected to be required to loan additional funds for the project. The specific terms of the City’s consolidated loan, as well as a specific City Affordable Housing Regulatory Agreement, will be brought to the Council for review and approval at a later meeting closer to the expected closing/commencement date.
- Timing: The current project schedule contemplates a closing on October 22, 2021. This ordinance is being introduced for initial approval at the September 13, 2021 City Council meeting and if passed, will be scheduled for final adoption at the September 20, 2021 Council meeting. The intent is to have the approved ordinance become effective on October 20, 2021, in advance of the anticipated closing date.

**FISCAL IMPACT:**

The purpose of this ordinance is to provide BRIDGE/EAH the opportunity to re-syndicate and refinance Centertown located at 855 C Street in San Rafael, California to provide flood improvements, ADA improvements, and other necessary ongoing maintenance. City Council approval of an ordinance is required to approve the new ground lease for BRIDGE/EAH to proceed with re-syndication and refinancing of this property.

There is no fiscal impact in adopting an ordinance that approves and authorizes the Mayor to execute the ground lease. The City will receive a base rent payable at closing along with a \$5,000 per year monitoring fee (escalated per CPI).

**OPTIONS:**

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

1. Pass the ordinance to print.

2. Pass the ordinance with modifications.
3. Direct staff to return with more information.
4. Take no action.

**RECOMMENDED ACTION:**

Adopt ordinance approving and authorizing the Mayor to execute a ground lease of real property at 855 C Street, San Rafael (Centertown) to Centertown II, LP.

**ATTACHMENTS:**

1. San Rafael Centertown Apartments Due Diligence Analysis
2. Ordinance of the City Council of the City of San Rafael Approving and Authorizing the Mayor to Execute a Lease of Real Property at 855 C Street, San Rafael (Centertown) to Centertown II, LP
3. Exhibit A to Ordinance – New Centertown II, LP Ground Lease
4. Public Hearing Notice



# Memorandum

**Date** August 7, 2020

**To:** City of San Rafael

**From:** Seifel Consulting, Inc.

**Subject:** San Rafael Centertown Apartments Due Diligence

Seifel Consulting, Inc. (Seifel) has performed a due diligence analysis regarding a proposed ground lease amendment and funding request from BRIDGE Housing and EAH Housing (BRIDGE/EAH) that would substantially rehabilitate Centertown Apartments (Centertown) in downtown San Rafael. The current residents of Centertown are in substantial need of affordable housing as their incomes are significantly below typical household incomes in Marin County.

Prior to BRIDGE/EAH acquiring the site, the property was originally planned as condominiums, but the condominium development failed financially prior to construction completion. The City of San Rafael (City) and its former Redevelopment Agency collaborated with BRIDGE/EAH to acquire the property and redevelop it as 60 units of affordable rental housing. As part of the project's financial structure, the City owns the land, and a BRIDGE/EAH-controlled limited partnership (Centertown Associated Ltd) ground leases the property from the City and owns the Centertown building improvements. EAH is the property manager for the property.

While BRIDGE/EAH were able to redevelop the property into apartments in 1992 by incorporating the existing, partially built foundation, Centertown has unfortunately experienced subsequent construction related issues including significant problems related to water intrusion.. These problems, coupled with the overall age of the building, have resulted in the need for substantial ongoing investment out of operating cash flow. BRIDGE/EAH have requested and been granted the deferral of payments on the City's ground lease and outstanding promissory note, as well as loan payment deferrals from other soft lenders, to pay for needed repairs and increase replacement reserves to help pay for the proposed substantial rehabilitation of the property.

BRIDGE/EAH commissioned Marx | OKUBO Associates to perform a Facility Condition Assessment of the property to determine its condition and the need for repairs to the building systems. As will be further described below, the property is in significant need of repair given its age and construction type. BRIDGE/EAH are proposing to undertake rehabilitation improvements to the property as recommended in the Facility Condition Assessment and to provide additional building common area for residents and property management. The proposed re-syndication of the property and amendment to the ground lease is anticipated to leverage substantial funding from the State of California, County of Marin and private capital to holistically correct the property's waterproofing issues and to undertake other needed rehabilitation.

Both BRIDGE and EAH have a long history of developing, rehabilitating and managing affordable housing. As the property manager of Centertown, EAH provides a broad array of resident services and regularly communicates with residents. Once BRIDGE/EAH have been able to secure funding for the

rehabilitation, they will provide information to the residents regarding the likely rehabilitation schedule and information regarding any temporary moves that households may need to make during the rehabilitation process. Alternative housing will be provided at no additional cost to residents who need to be temporarily relocated, and they will receive assistance with their move and will not have to pay any costs associated with the move or storage for personal belongings. The main focus will be to provide ample information and support to residents, as well as comfortable and convenient accommodations during any temporary moves.

In order to perform its due diligence analysis, Seifel analyzed a series of technical documents that were provided by City and BRIDGE/EAH staff and are referenced in this memorandum. Seifel also interviewed City staff and BRIDGE/EAH staff regarding specific elements of the proposed project and worked with staff and outside counsel to refine the proposed terms of the ground lease amendment and funding request to the City.

This memorandum is organized into the following sections:

- A. Project Description
- B. Existing Ground Lease
- C. Existing City Loan and Other Financial Obligations
- D. Proposed Rehabilitation Program
- E. Proposed Funding Program and Ground Lease Modifications
- F. Due Diligence Findings
- G. Conclusion

The due diligence analysis in this memorandum documents why BRIDGE/EAH's proposed modifications to the ground lease and City loan requests are reasonable, and how they will help the City of San Rafael preserve and substantially rehabilitate an important source of affordable housing for local residents, consistent with the City's Housing Element goals. The proposed resyndication and rehabilitation program will improve the living environment for approximately 180 of the City's lower income residents and will leverage sufficient public and private funding to accomplish much needed repairs and building improvements that will enhance the City's long-term interests in the property.

## **A. Project Description**

Centertown Apartments is located at 855 C Street on a 0.98-acre lot in downtown San Rafael owned by the City of San Rafael. The property was a housing asset of the former San Rafael Redevelopment Agency (SRRA). The City also owns the adjoining property at 815 C Street.

BRIDGE/EAH redeveloped the property into 60 affordable apartments in 1992 by incorporating an existing, partially completed foundation structure that was part of a former condominium development.<sup>1</sup> The former condominium developer declared bankruptcy before construction was complete, and the property was foreclosed in 1984 by the United States Bank. The foundations remained as they were constructed in 1983 until BRIDGE/EAH began construction on Centertown Apartments in the early 1990s.<sup>2</sup>

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<sup>1</sup> For purposes of this memorandum, the use of the term BRIDGE/EAH refers to the Centertown legal entities that have developed and are proposing to rehabilitate and resyndicate the property.

<sup>2</sup> A detailed history of the development and key terms of the City's ground lease and loans are presented in the Centertown Deal Memo, which was prepared by Page Robbins Associates for the City of San Rafael on February 1, 2000. This is a major source of information that was used in this due diligence analysis, which was verified to the extent feasible with current City and BRIDGE/EAH staff, as well as outside counsel.

The apartment building contains approximately 85,469 gross square feet of building area and is arranged around a central courtyard. Centertown provides 59 affordable family apartments– 17 one-bedroom units, 27 two-bedroom units, and 15 three-bedroom units. An onsite property manager occupies a two-bedroom manager’s unit for a total of 60 units. The property includes 102 parking spaces including six offsite spaces on 815 C Street that are able to be used by Centertown residents under the terms of a recorded Declaration of Restrictions for as long as the property remains residential and parking is required by the City.

All of the residents of Centertown are lower income households, with many of them being extremely low income. According to BRIDGE/EAH, the average household income of Centertown residents is about 32% of the Marin County Areawide Median Income (AMI).

## **B. Existing Ground Lease**

On March 8, 1988, BRIDGE entered into the initial Purchase Agreement with United Savings Bank to acquire the property. Later that year, property ownership was transferred from United Savings Bank to the former San Rafael Redevelopment Agency (SRRA). In 1989, property ownership of the adjacent 815 C Street was transferred from BRIDGE to SRRA. Both sites were then leased by the Lessor, SRRA, through a long-term ground lease to the Lessee, a project specific legal entity called Centertown Associates managed by BRIDGE/EAH.

The ground lease was originally recorded on November 30, 1989, and the term of the ground lease is 75 years. Three ground lease amendments have occurred since 1989 that amended specific sections related to the payment of ground rent given evolving financial conditions over time.

The original ground lease and subsequent amendments describe a complicated stream of payments that occur during specific periods of time. These payment amounts were tied to the project’s projected ability to meet its financial obligations including the repayment of loans that were provided by the City and the former SRRA. The most critical portions of the ground lease payment structure are summarized here:

- For the first five years, the Lessee’s initial ground lease payment or ground rent was \$1 per year.
  - A reconciliation was done in the sixth year to determine if the Lessee’s equity investment had been returned, and the rent continued at \$1 per year until this occurred.
- Once the Lessee’s equity investment was returned, the ground rent became 9% of gross income paid annually in arrears until it accumulates to \$1,061,104.
  - As further described below, the California Department of Housing and Community Development (HCD) provided a loan to the property that is subject to an HCD Regulatory Agreement that limits the amount of annual ground lease payments to a maximum of \$69,880 (\$84,880 minus a \$15,000 partnership management fee).<sup>3</sup>
- Once \$1,061,104 in ground rent payments have accumulated, the ground lease payment is \$1 per year until all of the original City and SRRA loans are repaid. (Only one City loan is currently outstanding as described below.)
- After the City and SRRA loans are repaid, ground rent is then based on 6% of gross income.

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<sup>3</sup> The HCD Regulatory Agreement does not allow cumulative distributions, but instead allows an annual distribution of up to \$84,880 in any year when there is net cash flow. After the allowable deduction of \$15,000 for a Partnership Management Fee, \$69,880 is available for payment of the deferred ground lease rent, although in recent years, surplus revenues have been used to fund reserves in order to meet repairs.



Based on an analysis of historical payments that were reported in annual financial audits performed on Centertown, the Lessee has made approximately \$430,000 in payments on the ground lease through December 2019, which means that about \$631,000 is remaining to be paid on the current \$1,061,104 ground lease payment tranche. Since 2016, almost all of the remaining cash flow has been deposited in the replacement reserve account to help pay for repairs on the property, and only about \$4,500 in ground lease payments have been made since then.

## **C. Existing City Loan and Other Loan Obligations**

The property has several outstanding loans that are payable to the City of San Rafael, State of California, County of Marin, and Citibank.

### **1. Existing City Loan**

The former SRRA and the City provided three loans to help finance redevelopment of the property. All but one loan was repaid in the early 1990s. The remaining \$303,000 promissory note from the former SRRA was transferred to the City, which is referred to in this memo as the existing City loan.

According to the City's FY 2018/19 Consolidated Annual Financial Report (CAFR), the former SRRA loaned \$303,000 at 3% simple interest to Centertown Associates, Ltd, which was due to be paid semi-annually. This existing City loan is fully secured by a deed of trust. With the dissolution of the Redevelopment Agency effective February 1, 2012, the assets of the Agency's Low and Moderate Income Housing Fund (LMHAF), including the Centertown Associates loan, were assumed by the City's Low and Moderate Income Housing Special Revenue Fund.

The existing City loan was amended, with the relevant terms being contained in the Amended and Restated Promissory Note dated May 6, 1991, with a maturity date of June 30, 2023.

Payments have been made on this loan over the years, and the remaining balance is about \$260,000 according to the most recent City Consolidated Annual Financial Report (CAFR) and Centertown 2019 Audit performed on behalf of BRIDGE/EAH.<sup>4</sup> (Please see Appendix Table A-1 for additional information regarding this loan and other loan obligations.)

### **2. California Housing and Community Development (HCD) Loan**

The California Department of Housing and Community Development (HCD) provided a Rental Housing and Construction Program (RHCP) loan to the property in the early 1990s, which is subject to an HCD Regulatory Agreement that restricts rents on 29 units (RHCP units). The loan is for 3% simple interest and is payable by November 5, 2052. The current principal balance is \$1,722,662, and about \$1.45 million in interest has accrued on this loan as of the end of 2019.

### **3. County of Marin Loan**

The County of Marin (County) provided two loans totaling \$99,504 loan to the property in the early 1990s, which is subject to a loan agreement that has a unique set of interest and payment provisions. No interest or principal is currently due, but the loan comes due on May 1, 2021. (The County also provided a CDBG loan of \$59,504 that has since been retired.)

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<sup>4</sup> The remaining balance on the City loan is \$259,756 (including accrued interest) as of December 31, 2019, according to the most recent Centertown 2019 Audit (Centertown Associates, Ltd. Financial Statements and Independent Auditor's Report, December 31, 2019). The City's FY 2018/19 Consolidated Annual Financial Report (CAFR) indicates that the remaining balance as of the end of June 30, 2019 was \$256,870.



## 4. Citibank Loans (AHP and Permanent Mortgage)

In addition to these soft, public agency loans, two private loans were provided to the project. The Affordable Housing Program (AHP) loan is a soft private loan that is provided through Citibank (Citi). It has a 0% interest rate and a 30-year term, with a due date of June 30, 2023. BRIDGE/EAH believe that this loan will be forgiven and will no longer apply to the property in the future.

A senior permanent mortgage with a remaining balance of \$236,321 is payable to Citibank and serviced by Berkadia Commercial Mortgage. This loan is senior to all other loan obligations, and the required payments are due in monthly installments of \$5,981, based on a 30-year amortization including interest at 4.690%. The loan is due in full in the year 2023. (Please refer to Appendix Table A-1 for a summary of these loans that is organized according to the seniority of the loans based on the City's records.)

## 5. Deferral of Loan Payments

In the past five years, BRIDGE/EAH have requested and been granted annual deferral of payments on the City's ground lease and outstanding promissory note, as well as loan payment deferrals from HCD in order to contribute additional funds to the replacement reserves. According to the Centertown 2019 Audit, the property currently has about \$614,354 in replacement reserves available for capital improvements as of the end of 2019.

## D. Proposed Rehabilitation Program

As described above, the Centertown development has experienced numerous construction related issues, which include significant problems related to water intrusion, aging building systems and deferred maintenance, as identified in the Facility Needs Assessment performed by Marx | OKUBO Associates. These problems are not uncommon for a building that was constructed about three decades ago, particularly for affordable housing that does not generate sufficient cash flow to pay for significant rehabilitation costs. While ongoing repairs have been undertaken, the needed level of repairs substantially exceeds the replacement reserve account that has been accumulated from project cash flow, and the apartments require substantial renovation to improve the health, safety and quality of life for residents.

BRIDGE/EAH are proposing to resyndicate and refinance Centertown using tax exempt bonds and low income housing tax credits (LIHTC), as further described in the next section, in order to rehabilitate the property to address all immediate physical needs and establish reserves and cash flow to address future maintenance needs as they arise. All of the existing residents will be able to continue to reside in their apartments, although some residents could be temporarily moved depending on the extent of renovation in their units. These residents will be able to move back to their original unit once renovated.

The rehabilitation program is proposed to include the following improvements in the following priority order:

1. Waterproofing-related repairs, including the replacement of windows and sliding glass doors, repair of the roof membrane, shingles, gutters, and downspouts, and the removal and replacement of all cement plaster, repair of gypsum and plywood siding.
2. Exterior improvements to improve health and safety, including replacement of ceramic tiles, use of non-skid strips, signage, upgrades to handrails and entrances.
3. Accessibility upgrades to meet Americans with Disabilities Act (ADA) requirements, including the renovation of six apartment units to serve persons with disabilities.
4. Upgrade and/or replacement of HVAC, plumbing and electrical that will make the property safer, healthier, and environmentally sustainable and provide more efficient operations.

5. Upgrade of unit interiors to address critical repairs related to plumbing leaks and decayed unit finishes.
6. Community building addition of approximately 1,100 square feet to be located on the property's lower, interior courtyard, which will provide a community room, common area restrooms, kitchen area, resident service rooms and management offices.
7. Upgrade of common areas, including replacement of damaged exterior common area and dwelling unit doors and installation of resilient flooring in corridors.
8. Repair and upgrade of the courtyard and parking areas.
9. Should sufficient funds be available, additional rehabilitation of unit interiors will be done to those units most in need of updated interior finishes, which would include new kitchens, bathrooms, flooring and lighting fixtures.

These improvements will be done approximately in the priority order described above. The total estimated cost for the proposed improvements is approximately \$10 million, which includes an approximately 10 percent hard cost contingency that is typical for rehabilitation of older properties. The City's Building Department will monitor the rehabilitation efforts through its permitting and inspection process. Appendix Table A-2 shows the proposed development sources, which presents all of the costs associated the renovation and resyndication including the construction hard cost.

To permit the new addition proposed for the lower, interior courtyard, the BRIDGE/EAH team have submitted a design review application to the City's Zoning Administrator, and approvals were received on July 22, 2020. The remainder of the rehabilitation scope is by-right and a building permit application will be submitted in February 2021, in anticipation of a May 2021 construction start.

## **E. Resident Communication and Temporary Relocation**

As the property manager of Centertown, EAH regularly communicates with Centertown residents and provides an array of social services through the EAH "StayWell!" program for families, individuals, and aging adults. Once BRIDGE/EAH have been able to secure funding for the rehabilitation, they will provide information to the residents regarding the proposed rehabilitation schedule and any temporary moves that households may need to make during the rehabilitation process.

The proposed exterior rehabilitation and a substantial portion of the interior rehabilitation, including window/sliding door replacement, lighting, heating and water saving upgrades to all 60 units, can be performed while residents remain in their units. However, the proposed ADA retrofits for 6 units, and the potential kitchen and/or bathroom replacements in about 6-12 units, will be most effectively and safely done if households are temporarily moved while these upgrades are performed.

This means that some households will be temporarily relocated for a period of approximately 4-8 weeks while their units undergo interior rehabilitation work. Every effort will be made to minimize the time when residents must leave their homes. A relocation consultant and on-site property management staff will work with all affected households to address their immediate needs and resolve health and safety concerns.

Accommodations will be provided to residents who are temporarily relocated at no additional cost to the tenants. Packing materials, moving and storage of tenant belongings will also be coordinated and facilitated for them. The rehabilitation budget includes projected costs associated with the temporary relocation, and affected residents will not have to pay any of these expenses. The main focus will be to provide ample information and communication regarding any required move and to provide comfortable and convenient alternative housing for them during the relocation period. Once unit renovations are complete residents will be able to return to their original units.

BRIDGE/EAH are in the process of retaining a relocation consultant who will interview residents, prepare a relocation plan and then implement the plan to accomplish the temporary relocation in compliance with all relevant State and Federal laws. Interviews will be conducted with current residents to understand their housing needs, including any special needs related to disabilities and health problems, and their preferences related to the location and type of temporary housing. Relocation information and assistance will be provided in the primary language of the residents in order to assure that they understand the relocation plan and how their housing needs will be addressed.

A relocation schedule and noticing will be provided to households once the construction phasing is confirmed and BRIDGE/EAH know which households may be affected. A BRIDGE/EAH rehabilitation project manager will work closely with the General Contractor, relocation consultant, and property management staff to ensure a smooth construction schedule and facilitate temporary relocation.

## **F. Proposed Funding Program and Ground Lease Amendment**

BRIDGE/EAH are proposing to renegotiate the existing City, County and State loans to extend their term and modify their interest rates in some cases, among other modifications to be negotiated between the parties. BRIDGE/EAH are also proposing to resyndicate and refinance the development using tax exempt bonds and LIHTC that would be applied for in September 2020 to the California Debt Limit Advisory Committee (CDLAC). Each of the major proposed sources of funding are described below and shown in Appendix Table A-3.

As part of the proposed funding program, the apartments will continue to be restricted as affordable rental units for another 55 years. BRIDGE/EAH propose to maintain the current income restrictions, which range from 50% to 60% of the Area Median Income (AMI). More than 40% of the units will continue to house residents earning 50% AMI or less. Currently, fifteen residents receive Housing Choice Vouchers (HCV) from the Marin County Housing Authority that provide additional annual revenues to Centertown.

The 29 RHCP units will be maintained, which are subject to the HCD Regulatory Agreement and have rents that are subject to review and approval by HCD. Table 1 shows the proposed household income distribution at Centertown, which will remain substantively the same as the current income mix.

**Table 1  
Resident Affordability by Unit Type  
Centertown Apartments**

<b>Bedrooms</b>	<b>Rental Restriction</b>	<b>AMI</b>	<b>Total Units</b>
1	TCAC (RHCP)	50%	6
1	TCAC + HCV	60%	10
1	TCAC (Rent Burdened)	60%	1
2	TCAC (RHCP)	50%	11
2	TCAC + HCV	60%	5
2	TCAC (Rent Burdened)	60%	10
2	TCAC	60%	1
3	TCAC (RHCP)	50%	8
3	TCAC (RHCP)	60%	4
3	TCAC (Rent Burdened)	60%	2
3	TCAC	60%	1
2	Manager's Unit	N/A	1
<i>Subtotal RHCP Units</i>			29
<i>Subtotal HCV Units</i>			15
<b>Total</b>			<b>60</b>

Source: City of San Rafael, BRIDGE Housing, EAH Housing.

The current resident population is primarily families, with a number of single adults and seniors. This resident mix is proposed to continue in the future. While Centertown does not currently have any special needs or targeted populations, BRIDGE/EAH are proposing to retrofit six units to be fully ADA accessible, as required by TCAC. These units will be available to current households with disabilities and will be also be provided to new households with disabilities if residents were to move. Although no special needs units would be designated, some of the units will continue to be rented to extremely low-income households that earn 30% or less of AMI. (Although these units are designated as very low-income units affordable at 50% AMI, some are occupied by extremely low-income households.

## **1. Modifications to City Loans and Ground Lease**

BRIDGE/EAH are proposing that the City amend the loan terms of the existing City loan, and this loan would continue to remain a source of funding for the rehabilitation program. The existing City loan would be modified to change the interest rate to meet tax credit requirements (from 3% simple to compounding interest at the Applicable Federal Rate or AFR), extend the loan term to 55 years, and other needed changes to be negotiated with the City. The existing City loan would be assigned to the new tax credit partnership when this occurs, anticipated to be in May 2021.

A Fourth Amendment to the Ground Lease is proposed to occur at the end of 2020, and an option to enter into a new ground lease would be entered into during August 2020, with the formal agreement for the new ground lease to occur only if and when the re-syndication and refinancing process moves forward. The Option to Ground Lease is a required document to be submitted with the project's joint TCAC/CDLAC application to establish site control (a Purchase and Sale Agreement will also be entered into for the improvements).

**a. Fourth Amendment to the Ground Lease (To be Executed by End of 2020)**

Under the City's existing ground lease, the City is unlikely to receive substantive ground lease payments in the future as surplus cash flow will likely continue to be needed for repairs. The estimated hard cost for repairs (before consideration of soft costs related to professional services to undertake them) is \$10 million in 2020 dollars. If this amount of rehabilitation were divided by the 42 years remaining on the ground lease, the operating cash flow would need to contribute \$238,000 per year (in 2020 dollars) toward these repairs to accomplish them by the end of the ground lease. As noted in Section C, only \$69,880 is allowed by HCD to be annually paid out of project cash flow, so there would not be sufficient cash flow to pay for all of the proposed repairs before the end of the lease term.

In recent years, the developer has requested permission to contribute excess cash flow into replacement reserves, rather than make residual receipts distributions to ground lease and soft debt payments. These requests have consistently been approved by the City and HCD. The replacement reserves have been used to make immediate repairs and to save for the upcoming substantial rehabilitation that is planned for 2021.

Additionally, structural changes to the current ground lease payment structure are needed to bring the ground lease into compliance with IRS rules. These changes need to occur prior to the anticipated construction financing closing/resyndication event that is anticipated for May 2021. The developer and investor's respective tax counsel advise that amendments to the ground lease and the new loan be completed in 2020.

Taking into account these considerations while also seeking to enhance potential revenues to the City, the fourth amendment of the ground lease is proposed to modify the lease as follows:

- \$1 per year ground lease payment plus a \$5,000 per year annual City monitoring fee. These annual payments will continue until a new lease is negotiated.
- The remaining balance of the second ground lease payment tranche, which is approximately \$631,000, will become the principal amount on a new City loan.<sup>5</sup>
  - The precise loan amount will be verified with City staff and be based on the Centertown 2019 Audit as of 12/31/19 and the City's FY 2018/19 CAFR.)
  - This new City loan will ultimately be consolidated with the existing City loan and become part of a consolidated City loan to the new Limited Partnership should the resyndication and refinancing proceed. This consolidated City loan will be a part of the overall residual receipts distributions.
- The fourth amendment and the new City deferred loan are proposed to be entered into by the end of 2020 with City Council approval, once receipt of the tax credit and bond allocation is received.

The proposed 4<sup>th</sup> Amendment and the New City Loan allows the accrued ground rent of \$631,000 to be recast as a loan, which paves the way for an optimal structure for the project's resyndication and future

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<sup>5</sup> The New City Loan will be evidenced by a promissory note, with a maturity date of November 6, 2052 (after the HCD loan term has expired but before the expiration of the current Ground Lease term, which expires November 5, 2064) and will be a fully deferred soft loan. It will not be secured by the Property, but a default under the promissory note will be a default under the Ground Lease, which is how the Ground Lease payment is secured now. The New City Loan will essentially be a placeholder loan, as it will be consolidated with the City's Existing Loan when that loan is modified (to change some of the terms to comply with tax credit requirements such as: changing the interest rate from 3% simple to compounding AFR, extending the term to 55 years, and other needed changes to be negotiated with the City) and assigned to the new tax credit partnership in May 2021.

ground lease, while at the same time preserving the City’s ability to retain the ability to collect residual receipts payments from \$631,000 in the resyndication financial plan.

**b. Option to Ground Lease and New Ground Lease (Option To be Executed in August 2020; New Ground Lease Agreement to Occur with Proposed Resyndication and Refinancing)**

The proposed ground lease option would enable BRIDGE/EAH and the City to negotiate a new lease under the following terms, which may be modified as the financing program is refined over the next few months:

- A new ground lease term of 99 years from the date of execution.
- \$83,000 upfront ground lease payment based on a 2020 property appraisal that indicates the current land value is \$83,000, due to existing regulatory restrictions on the property. (This amount would be paid to the City at closing.)
- Payment of a \$5,000 per year annual City monitoring fee, which could escalate at 3% per year after permanent financing is in place. This amount will be determined in collaboration with City staff based on experience with other projects, taking into account the size of this development.
- The ground lease language will be modernized in connection with the resyndication, which will include a provision that the ground rent won't exceed the market value of the land.
- As described above, the consolidated City loan would be entered into at the same time.

As noted above, BRIDGE/EAH need a contractual option to enter a new ground lease in order to meet requirements for applying for tax credits and tax exempt bond monies. Entering into a new ground lease will enable the proposed resyndication and rehabilitation to occur, which will significantly improve the building improvements. As the City will ultimately receive the building improvements at the end of the lease, the rehabilitation will enhance the City’s long-term asset. Any new ground lease will have to be approved by the City Council, but subject to the material terms agreed to in the Option.

**c. New Housing Trust Fund Loan**

BRIDGE/EAH is applying to the City for between \$500,000 and \$1 million in Housing Trust Funds to help fund the rehabilitation of the development. (The City’s funds will be solely used for this purpose.) If approved, these loan funds would collectively be repaid out of residual cash flow from the project in proportion to the City’s contribution, as the project stabilizes. Table 2 summarizes the proposed City funding.

**Table 2  
Proposed City Funding  
Centertown Apartments**

<b>Proposed City Loans</b>	<b>Potential Loan Amount</b>
City- Existing Loan	\$259,576
City- New Loan	\$631,000
City- Housing Trust Fund	\$524,927
<b>Total Proposed Loans</b>	<b>\$1,415,503</b>

Source: City of San Rafael, BRIDGE Housing, EAH Housing.



## **2. California Housing and Community Development (HCD) Loan**

BRIDGE/EAH are proposing that HCD amend the existing HCD loan terms and allow this loan to remain a source of funding for the rehabilitation program pursuant to HCD's Loan Portfolio Restructuring Program and Guidelines. The existing HCD loan would be modified to change the interest rate to AFR, extend the loan term to 55 years, and other needed changes to be negotiated with HCD. The HCD loan would also be assigned to the new tax credit partnership. HCD would likely continue to receive an annual senior payment of \$10,311 per year, as well as a proportionate share of residual receipts.

## **3. County of Marin Loan**

BRIDGE/EAH are also proposing that the County amend the loan terms of its existing County loan and allow this loan to remain a source of funding for the rehabilitation program. In addition, BRIDGE/EAH have received additional funding of approximately \$1 million to help fund the project's substantial rehabilitation. The existing and new County loan would likely have the same terms, which would need to be consistent with tax credit requirements and would be similar to the City and HCD loan terms as described above.

## **4. Private Loans**

In addition to these soft, public agency loans, BRIDGE/EAH will secure a permanent mortgage, which is projected to be about \$5 million in size. This loan will be senior to all other loan obligations, and the required payments will likely be due in monthly installments based on a 40-year amortization at an interest of about 4.25%. (The AHP loan is assumed to be forgiven.)

## **5. Replacement Reserves**

BRIDGE/EAH are proposing to utilize about \$680,000 in funding from replacement reserves to help pay for the rehabilitation. As indicated earlier, the Centertown replacement reserve account has \$614,354 in funds as of 2019. Assuming the continuation of substantial HCV payments to tenants, additional funds could be available from surplus cash flow to be deposited in the replacement reserve. The final amount of replacement reserves that could be available to help pay for future rehabilitation costs will be finalized at the close of construction period financing, and upon finalization of the 2020 financial audit of the property. If additional reserves result in a surplus of project sources, the City of San Rafael Housing Trust Fund would be reduced by an amount commensurate to the surplus.

## **6. Syndication Proceeds, General Partner Equity and Seller Carry Back Loan**

BRIDGE/EAH are applying for low income housing tax credits, which will be syndicated and are projected to yield about \$9.1 million in investor equity. BRIDGE/EAH will also contribute about \$1.7 million in General Partner Equity that is equal to the portion of the developer fee that is in excess of the allowable fee pursuant to State guidelines. The seller carry back loan represents the difference between the appraised value for Centertown and the sum of the refinanced loans and the sponsor loan.

## **G. Due Diligence Findings**

The Centertown apartments are in substantial need of rehabilitation, which is evident from the Facility Needs Assessment performed by Marx | OKUBO Associates. In addition, BRIDGE/EAH retained an experienced General Contractor (Saarman) to review the building conditions and prepare a detailed cost estimate to undertake the rehabilitation in alignment with the findings of the Facility Needs Assessment.

Seifel reviewed the Facility Needs Assessment and interviewed BRIDGE/EAH to understand what rehabilitation elements are most critically needed, as there may not be sufficient funding to undertake all

of the improvements that have been identified. Section D of this memorandum describes the proposed rehabilitation and the proposed order of priority to undertake these improvements depending on the level of available funding from all sources.

Seifel has reviewed BRIDGE/EAH's funding plan as it evolved over the past two months and agrees that BRIDGE/EAH has identified all relevant public funding sources that could be utilized for this rehabilitation effort. BRIDGE/EAH will work to maximize the amount of revenues that are generated from LIHTC, and BRIDGE/EAH will contribute about 40 percent of its eligible developer fee (in the form of a General Partner contribution) to help fund the planned rehabilitation. In addition, BRIDGE/EAH is providing a seller back carry loan to the development that is equal to the difference between the appraised property value and the existing debt. Repayment on this loan is limited to 50% of cash flow per the HCD Loan Portfolio Restructuring Guidelines.

Seifel reviewed BRIDGE/EAH's financial pro forma, and the proposed high priority rehabilitation projects that can be feasibly undertaken if the City, County, State and private lender provide the requested level of funding. BRIDGE/EAH has included a 10% contingency to take into account cost escalation and potential rehabilitation needs that could occur once construction begins.

Should less funding be available, the scope of the rehabilitation may need to be reduced. If additional funding is available or not all of the construction contingency funds are needed, additional rehabilitation improvements could be undertaken. Seifel worked with BRIDGE/EAH to identify and prioritize these improvements, and BRIDGE/EAH is committed to implementing as many of the needed rehabilitation improvements as possible, following the order of priority in this memorandum, or as this priority may be further revised in consultation with City staff.

BRIDGE/EAH proposes that the existing public loans (soft debt) from the City of San Rafael, Marin County and the State of California will be amended to a compounded interest rate equal to the AFR, which is currently approximately 1.2%. While this proposed modification could generate less interest than the City's current 3% simple interest rate, this modification will generate additional tax credit equity for the project. Furthermore, the AFR may increase by the time this project proceeds and be closer to the City's current effective interest rate.

Seifel worked with City staff, BRIDGE/EAH and outside counsel to refine what BRIDGE/EAH originally proposed with respect to the ground lease and City funding. The proposed Fourth Amendment to the Ground Lease and proposed Option to Ground Lease, and the recommended provision of a new City loan equal to the outstanding balance on the ground lease, will enable the City to properly secure its interest in the property and provide for greater participation in future residual receipts. Seifel also prepared a comparative analysis of what the City would likely receive under the existing ground lease and with the proposed project under two alternative revenue scenarios. Table 3 on the next page compares the City revenues under these three scenarios. As this shows, the City will likely receive a larger stream of revenues with the proposed project than under the existing ground lease scenario.

## **1. Scenario 1– Existing Ground Lease With Fourth Amendment**

Scenario 1 assumes that the City would enter into the Fourth Amendment to the Ground Lease by the end of 2020. As described above under Section E, the Fourth Amendment to the Ground Lease will revise the existing payment terms to conform with current IRS rules, provide for the payment of an annual monitoring fee, and will facilitate the creation of a new City loan that will be refinanced in the syndication of the project, generating revenues to the City from residual receipts.



## **2. Scenario 2A and 2B– Proposed Project Under Two Revenue Scenarios**

Two proposed project scenarios are analyzed that assume the proposed resyndication and rehabilitation occurs based on key financial projections in the BRIDGE/EAH proforma. Scenario 2A assumes that future rental revenues do not include payments from Housing Choice Vouchers, as HCV payments cannot be underwritten to secure a permanent mortgage. Scenario 2A assumes that the resyndication occurs in May 2021, the new ground lease is signed in connection with the resyndication's financial closing, an upfront ground lease payment of \$83,000 is made at this time, and the City's annual monitoring fee payments continue throughout the term.

Scenario 2B assumes that 15 residents will continue to receive HCV, and revenues from these HCV payments are included in the cash flow projections. Scenario 2B assumes that the resyndication is delayed two years and occurs in May 2023, the new ground lease is signed prior to this date, an upfront ground lease payment of \$83,000 is made in May 2023, and the City's annual monitoring fee payments continue throughout the term. Scenario 2B generates significantly more revenues than the other two scenarios as additional cash flow is generated, and about 12.7% of this cash flow accrues to the City.

**Table 3**  
**Comparison of City Revenues from Alternative Scenarios**  
**Centertown Apartments**

<b>Lease Year (Fiscal Year Beginning)</b>	<b>Pro Forma Year</b>	<b>Scenario 1: Existing (Amended)</b>	<b>Scenario 2A: Proposed Project</b>	<b>Scenario 2B: Proposed Project (Plus HCV)</b>
2020		\$5,001	\$0	\$0
2021		\$5,001	\$8,000	\$5,001
2022		\$5,001	\$5,000	\$5,001
2023	1	\$5,001	\$5,680	\$101,066
2024	2	\$5,001	\$5,759	\$18,392
2025	3	\$5,001	\$5,816	\$18,702
2026	4	\$5,001	\$5,850	\$18,994
2027	5	\$5,001	\$5,860	\$19,267
2028	6	\$5,001	\$5,846	\$19,521
2029	7	\$5,001	\$5,805	\$19,753
2030	8	\$5,001	\$5,736	\$19,963
2031	9	\$5,001	\$5,638	\$20,150
2032	10	\$5,001	\$5,510	\$20,312
2033	11	\$5,001	\$5,350	\$20,449
2034	12	\$5,001	\$5,157	\$20,557
2035	13	\$5,001	\$5,000	\$20,637
2036	14	\$5,001	\$5,000	\$20,686
2037	15	\$5,001	\$5,000	\$20,703
2038	16	\$5,001	\$6,942	\$22,953
2039	17	\$5,001	\$6,645	\$22,969
2040	18	\$5,001	\$6,306	\$22,950
2041	19	\$5,001	\$5,924	\$22,894
2042	20	\$5,001	\$5,498	\$22,800
2043	21	\$5,001	\$5,024	\$22,665
2044	22	\$5,001	\$5,000	\$22,488
2045	23	\$5,001	\$5,000	\$22,266
2046	24	\$5,001	\$5,000	\$21,997
2047	25	\$5,001	\$5,000	\$21,680
2048	26	\$5,001	\$5,000	\$21,311
2049	27	\$5,001	\$5,000	\$20,889
2050	28	\$5,001	\$5,000	\$20,411
2051	29	\$5,001	\$5,000	\$19,874
2052	30	\$5,001	\$5,000	\$19,276
2053	31	\$5,001	\$5,000	\$18,614
2054	32	\$5,001	\$5,000	\$17,886
2055	33	\$5,001	\$5,000	\$17,087
2056	34	\$5,001	\$5,000	\$16,216
2057	35	\$5,001	\$5,000	\$15,269
2058	36	\$5,001	\$5,000	\$14,243
2059	37	\$5,001	\$5,000	\$13,135
2060	38	\$5,001	\$5,000	\$11,940
2061	39	\$5,001	\$5,000	\$10,656
2062	40	\$5,001	\$5,000	\$9,278
2063	41	\$5,001	\$26,993	\$43,893
2064	42	\$5,001	\$25,183	\$42,317
<b>Total</b>		<b>\$225,045</b>	<b>\$359,524</b>	<b>\$947,113</b>

## H. Conclusion

As described above, the property needs to be substantially rehabilitated, and the proposed funding request is reasonable. The City should continue to work with BRIDGE/EAH and the County to obtain the additional \$1 million in funding, as well as to facilitate the renegotiation of the HCD loan. In total, the City's commitment to the development would be to amend and renegotiate the ground lease and to enter into the following loans with the future Limited Partnership:

- Existing Loan—Approximately \$260,000, which is the current remaining balance including accrued interest.
- New Loan— Approximately \$631,000, which is equivalent to the remaining unpaid amount from the ground lease.
- Potential Housing Trust Fund Loan— Between \$500,000 and \$1,000,000, which, if awarded, would be used to help pay for new community facilities.

These loans would be repaid out of the resyndicated project's residual cash flow in proportion to the City's contribution. The City's investment will leverage about \$21.8 million in private and public funding to meet the total development costs of about \$23.2 million net of the building acquisition value.

The City's ground lease modification and investment will result in the following:

- Enhanced living environment for approximately 180 of the City's lower income residents.
- Substantial health, life-safety, environmental and accessibility improvements.
- Continued preservation of 60 affordable apartments, with an extension of the affordability covenants for another 55 years.
- Recapitalization of the development, which will leverage sufficient funding to undertake much needed rehabilitation improvements that will enhance the City's long term interests in the property.

**Appendix Table A-1  
Summary of Existing and Proposed Loans  
Centertown Apartments**

	Original Principal	Outstanding Balance as of Dec. 31, 2019			Key Loan Terms	
		Principal	Accrued Interest	Total	Due Date	Rate
<b>Existing Loans</b>						
First Mortgage (Berkadia, Citi)	\$1,025,504	\$236,321	\$924	\$237,245	2023	4.69%
Affordable Housing Program (AHP, Citi)	\$390,000	\$390,000	\$0	\$390,000	2023	None
California HCD (RHCP)	\$2,647,711	\$1,722,662	\$1,495,167	\$3,217,829	2052	3.00%
City of San Rafael/Formal SRRA*	\$303,000	\$219,982	\$39,594	\$259,576	June 2023	3.00%
City of San Rafael and Former SSRA*	\$616,000	\$0	\$0	\$0	N/A	N/A
County of Marin	<u>\$99,504</u>	<u>\$99,504</u>	<u>\$0</u>	<u>\$99,504</u>	May 2021	Specific Terms
Subtotal	\$5,081,719	\$2,668,469	\$1,535,685	\$4,204,154		

\* The City and the former San Rafael Redevelopment Agency (SRRA) provided three loans to the development, two of which were repaid in the 1990s. The remaining \$303,000 promissory note was transferred to the City as a former housing asset of the SRRA.

Source: Centertown Associates, Ltd. Financial Statements and Independent Auditor's Report, December 31, 2019, BRIDGE Housing, EAH Housing, .

**Appendix Table A-2  
Estimated Development Uses  
Centertown Apartments**

Development Cost (Uses)	Project Estimates	
	Total	Per Unit
<b>Property Related Costs</b>		
Acquisition Cost (Upfront Ground Lease Payment)	\$83,000	\$1,383
Acquisition Cost or Value- Building	\$14,917,000	\$248,617
BRIDGE WC Interest	\$50,000	\$833
<u>Other Acquisition Costs</u>	<u>\$41,500</u>	<u>\$692</u>
Subtotal	\$15,091,500	\$251,525
<b>Hard Construction Costs</b>		
Rehabilitation Costs	\$6,937,344	\$115,622
General Conditions	\$416,241	\$6,937
General Requirements & Profit	\$554,988	\$9,250
Covid Related	\$300,000	\$5,000
GC Testing Allowance	\$40,000	\$667
Insurance & Bond	\$158,171	\$2,636
Design Contingency	\$840,674	\$14,011
<u>Hard Cost Contingency</u>	<u>\$924,742</u>	<u>\$15,412</u>
Subtotal	\$10,172,160	\$169,536
<b>Project Related Soft Costs</b>		
Architecture/Engineering	\$1,085,109	\$18,085
Legal	\$135,000	\$2,250
Marketing/Lease-up	\$123,800	\$2,063
Appraisal	\$7,500	\$125
Miscellaneous	\$549,450	\$9,158
Title & Recording	\$52,500	\$875
Furnishings and Equipment	\$49,000	\$817
Permits and Fees	\$60,000	\$1,000
Soft Cost Contingency and Reserves	\$682,602	\$11,377
<u>Insurance</u>	<u>\$79,218</u>	<u>\$1,320</u>
Subtotal	\$2,824,179	\$47,070
<b>Project Financing</b>		
Construction Interest & Fees	\$1,365,688	\$22,761
<u>Permanent Financing</u>	<u>\$327,500</u>	<u>\$5,458</u>
Subtotal	\$1,693,188	\$28,219
<b>Syndication &amp; Developer Fee</b>		
Capitalized Developer Fee	\$2,010,264	\$33,504
GP Equity	\$2,010,264	\$33,504
<u>Construction Management and Other Consultants</u>	<u>\$170,600</u>	<u>\$2,843</u>
Subtotal	\$4,191,128	\$69,852
<b>Total Development Cost</b>	<b>\$33,972,155</b>	<b>\$566,203</b>

Source: City of San Rafael, BRIDGE Housing, EAH Housing.

**Appendix Table A-3  
Estimated Development Sources  
Centertown Apartments**

Development Revenues (Sources)	Project Estimates	
	Total	Per Unit
<b>Permanent Loan</b>	\$5,406,942	\$90,116
<b>Building Acquisition Value</b>		
Seller Note	\$2,500,000	\$41,667
<u>Seller Carryback Loan</u>	<u>\$8,222,431</u>	<u>\$137,041</u>
Subtotal	\$10,722,431	\$178,707
<b>Tax Credit Equity</b>		
Federal	\$9,144,715	\$152,412
<u>State</u>	<u>\$0</u>	<u>\$0</u>
Subtotal	\$9,144,715	\$152,412
<b>City of San Rafael Financial Assistance</b>		
City- Existing Loan	\$259,576	\$4,326
City- New Loan (Former Ground Lease)	\$631,000	\$10,517
<u>City- Housing Trust Fund</u>	<u>\$524,927</u>	<u>\$8,749</u>
Subtotal	\$1,415,503	\$23,592
<b>Other Public Funding Assistance</b>		
HCD RHCP- Existing Loan	\$1,722,662	\$28,711
County of Marin- Existing Loan	\$99,504	\$1,658
<u>County of Marin- New Loan</u>	<u>\$1,013,732</u>	<u>\$16,896</u>
Subtotal	\$2,835,898	\$47,265
<b>Other Revenues</b>		
GP Equity	\$2,010,264	\$33,504
Accrued interest during construction	\$1,603,421	\$26,724
Income From Operations	\$152,725	\$2,545
<u>Contributed Reserves</u>	<u>\$680,257</u>	<u>\$11,338</u>
Subtotal	\$4,446,667	\$74,111
<b>Deferred Developer Fee</b>	\$0	\$0
<b>Total</b>	<b>\$33,972,155</b>	<b>\$566,203</b>

Source: City of San Rafael, BRIDGE Housing, EAH Housing.

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL  
APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A GROUND  
LEASE OF THE REAL PROPERTY AT 855 C STREET, SAN RAFAEL  
(CENTERTOWN) TO CENTERTOWN II, LP**

**WHEREAS**, the City of San Rafael owns real property located at 855 C Street, commonly known as Centertown, and leases that real property to Centertown, Ltd, a California limited partnership, which has constructed and operates on the real property a 60 residential unit affordable housing development; and

**WHEREAS**, the original development, constructed in approximately 1992, is in need of substantial rehabilitation; and

**WHEREAS**, to permit a resyndication and refinancing of Centertown using tax exempt bonds and low-income housing tax credits (LIHTC), on August 17, 2020, the City Council, in Resolution No. 14851, approved an Option to Lease with Centertown II, LLC, an affiliate of Centertown, Ltd., for a ninety-nine-year term; and

**WHEREAS**, as contemplated by Resolution No. 14851, Centertown II, LP, an affiliate of Centertown II, LLC and Centertown, Ltd has, subject to closing, obtained the necessary funding to rehabilitate the property; and

**WHEREAS**, the City Council wishes to support the continuation of Centertown as an affordable housing project, and finds that leasing the property to Centertown II, LP would be in the best interests of the public and would benefit the public health and welfare; and

**WHEREAS**, the City Council finds that approval of a lease of an existing structure is categorically exempt from environmental review, pursuant to CEQA Guidelines Section 15301;

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

**DIVISION 1.**

The City Council hereby approves, and authorizes the Mayor to execute, a lease of the Centertown property to Centertown II, LP for a term of ninety-nine (99) years, at a base rental of Eighty-Three Thousand Dollars (\$83,000) plus One Dollar (\$1.00) per year (both payable at closing), plus a Five Thousand Dollar (\$5,000) per year monitoring fee (escalated per CPI), and

on substantially the other terms set forth in the “Ground Lease (Centertown)” Between the City of San Rafael and Centertown II, LP, a California limited partnership attached hereto as Exhibit A, subject to final approval as to content and form by the City Manager and City Attorney.

**DIVISION 2.**

The City Council hereby authorizes the Mayor to execute all documents reasonably required to terminate the current ground lease in favor of Centertown Ltd., a California limited partnership, subject to approval as to form by the City Attorney.

**DIVISION 3.**

The City Council hereby authorizes the Mayor and City Manager to execute, all other documents reasonably required to carry out the intent and purposes of the foregoing lease, subject to approval as to form by the City Attorney.

**DIVISION 4:**

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

\_\_\_\_\_  
KATE COLIN, Mayor

ATTEST:

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

The foregoing Ordinance No. \_\_\_\_\_ was introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 13<sup>th</sup> day of September 2021 and ordered passed to print by the following vote, to wit:



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

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 20<sup>th</sup> day of September 2021.

---

LINDSAY LARA, City Clerk

**EXHIBIT A**

**GROUND LEASE  
(Centertown Project)**

**Between**

**CITY OF SAN RAFAEL**

**and**

**CENTERTOWN II, LP**

**A California Limited Partnership**

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## GROUND LEASE

### (Centertown Project)

THIS GROUND LEASE, dated for convenience \_\_\_\_\_, 2021 (the “**Ground Lease**”), is by and between the CITY OF SAN RAFAEL, a municipal corporation (“**Lessor**” or “**City**”) and CENTERTOWN II, LP, a California limited partnership (“**Lessee**”).

### RECITALS

A. The former Redevelopment Agency of the City of San Rafael, sometimes referred to as San Rafael Redevelopment Agency, a public body, corporate and politic, and a redevelopment agency organized pursuant to the former California Community Redevelopment Law (“**CRL**”), California Health and Safety Code Section 33000 et seq. (“**Former Agency**”), was the former owner of certain land, located at 855 C Street in the City (APN 011-254-19), which is now more particularly described in Exhibit A attached hereto and incorporated herein (the “**Land**”). The Former Agency, as Lessor (“**Prior Lessor**”), entered into a 75-year Ground Lease, dated November 6, 1989 (“**Original Ground Lease**”) for the Land with Centertown Ltd., a California limited partnership, with Centertown, Inc., a California nonprofit public benefit corporation as general partner (“**Prior Lessee**”), for low income housing use.

B. The Original Ground Lease was subsequently amended and restated by the First Amended and Restated Ground Lease dated August 20, 1990 (“**A&R Ground Lease**”). The A&R Ground Lease was subsequently amended by the Second Amendment to the First Amended and Restated Ground Lease dated May 6, 1991 (“**Amendment 2**”), the Third Amendment to First Amended and Restated Ground Lease dated April 1, 1993 (“**Amendment 3**”), and the Fourth Amendment to First Amended and Restated Ground Lease dated June 2, 2021 (“**Amendment 4**”). The A&R Ground Lease, together with Amendment 2, Amendment 3 and Amendment 4, is hereby referred to as the “**Prior Ground Lease**.”

C. Pursuant to the Original Ground Lease, Prior Lessor and Prior Lessee executed a Memorandum of Ground Lease, dated November 6, 1989 (“**Original Memorandum**”), and caused the original Memorandum to be recorded in the official records of Marin County (“**Official Records**”) on November 30, 1989 as Document No. 89-69343. The Original Memorandum was amended by that certain Amendment to Memorandum of Ground Lease, dated May 6, 1991, recorded in Official Records on July 8, 1991 as Document No. 91-041695 (re-recorded in Official Records on January 16, 1992 as Document No. 92-003311) (“**Memorandum Amendment 1**”) and that certain Second Amendment to memorandum of Ground Lease, recorded in Official Records June 30, 1993 in Document No. 93-052072 (“**Memorandum Amendment 2**” and, together with the Original Memorandum and Memorandum Amendment 1, the “**Prior Memorandum**”).

D. Pursuant to the Prior Ground Lease, the Prior Lessee developed, constructed, owns and operates a residential development consisting of 60 units rented to and occupied by very low, low and lower income households and commonly known as Centertown Apartments (“**Project**”). The Project was completed on or about 1992.

E. By a Declaration of Restrictions executed by the Prior Lessor, recorded September 11, 1990 in Official Records as Recorder’s Serial No. 90-53574, Prior Lessee obtained a non-exclusive right to use six (6) parking spaces at 1412 2<sup>nd</sup> Street, San Rafael California (APN 11-252-10) (“**Parking Rights**”).

F. In 2011, the California Legislature adopted, the Governor signed, and the California Supreme Court, in *California Redevelopment Association, et al. v. Matosantos* (2012) 53 Cal.4th 231, upheld Assembly Bill x1 26 (“**ABx1 26**”). Pursuant to ABx1 26 (as amended by AB 1484 and SB 107, the “**Dissolution Law**”), all California redevelopment agencies were dissolved effective February 1, 2012, including the Former Agency. Pursuant to the Dissolution Law and resolutions adopted by the City’s City Council on January 3, 2012 the City elected to become the successor housing agency to the Former Agency, and thereby succeeded to all of the Former Agency’s right, title and interest in and to the Land and Prior Ground Lease.

G. The Project is in need of rehabilitation. To finance the rehabilitation, it was determined to obtain a new allocation of low-income housing tax credits pursuant to Internal Revenue Code Section 42 (“**LIHTC**”), which required, among other things, that: (1) the Project be owned by a new limited partnership, the Lessee and (2) the term of the ground lease for the Land be ninety-nine (99) years. Pursuant to that certain Option Agreement dated August 27, 2020 (“**Option Agreement**”) by and between the City (as Prior Lessor) and Centertown II, LLC, a California limited liability company (“**General Partner**”), with sole members BRIDGE Housing Corporation and EAH Inc., each, a California nonprofit public benefit corporation, as assigned by General Partner to Lessee, pursuant to that certain Assignment Agreement (Option and Purchase and Sale Agreement) (the “**Assignment Agreement**”), Lessee has an option to enter into a new 99-year ground lease for the Land, on terms and subject to certain conditions set forth in the Option Agreement, including (I) sale of the Project to Lessee pursuant to a purchase and sale agreement and (II) termination of the Prior Ground Lease.

H. After the Option Agreement: (1) the Prior Lessee entered into a Purchase and Sale Agreement, dated September 8, 2020 (“**PSA**”) with General Partner, which was assigned by General Partner to Lessee pursuant to the Assignment Agreement, to purchase the Project.<sup>1</sup>

I. Concurrently with the execution and delivery of this Ground Lease: (1) Lessor and Lessee will record the Memorandum (as defined in Section 10.6 in the Official Records, (2) Lessee will purchase a fee simple interest in all improvements on the Land, including without limitation the Project in accordance with the PSA, pursuant to a [Grant Deed] executed by Prior Lessee and recorded in the Official Records substantially concurrently with the Memorandum; (3) Lessor and Prior Lessee will execute and deliver a Termination of Ground Lease<sup>2</sup> dated \_\_\_\_\_, 2021, to be recorded in the Official Records (which shall also terminate the Prior Memorandum); and (4) Prior Lessee will execute and deliver to Lessor a recordable Quitclaim of all of its right, title and interest in and to the Land.

THEREFORE, in consideration of the promises and the respective covenants and agreements hereinafter contained, the parties hereby agree as follows:

## ARTICLE 1

### DEFINITIONS

#### **Section 1.1**    Definitions.

The following terms shall have the following meanings in this Ground Lease:

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<sup>1</sup> Developer to prepare and distribute Assignment Agreement.

<sup>2</sup> Developer to prepare and distribute Termination of Ground Lease.

- (a) **“Alterations”** is defined in Section 3.2.
- (b) **“Assignment Agreement”** is defined in the Recitals.
- (c) **“business day”** is defined in Section 10.16.
- (d) **“City Leasehold Mortgage”** shall mean the Leasehold Mortgage on the Development, executed by Lessee for the benefit of the City, as security for the City Leasehold Loan, and recorded in the Official Records Substantially concurrently with the Memorandum.
- (e) **“City Leasehold Loan”** shall mean the \$\_\_\_\_\_ loan made by the City to Lessee.
- (f) **“City Leasehold Mortgage Documents”** shall mean all documents executed by Lessee and/or the City evidencing or securing the City Leasehold Loan.
- (g) **“Commencement Date”** shall mean the date the Memorandum is recorded in the Official Records of Marin County.
- (h) **“CPI”** means the Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward area, or any successor thereof.
- (i) **“Development”** shall mean and include both the Improvements owned by Lessee and located on the Land and the leasehold estate in the Land held by Lessee which is created by this Ground Lease.
- (j) **“Dwelling Units”** shall mean the residential units within the Development, and any additions or alterations thereto; such Dwelling Units shall be occupied by Residents.
- (k) **“General Partner”** is defined in the Recitals.
- (l) **“Governmental Capacity”** is defined in Section 3.10.
- (m) **“Ground Lease”** shall mean this Ground Lease between Lessor and Lessee, and shall include all further amendments, addenda or modifications to this Ground Lease.
- (n) **“HCD”** shall mean the Department of Housing and Community Development, a public agency of the State of California.
- (o) **“HCD Rider”** shall mean the Lease Rider (Ground Lease) among Lessor (as Landlord), Lessee and HCD (as the Department), attached hereto and incorporated herein as Exhibit C.
- (p) **“Household”** shall mean all persons residing together in one Dwelling Unit.
- (q) **“Impositions”** shall mean any Property Taxes, possessory interest taxes, licenses and permit fees, charges for public utilities of any kind, and obligations for any and all other governmental charges, general and special, of any kind and nature whatsoever, as well as assessments for sidewalks, streets, sewers, water or any other public improvements and any other improvements or benefits which shall, during the Term hereof, be made, assessed, levied or imposed upon or become due and payable in connection with, or a lien upon, the Development,



or any part thereof, or upon this Ground Lease, and any payment in lieu of taxes which Lessee has agreed to or is bound to pay with respect to the Development.

(r) **“Improvements”** shall mean that portion of the Development consisting of 60 Dwelling Units, including all structures, fixtures, equipment, landscaping, driveways, off-street parking on the Land and other improvements constructed or installed on the Land, including without limitation the Lessee Improvements.

(s) **“Investors”** (individually **“Investor”**) shall mean Lessee’s limited partner(s), including those identified as such in Exhibit B:

(t) **“Laws”** (individually, **“Law”**) shall mean all laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force.

(u) **“Lessee Improvements”** shall mean the rehabilitation of Centertown Apartments and all other improvements to be constructed or rehabilitated on the Land as described in the design plans titled “\_\_\_\_\_” prepared by TWM Architects + Planners, dated June 21, 2021 and approved by the Lessee and Lessor, which are incorporated herein by this reference (as modified from time to time, the **“Lessee Improvement Plans”**).

(v) **“Lessee Improvement Plans”** shall have the meaning set forth in the definition of Lessee Improvements.

(w) **“Leasehold Mortgage”** is defined in Section 4.1.

(x) **“Leasehold Mortgage Documents”** shall mean all documents executed by Lessee evidencing or securing the Leasehold Mortgages, including without limitation the City Leasehold Mortgage Documents and all other documents evidencing or securing the loans identified on Exhibit B attached hereto.

(y) **“Leasehold Mortgagee”** shall mean the holder or beneficiary of any Leasehold Mortgage, including without limitation, those securing the loans identified in Exhibit B attached hereto, or any other holder of a Leasehold Mortgage.

(z) **“Lower Income Household”** means a household whose annual income does not exceed eighty percent (80%) of the Area Median Income as determined for the San Francisco, California HUD Metro FMR Area annually by HUD and adjusted for household size.

In the event that such income determinations are no longer published by HUD, “Median Income” shall mean the median gross yearly income for households in Marin County, as published periodically by the California Department of Housing and Community Development (**“HCD”**). In the event that such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen months, Lessor shall provide Lessee with other income determinations which are reasonably similar with respect to method of calculation to these previously published by HCD or HUD.

(aa) **“Material Alterations”** is defined in Section 3.2.

(bb) **“Memorandum”** is defined in Section 10.6.

- (cc) **“Monetary Default”** is defined in Section 4.2(d).
- (dd) **“New Lease”** is defined in Section 4.2(g).
- (ee) **“Non-Monetary Default”** is defined in Section 4.2(d).
- (ff) **“Property Taxes”** is defined in Section 2.6.
- (gg) **“Proprietary Capacity”** is defined in Section 3.10.
- (hh) **“Rent”** is defined in Section 2.3.
- (ii) **“Residents”** shall mean the residents of the Dwelling Units in the Development to whom Lessee leases such Dwelling Units.
- (jj) **“TCAC”** means the California Tax Credit Allocation Committee.
- (kk) **“TCAC Rider”** shall mean the \_\_\_\_\_ among Lessor, Lessee and TCAC, which shall be recorded after the permanent conversion of the construction loan for the Lessee Improvements, the form of which is attached hereto and incorporated herein as Exhibit D.
- (ll) **“Term”** shall mean period set forth in Section 2.2 during which this Ground Lease shall be operative, unless earlier terminated in accordance with this Ground Lease.
- (mm) **“Title Reports”** mean those certain \_\_\_\_\_ Reports on the Land issued by Old Republic National Title Insurance Company, dated \_\_\_\_\_, 20\_\_\_\_, Order No. \_\_\_\_\_ and \_\_\_\_\_.

## ARTICLE 2

### LEASE OF THE LAND; RENTAL PROVISIONS; TAXES AND ASSESSMENTS

**Section 2.1** **Ground Lease of the Land**. Lessor for and in consideration of the rent, covenants and agreements of Lessee set forth herein, to be paid, kept and performed by Lessee, hereby leases the Land to Lessee, and in consideration thereof, Lessee does take, hire and lease the Land from Lessor pursuant to the terms of this Ground Lease.

**Section 2.2** **Duration of Term**. The Term of this Ground Lease shall commence on the Commencement Date, and shall expire at midnight ninety-nine (99) years thereafter.

**Section 2.3** **Rental Provisions, Including Monitoring Fee**. Lessee agrees to pay the Lessor the following as **“Rent”** for the Land:

(i) On or before the Commencement Date, and as a condition thereof, Lessee shall pay Lessor a one-time, upfront lease payment of \$83,000.00, being the value of the Land pursuant to that certain appraisal by \_\_\_\_\_, dated \_\_\_\_\_, issued to \_\_\_\_\_.

(ii) Commencing on the Commencement Date, the Lessee shall pay, on an annual basis, rent in the amount of One Dollar (\$1.00) per year or fraction thereof. Lessor hereby

acknowledges and agrees that, as of the Commencement Date, Lessee has paid to Lessor all Rent due under this Section 2.3(a)(ii) in the amount of \$99.00, and no further rent is due under this Section 2.3(a)(ii).

(iii) In connection with the requirements imposed by this Ground Lease and to ensure compliance, Lessee agrees to pay Lessor on January 1 of each year a Five Thousand Dollar (\$5,000.00) annual monitoring fee (“**Monitoring Fee**”). The Monitoring Fee will not be prorated for any partial year of the Term. Commencing on the fifth anniversary of the Commencement Date, and each five years thereafter, the Monitoring Fee shall be increased by the increase in CPI during that five-year period.

(b) Rent and all other sums payable by Lessee to Lessor under this Ground Lease shall be paid in lawful currency of the United States of America at Lessor's address for notices as set forth below, or to such other person or at such other place as Lessor may from time to time designate by notice in writing to Lessee.

#### **Section 2.4 Use of Development and Assurances of Lessee.**

(a) The Land shall be used by Lessee solely for rehabilitating, constructing, owning and operating a residential development and related ancillary uses, including at least 60 Dwelling Units, of which no less than 48% shall be rented to Lower Income Households; provided, however, that from and after the foreclosure of a Leasehold Mortgage (or acceptance of a deed in lieu thereof), Lessee need only comply with those Regulatory Requirements that are senior in priority to such Leasehold Mortgage.

(b) Lessee hereby agrees. subject to applicable law:

(i) not to use or permit the use of the Development or the Land for any disorderly or unlawful purpose, and not to use the Land and the Development other than to provide proper housing facilities to Residents and to maintain the character of the Development as required by any Leasehold Mortgage Documents and this Ground Lease, for so long as such Leasehold Mortgage Documents remain in effect and for the entire Term of this Ground Lease;

(ii) not to utilize any of the Dwelling Units at any time on a transient basis or for hotel, motel, dormitory, rooming house, nursing home, hospital, rest home or similar uses;

(iii) to notify the Lessor promptly in writing of any defect appearing in the Land or any part thereof;

(iv) to use reasonable efforts to prevent any Resident from committing or maintaining any nuisance or unlawful conduct on or about the Development or the Land;

(v) to use reasonable efforts to prevent any Resident from violating any of the covenants and conditions of the Ground Lease with respect to the Development or the Land;

(vi) to take necessary action, to abate any violation of this Ground Lease by any Resident; and

(vii) to permit the Lessor and its agents to inspect the Development and the Land or any part thereof at any reasonable time during the Term of this Ground Lease.

(c) Lessee will maintain complete and accurate records pertaining to the Dwelling Units, and will permit any duly authorized representative of the Lessor upon ten days' notice to inspect the books and records of the Lessee pertaining to Lessee's obligation to rent at least 48% of the Dwelling Units to eligible Residents under this Lease.

(d) Costs and expenses, if any, incurred by the Lessor for the review of certificates described in this Section 2.4 shall be borne by the Lessor.

### **Section 2.5 Rights of Lessee.**

Subject to the terms and conditions set forth in Section 2.4, Lessee shall have the sole and exclusive right:

- (a) to select and terminate the occupancy of a Resident;
- (b) to determine the eligibility of a Resident for rental of a Dwelling Unit within the Development;
- (c) to give notice to a Resident to vacate the Development or any part thereof; and
- (d) to institute and prosecute legal proceedings against a Resident and levy execution upon any judgement obtained in such proceedings.

### **Section 2.6 Taxes and Assessments.**

(a) Subject to Section 2.6(c), as a part of the consideration for the execution and delivery of this Ground Lease and as additional rent and subject to all provisions hereof, Lessee covenants and agrees during the entire Term of this Ground Lease, at its own cost and expense, to pay the public officers charged with the collections thereof, as the same become due and payable and before any fine, penalty, interest or other charge may be added thereto for the nonpayment thereof, all Impositions.

Any Impositions which are applicable only to a portion of the Term hereof shall be appropriately prorated between Lessor and Lessee; provided that, if by law any Imposition may at the option of the taxpayer be paid in installments, Lessee may exercise such option, and in such event Lessee shall pay all such installments and interest, if any, becoming due during, or allocable to, the Term of this Ground Lease as the same become due and before any additional interest or any penalty, fine or cost may be added thereto, except that any amount properly allocable to periods subsequent to the expiration of the Term of this Ground Lease shall not be chargeable to nor payable by Lessee, it being agreed that such impositions for said partial taxing period shall be prorated between Lessor and Lessee on the basis that the number of days in each such fractional tax year bears to 365.

Upon request by Lessor, Lessee covenants to furnish to Lessor, prior to delinquency, official receipts of the proper taxing or other authority, or other proof satisfactory to Lessor, evidencing the full payment thereof. In the event of Lessee's failure to pay any such Imposition, Lessor shall have the right to pay the same and charge said amount to Lessee as additional rent, which rent shall not be deferred but shall be due and payable immediately upon receipt of notice to Lessee that Lessor has paid an Imposition pursuant to this Section. Lessor agrees promptly to send to Lessee (i) copies of any notices for any Impositions, if such notices have been received

by Lessor, and (ii) evidence of any such payment of Impositions made by the Lessor, which are the responsibility of Lessee pursuant to the terms of the Ground Lease.

Subject to the rights of the Leasehold Mortgagees under, and without limiting the scope of Article 4, failure by Lessee to pay any such Imposition shall be a default by Lessee under this Ground Lease for which Lessor may terminate the Ground Lease.

(b) The provisions of this Ground Lease shall not be deemed to require Lessee to pay municipal, county, state or federal income or gross receipts or excess profits taxes assessed against Lessor, or municipal, county, state or federal capital levy, succession, gift or transfer taxes of Lessor, or corporation franchise taxes imposed upon any fee interest of the Lessor in the Land, or any increase in real estate taxes or assessments on account of Lessor's transfer of its fee title to the Land or a change in ownership of the Land other than to Lessee. Lessee agrees promptly to send to Lessor copies of any and all notices received by it in respect to any taxes or assessments affecting the Land which are the responsibility of the Lessor, pursuant to the terms hereof.

(c) Notwithstanding anything to the contrary contained in the Lease, if Lessee deems any Imposition imposed in connection with the ownership, use or occupancy of the Development to be excessive or illegal, Lessee may defer payment thereof so long as the validity or the amount thereof is contested by Lessee with diligence and in good faith; provided, however, that Lessee, upon request by Lessor, shall furnish to Lessor a bond in form, and issued by a surety company, reasonably satisfactory to Lessor, in an amount equal to the amount of the tax so contested, which bond shall guarantee the payment thereof with interest and penalties thereon; and provided further that if, at any time, payment of the whole of such tax shall become necessary in order to prevent the termination by sale or otherwise of the right of redemption of all or any part of the Development, or to prevent eviction of Lessor or of Lessee because of non-payment thereof, Lessee shall pay the same, or cause the same to be paid, in time to prevent such termination of the right of redemption or such eviction. Any contest as to the validity or amount of any tax, whether before or after payment, may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request, it being understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses in connection with any proceedings brought by Lessee, and Lessee covenants to pay, and to indemnify and save Lessor harmless from, any such costs or expenses. Lessee shall be entitled to any refund of any such tax and penalties or interest thereon which have been paid by Lessee or by Lessor and reimbursed to Lessor by Lessee.

(d) In the event Lessor fails to timely pay any Imposition affecting the Land or Development which Lessor is obligated to pay, Lessee may (but shall not be required to) pay such Imposition and seek reimbursement from Lessor for such costs, which reimbursement shall be made promptly following Lessee's request therefor.

(e) As used herein, the term "**Property Taxes**" shall include all general and special taxes, assessments, duties and levies, charged and levied upon or assessed by any governmental authority against the Development, including the Land, the Improvements, any other improvements situated on the Land other than the Improvements, the various estates in the Land and the Development, any leasehold improvements, fixtures, installations, additions and equipment, whether owned by Lessor or Lessee. Further included in the definition of Property Taxes herein shall be general and special assessments, license fees, levy or tax (other than federal or state income or gift tax, and any franchise, capital stock, inheritance or estate taxes)

imposed by any authority having the direct or indirect power to tax, as against any legal or equitable interest of the Lessor and/or Lessee in the Land or in the Development or on the act of entering into leases or any tax, fee, or charge with respect to the possession, leasing, transfer of interest, operation, management, maintenance, alteration, repair, use or occupancy of the Development, or any tax imposed in substitution, partially or totally, for any tax previously included within the definition of Property Taxes. Further, if at any time during the term of this Ground Lease the method of taxation or assessment of real estate or the income therefrom prevailing at the time of execution hereof shall be, or has been altered so as to cause the whole or any part of the taxes now or hereafter levied, assessed or imposed on real estate to be levied, assessed or imposed upon Lessor, wholly or partially, as a capital levy, business tax, permit or other charge, then such new or altered taxes, regardless of their nature, which are attributable to the land, the Improvements or to the Development shall be deemed to be included within the term "Property Taxes" for purposes of this Subsection, whether in substitution for, or in addition to any other Property Taxes. However, with respect to any general or special assessments which may be levied upon or against the Land or which may be evidenced by improvement or other bonds, or may be paid in annual or semiannual installments, only the amount of such installment, prorated for any partial year, and statutory interest shall be included within the computation of Property Taxes for which the Lessee is responsible hereunder.

### ARTICLE 3

#### **CONSTRUCTION OF LESSEE IMPROVEMENTS; REHABILITATION AND MAINTENANCE; USE OF LAND**

##### **Section 3.1 Construction of Lessee Improvements.**

(a) Lessee shall renovate the Improvements by constructing the Lessee Improvements substantially as indicated in the Lessee Improvement Plans. All of the Improvements, including without limitation the Lessee Improvements, shall be the fee simple property of Lessee until the termination of this Ground Lease.

(b) Lessee shall construct the Lessee Improvements on or before the dates set forth in the Schedule of Performance attached hereto as Exhibit E; provided, however, that any delay in construction due to causes beyond the reasonable control of Lessee shall extend the time in which said construction must be completed by the length of such delay.

(c) For the purpose of this Section 3.1, the term "beyond the reasonable control of the Lessee" shall mean, and is limited to, delays caused directly by acts of God; epidemics; pandemics, quarantine restrictions, strikes; lockouts; sit-downs; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials necessary in the work by order, decree or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the work ordered by City of San Rafael insofar as they necessarily require additional time in which to complete the work; the prevention by City of Lessee from commencing or prosecuting the work because of the acts of others, excepting Lessee's contractors and subcontractors; or the prevention of Lessee from commencing or prosecuting the work because of a citywide failure of public utility service. Lessor may grant an extension of time for unavoidable delay as a result of inclement weather.

The term "beyond the reasonable control of Lessee" shall specifically not include: (i) any delay which could have been avoided by the exercise of care, prudence, foresight and diligence;

and (ii) any delay in the prosecution of parts of the work, which may in itself be unavoidable but which does not necessarily prevent or delay the prosecution of other parts of the work, nor the completion of the whole work within the time specified.

(d) Notwithstanding the above and the Schedule of Performance set forth in Exhibit E, so long as (i) Lessee is diligently prosecuting the work and (ii) any Leasehold Mortgagee has agreed to extend performance dates under its Leasehold Mortgage Documents so as not to cause a default thereunder, Lessor's consent to extend the performance dates set forth in Exhibit E shall not be unreasonably withheld.

(e) Prior to the commencement of construction of the Lessee Improvements, Lessee shall, at its own cost and expense, furnish to Lessor as obligee or co-obligee, either (i) a faithful performance bond of a surety company licensed to transact business in the State of California and satisfactory to Lessor with Lessee's contractor or contractors as principal, in a sum not less than one hundred percent (100%) of the estimated cost of construction, and a labor and materials bond of a surety company licensed to transact business in the State of California and satisfactory to the Lessor with Lessee's contractor or contractors as principal in a sum not less than 50% of the total estimated cost of the construction contract or contracts for the Lessee Improvements, guaranteeing respectively faithful performance and the payment for all materials, provisions, provender, supplies and equipment used in, upon, for or about the performance of said construction work or labor done thereon of any kind whatsoever, or (ii) other instrument of security or completion assurance agreement or payment assurance agreement acceptable to the Leasehold Mortgagees and approved by the Lessor to guarantee completion of such construction and payment of all such items. In the event that Lessee obtains from its contractor or contractors such bonds, security or assurance agreements in like amount which is satisfactory to Lessor, Lessor, upon application by Lessee and upon naming Lessor an additional obligee of Lessee's principal and surety under such bonds or agreements, will release Lessee from Lessee's obligation to provide its bonds, agreements or instruments of security pursuant to this Section 3.1(e).

### **Section 3.2 Alterations.**

(a) Following completion of the Lessee Improvements, Lessee shall, subject to the Leasehold Mortgage Documents, have the right to further alter, modify or rehabilitate the Improvements (together, "**Alterations**") as Lessee shall deem desirable; provided that for any Material Alterations, Lessor's prior written consent shall first have been obtained. "**Material Alterations**" means (a) the construction of any new additional building or structure, (b) an increase in the height of the Improvements, (c) demolition or removal of all or any substantial part of the Improvements; (d) change in the number of Dwelling Units or total square footages of the Dwelling Units; (e) any material alteration of exterior architectural designs, colors or materials (unless the applicable exterior component is not reasonably available or does not meet current code requirements, and Lessee uses materials of equal quality, durability, design standards, and appearance to the materials originally installed), or (f) reconstruction following fire or other casualty in excess of \$1,000,000 (subject to adjustment pursuant to the CPI from and after the Commencement Date. Lessee shall also obtain building permits for all Alterations to the extent required by City of San Rafael codes and other customary requirements.

(b) Fee simple title to all of the Improvements (including without limitation the Lessee Improvements) shall be in and remain in Lessee for and during the entire Term of the Ground Lease, but at the expiration of the Ground Lease Term, or upon the sooner termination of this Ground Lease (unless a New Lease is executed), title to the Improvements shall vest in Lessor,

free and clear of all claims to or against them by Lessee or any third person, except those existing and created pursuant to the terms of this Ground Lease or those remaining on title with the consent or at the request of the Lessor. Lessee agrees to execute at the time of such expiration or termination a quitclaim deed for the Improvements to Lessor to be recorded at Lessor's option and at Lessor's sole cost and expense. Lessee shall defend, indemnify and hold Lessor harmless against any and all claims, liability and losses arising from such claims or from Lessor's exercise of the right conferred by this Section 3.2(b).

(c) Lessor shall have the right at all reasonable times to post, and keep posted, on the Land and Improvements any notices which Lessor may reasonably deem necessary for the protection of Lessor and of the Land from mechanics' liens or other claims. Lessee shall give Lessor ten days' prior written notice of the commencement of the Lessee Improvements and any Alterations that could give rise to mechanics' liens to be done on or about the Land or Improvements to enable Lessor to post such notice.

(d) Lessee agrees that the Improvements and any maintenance, repair work, Alterations, replacements and/or additions in connection therewith (including without limitation the Lessee Improvements) shall be of good quality. Lessee shall have no authority to place any lien or any encumbrances upon the fee title to the Land, or in any manner to bind the interest of Lessor in the Land or, except as provided elsewhere in this Ground Lease, to assign the rentals payable to Lessor under this Ground Lease for any claim in favor of any person dealing with Lessee. Lessee covenants and agrees promptly to pay all sums legally due and payable by Lessee on account of any labor performed or materials supplied for which a lien can legally be asserted against Lessee's leasehold interest in the Land or Lessee's fee title to the Improvements thereon. In the event any mechanic or materialmen's lien is filed against the Land, Lessee at its expense, shall promptly cause such lien to be removed by bonding or otherwise. If Lessee disputes liens or claims of materialmen, mechanics or laborers, upon the Land or the Improvements, regardless of whether such amounts are payable by Lessor or Lessee, Lessee may contest and defend against the same at its cost, and in good faith diligently conduct any necessary proceedings in connection therewith to prevent and avoid the same; provided, however, that such contest shall be prosecuted to a final conclusion as speedily as possible. During any such contest, Lessee shall (by the payment of such disputed charges, if necessary) prevent any foreclosure of, or any divesting thereby of Lessor's title, reversion or other interest in or to the Land.

### **Section 3.3 Permits, Licenses and Easements.**

Lessor (as the lessor hereunder and not as a government authority having jurisdiction over the Development) agrees that, within ten days after receipt of written request from Lessee, it will (at no expense to Lessor) join in all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which Lessee may perform in connection with the Development, and will also join in any grants of easements for public or private utilities useful, desirable or necessary to the proper economic development of the Land or to the improvements to be constructed thereon, if required to do so by such governmental or other bodies (including without limitation utility companies). Nothing herein will limit the City's rights in a Proprietary Capacity or Governmental Capacity in accordance with Section 3.10.

### **Section 3.4 Use of Development.**

Lessee shall cause the Development to be used solely for purposes specified in Section 2.4(a), consistent with all applicable zoning and environmental laws of any governmental



authority having jurisdiction over the Development. Lessee agrees to comply reasonably, promptly and effectively with all applicable and lawful statutes, rules, orders, ordinances, requirements and regulations of the State of California, the Federal Government, the City and any other governmental authority having jurisdiction over the Development. Lessee shall have the right, if in good faith and on reasonable grounds, to dispute the validity of any charge, complaint or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. Lessee agrees that any such contest shall be prosecuted to a final conclusion as speedily as possible. Except to the extent City is acting in a Governmental Capacity in accordance with Section 3.10, Lessor agrees upon request by Lessee to sign, promptly and without charge therefor to Lessee, all applications for licenses and permits required by Lessee for the lawful conduct and operation of any business on the Land or in the Improvements, including, without limitation, applications for occupancy permits, provided that the cost of obtaining such licenses and permits shall be borne by Lessee, and to the extent such participation by the Lessor is required by the body receiving such application.

### **Section 3.5 Maintenance of the Improvements and the Land.**

During the Term of this Ground Lease, Lessee or its designee shall perform, or cause to be performed, all maintenance and repairs necessary to maintain the Improvements and Land in good repair and tenantable condition, except for ordinary wear and tear, and in full compliance with all Leasehold Mortgage Documents.

### **Section 3.6 Utilities.**

Lessee shall be responsible for the cost of all utilities, including water, heat, gas, electricity, waste removal or other utilities or services supplied to the Development, and Lessee will pay or cause same to be paid currently and as due. Lessor without limitation of the foregoing acknowledges that Lessee may require each Resident to pay for utility charges for each Resident's Dwelling Unit.

### **Section 3.7 Condition of Land.**

Lessor has knowledge that prior to the Original Ground Lease certain petroleum hydrocarbons had come to be located on or beneath the Land from an underground fuel tank. The fuel tank and contaminated soil surrounding the area of the tank were removed before the Original Ground Lease; however, some petroleum hydrocarbons or dirt contaminated with such materials or substances may have remained on the Land thereafter. Lessee has knowledge of the facts in the preceding sentence and agrees to lease the Land in an "as is" condition, with no warranty, express or implied, by the Lessor as to the condition of the soil, its geology, the presence of known or unknown faults or the former presence of petroleum hydrocarbons. It shall be the sole responsibility of the Lessee at its expense to investigate and determine the soil conditions for the Lessee Improvements to be constructed thereon and for the Improvements to be leased, owned and operated thereon, including the presence of potentially toxic materials or soils.

If the soil conditions are not in all respects entirely suitable for the use or uses to which the Land is currently being put and will be put under this Lease, it is the sole responsibility and obligation of Lessee, at its sole cost, to take such action as may be necessary to place the soil conditions of the Land in a condition entirely suitable for the Lessee's purposes under this Lease, subject to all other provisions contained in this Ground Lease, including Section 10.20.

**Section 3.8 “As-Is, Where-IS” Existing Improvements.**

Lessor makes no warranty, express or implied, regarding the condition of the Land or any physical improvements to the Land existing as of the Commencement Date, including without limitation the existing Improvements. Lessee had inspected the Land and all improvements and acknowledges that it is leasing the Land and, as between Lessor and Lessee, is acquiring fee title to the improvements thereon existing as of the Commencement Date in an “as is” condition.

**Section 3.9 Management.**

Lessee shall direct and supervise the operation and management of the Development and shall, at all times during the term of this Ground Lease, maintain or employ a professionally trained staff to manage the Development. Lessor hereby consents to management of the Development by Bridge Property Management Company or Ecumenical Association for Housing; provided, however, that Lessor may require Lessee to remove any manager of the Development within 120 days of notice from Lessor if Lessor determines there is good and sufficient cause for such removal, and provided, further, that Lessor provides Lessee with the opportunity to contest Lessor’s reasons for the removal of the management agent. Lessee shall not contract with another person to manage the Development without Lessor’s consent, which shall not be unreasonably withheld.

**Section 3.10 Proprietary and Governmental Roles: Actions by City.**

Except where clearly and expressly provided otherwise in this Ground Lease, the capacity of the Lessor in this Ground Lease shall be as owner and lessor of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Ground Lease on Lessor shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("**Governmental Capacity**"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided for in this Ground Lease. In addition, nothing in this Ground Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from Lessor under applicable Law, nor guarantee that Lessor, in its Governmental Capacity, will grant any particular request for a license, permit or other regulatory approval. Lessee understands that Lessor may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable Laws.

**Section 3.11 City Manager Authority and Limitations.**

Any amendment to this Ground Lease which affects or relates to: (1) the Term of this Ground Lease; (2) the permitted use of the Land; (3) rent amounts and other monetary payments by Lessor; or (iv) any other material provision of this Ground Lease, shall require approval by the Lessor’s City Council. Subject to the foregoing, the City Manager may also issue without City Council approval any consent or approval which Lessor is entitled to provide under this Ground Lease, including without limitation: (I) approvals of Material Alterations under Section 3.2; and (II) rules for a CASp inspection under Section 10.7.

**Section 3.12 City Leasehold Mortgage Documents.**

Nothing in this Ground Lease shall limit any City right under the City Leasehold Mortgage Documents.

**ARTICLE 4  
LEASEHOLD MORTGAGES**

**Section 4.1 Mortgage of Leasehold and Improvements.**

Lessee shall have the right to encumber the Development (i.e., the Improvements and the leasehold estate created by this Ground Lease) by whatever security instruments are used in the locale of the Land, including without limitation deeds of trust, security deeds, assignments of rents, issues and profits, and conditional deeds, as well as financing statements, security agreements and documentation required pursuant to the Uniform Commercial Code (each, a “**Leasehold Mortgage**”) to secure repayment of any loan and associated obligations of Lessee in connection with the acquisition, construction, rehabilitation or refinancing of the Development. The term “Leasehold Mortgage” shall also include any instruments required in connection with a sale leaseback transaction.

**Section 4.2 Notice to and Rights of Leasehold Mortgagee.**

(a) During the continuance of any Leasehold Mortgage and until such time as the lien of any such Leasehold Mortgage has been extinguished, the Leasehold Mortgagees shall have all rights provided in this Article 4. Lessor shall not accept any cancellation or surrender of this Ground Lease, Lessee shall not make any election or waiver to terminate, cancel or surrender this Ground Lease, nor shall Lessor or Lessee consent to any amendment or modification of this Ground Lease without, in each instance, the prior written consent of all Leasehold Mortgagees. Without limiting the foregoing, no election by Lessee to terminate this Ground Lease shall be effective unless the same is contained in a written instrument signed by Lessee and each Leasehold Mortgagee.

(b) When giving any notice to Lessee with respect to this Ground Lease or any provision hereunder, Lessor shall also give a concurrent copy of each such notice to any Leasehold Mortgagee who shall have given Lessor a written notice requesting such notice and specifying its name and address. No notice by Lessor to Lessee shall be deemed to have been given unless, and until, a copy thereof shall have been delivered to each Leasehold Mortgagee as set forth herein. The names and addresses of the initial Leasehold Mortgagees and Investor are set forth on Exhibit B attached hereto, and this shall constitute such Leasehold Mortgagees’ and Investor’s request for copies of all notices at such addresses pursuant to this Section 4.2(b). All notices by Lessor to Leasehold Mortgagees and Investor shall be given by registered or certified mail, return receipt requested, or reputable courier service with confirmation, addressed to the Leasehold Mortgagees or Investor, as applicable, at the address last specified to Lessor by the Leasehold Mortgagees and shall be effective upon receipt by such recipient(s) (or refusal to accept delivery by such recipient(s)).

(c) In the event Lessee shall default in the performance of any of the terms, covenants, agreements or conditions of this Ground Lease on Lessee’s part to be performed, any Leasehold Mortgagee shall have the right, but not the obligation, within the grace period available to Lessee for curing such default and such additional period permitted under Section 4.2(d), to cure such default, whether the same consists of the failure to pay rent, to effect any insurance, to pay any

taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Lessee under the Lease, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions to prevent termination of the Lease, and the Lessor shall accept any such performance by any Leasehold Mortgagee as though the same had been done or performed by Lessee. Any Leasehold Mortgagee and its agents and contractors shall have full access to the Land and Improvements for purposes of accomplishing any of the foregoing.

(d) In case of a default by Lessee in the payment of money or the performance of any other obligation due under this Ground Lease, Lessor will take no action to effect a termination of this Ground Lease by reason thereof unless, following the expiration of the grace periods (if any) otherwise granted to Lessee hereunder, including, without limitation, under Section 9.1, such default has continued beyond 60 days in the case of any default resulting from Lessee's failure to pay money due to Lessor (a "**Monetary Default**"), and beyond 180 days, in the case of any other default by Lessee hereunder (a "**Non-Monetary Default**"), after Lessor has given written notice to each Leasehold Mortgagee and Investor of such Monetary Default or Non-Monetary Default, as applicable and Lessor's intent to terminate the Ground Lease as a result of such default, it being the intent hereof and the understanding of the parties that any Leasehold Mortgagee and Investor shall be allowed up to, but not in excess of 60 days in the case of a Monetary Default, and 180 days in the case of a Non-Monetary Default by Lessee, to cure such default, in addition to the cure and grace periods (if any) otherwise granted to Lessee under this Ground Lease, including without limitation Section 9.1. Notwithstanding the foregoing or anything else to the contrary contained herein, in the case of any Non-Monetary Default, Lessor shall take no action to effect a termination of this Ground Lease by reason thereof if, within 180 days after the Leasehold Mortgagees and Investor receive written notice thereof, as provided for in this Section 4.2(d), a Leasehold Mortgagee or Investor has either:

(i) commenced to cure such default and to proceed diligently with such cure thereafter, if such default can be cured by the Leasehold Mortgagee without the Leasehold Mortgagee obtaining possession of the Development;

(ii) commenced proceedings to obtain possession of the Development (including possession by a receiver) and proceeded diligently to obtain such possession and to cure such default in the case of default which can be cured only after the Leasehold Mortgagee has obtained possession thereof; or

(iii) instituted foreclosure proceedings (either judicial or non-judicial) and thereafter to diligently proceed to complete such foreclosure proceedings (either judicial or non-judicial) or otherwise acquire Lessee's interest under this Ground Lease with reasonable and continuous diligence in the case of a default which cannot be cured in the manner set forth in subparagraphs (i) or (ii) above. As long as any Leasehold Mortgagee is diligently proceeding to complete foreclosure, the Lessor shall not terminate the Ground Lease. No Leasehold Mortgagee shall be required to continue such possession or continue such foreclosure proceedings (either judicial or non-judicial) if the default which prompted the service of such a notice has been cured. No Leasehold Mortgagee shall be obligated to cure any Monetary Default which has occurred more than 90 days before such Leasehold Mortgagee's receipt of notice of such default, in order to preserve its interest under its Leasehold Mortgage Documents or to exercise any of the rights granted to it under this Ground Lease. Nothing herein shall require a Leasehold Mortgagee who has acquired Lessee's leasehold interest and has taken possession of the Development to cure any Non-Monetary Default which is not reasonably capable of being cured by such Leasehold Mortgagee, and such default shall be deemed to be waived following Leasehold Mortgagee's

acquisition of Lessee's leasehold interest and such Leasehold Mortgagee's timely cure of all Monetary Defaults and all Non-Monetary Defaults which are reasonably capable of cure by such Leasehold Mortgagee in accordance with the foregoing provision.

(e) All right of Lessor to terminate the Lease as the result of the occurrence of any default shall be subject to, and conditioned upon, Lessor having first given to each Leasehold Mortgagee written notice of the default as required under Section 4.2(b), and each Leasehold Mortgagee having failed to remedy such default or acquire the Leasehold or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in Section 2.4(d).

(f) If a Leasehold Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified in this Section 4.2 for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee under this Ground Lease and shall continue to pay currently such monetary obligations as and when the same fall due.

(g) Lessor agrees that, in the event of termination of the Lease for any reason (including without limitation by reason of any default by Lessee or by reason of the disaffirmance thereof by a receiver, liquidator or trustee for Lessee or its property):

(i) Lessor shall (1) promptly give each Leasehold Mortgagee written notice of such termination and (2) if requested by any Leasehold Mortgagee, enter into a new lease of the Land ("**New Lease**") with the most senior Leasehold Mortgagee requesting a New Lease, which New Lease shall commence as of the date of termination of this Ground Lease and shall run for the remainder of the Ground Lease Term, at the same Rent and additional rent and upon the same terms, provisions, covenants and agreements, and subject to the rights, if any, of any parties then in possession of any part of the leasehold estate, provided:

(1) The Leasehold Mortgagee shall make written request upon Lessor for the New Lease not later than 60 days after the date such Leasehold Mortgagee receives written notice of the termination from Lessor;

(2) The Leasehold Mortgagee shall pay to Lessor at the time of the execution and delivery of the New Lease any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to the Ground Lease but for its termination, and in addition thereto any expenses, including reasonable attorneys' fees, to which Lessor shall have been subjected by reason of Lessee's default;

(3) The Leasehold Mortgagee shall perform and observe all covenants in this Ground Lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under the terminated Ground Lease was obligated to perform under its terms, to the extent the same are curable or may be performed by the Leasehold Mortgagee; and

(ii) The lessee under the New Lease shall have the same right, title and interest in and to the Improvements as Lessee had under the terminated Ground Lease immediately prior to its termination, and such New Lease shall be senior in priority to all mortgages, deeds of trust, or other lien or charge or encumbrance on the Land. The New Lease

shall be accompanied by a conveyance of title to the Improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Lessor) for a term of years equal to the term of the New Lease, subject to the reversion in favor of Lessor upon expiration or sooner termination of the New Lease.

(h) Nothing herein contained shall require any Leasehold Mortgagee to enter into a New Lease pursuant to Section 4.2(g), nor to cure any default of Lessee referred to above.

(i) Except as provided in Section 4.2(j), during the period that a Leasehold Mortgagee shall be in possession of the Land and/or Development and/or during the pendency of any foreclosure proceeding instituted by a Leasehold Mortgagee, subject to the cure periods set forth in Section 4.2(d)(iii), the Leasehold Mortgagee shall pay or cause to be paid the Rent specified in Section 2.3 and all other charges of whatever nature payable by Lessee hereunder which have been accrued and are unpaid and will continue to pay, when due, all such amounts which accrue thereafter during such Leasehold Mortgagee's possession of the Development.

(j) In the event two or more Leasehold Mortgagees exercise their rights hereunder, and there is a conflict which renders it impossible to comply with all such requests, the Leasehold Mortgagee holding the most senior holding the most senior Leasehold Mortgage shall prevail.

(k) Upon the request of any Leasehold Mortgagee, Lessor agrees to execute any amendment to this Ground Lease which does not adversely affect Lessor's rights hereunder, subject to Section 10.4.

(l) Any Investor shall have the same notice and cure rights as the Leasehold Mortgagee as set forth in this Section 4.2 for so long as it is a limited partner of Lessee; provided, however, that Investor shall be deemed to have met any condition relating to commencement or continuation of a foreclosure proceeding as set forth in Section 4.2(d), if it is attempting with diligence and in good faith to remove the general partner of Lessee. The address for any notices to Investor, as of the date hereof, is provided in Article I.

(m) Foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the Development from Lessee to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Lessor or constitute a breach of any provision of, or a default under, the Lease, and upon such foreclosure, sale or conveyance, Lessor shall recognize the purchaser or other transferee in connection therewith as the Lessee under this Ground Lease.

(n) In the event any Leasehold Mortgagee or any designee of it becomes the Lessee under this Ground Lease or under any New Lease obtained pursuant to Section 4.2(g), above, the Leasehold Mortgagee or its designee shall be personally liable for the obligations of Lessee under this Ground Lease or New Lease only to the extent that they arise during the period of time that the Leasehold Mortgagee or its designee constitutes the actual beneficial holder of the leasehold estate. The Leasehold Mortgagee's, or its designee's, right thereafter to assign this Ground Lease or the New Lease shall not be subject to any restriction.

(o) Notwithstanding anything to the contrary contained herein, under no circumstances shall any Leasehold Mortgagee (or its designee), whether before or after a foreclosure of its Leasehold Mortgage (or acceptance of a deed in lieu thereof), be obligated to

pay any amounts or perform any obligations owing to Lessor under the City Leasehold Mortgage Documents.

**Section 4.3 Registration of Leasehold Mortgagees and Investor(s).**

Upon written request by Lessor, Lessee shall provide written notice to Lessor of the name and address of each Leasehold Mortgagee and each Investor under this Ground Lease.

**Section 4.4 Notice and Right to Cure Defaults Under Leasehold Mortgages.**

Upon the recording of the Memorandum pursuant to Section 10.6, Lessee on behalf of Lessor shall cause to be recorded in the office of the County Recorder of Marin County requests for copies of any notice of default or notice of sale under the Leasehold Mortgages.

**Section 4.5 Priorities.**

No deed of trust, mortgage, lien, encumbrance, restriction or exception shall be superior to any of Lessor's interests in the Land.

**Section 4.6 No Merger.**

In the event Lessee acquires the fee estate of Lessor in the Land, except with the written consent of all Leasehold Mortgagees there shall be no merger of Lessee's leasehold and fee estates, but rather the lien of such mortgage, deed of trust or other encumbrance shall continue and apply to the entire right, title and interest of Lessee.

**ARTICLE 5**

**INSURANCE**

**Section 5.1 Required Insurance Coverage.**

(a) Fire and Special Coverage Endorsement. Lessee shall during the Term of this Ground Lease keep the Development insured against loss or damage by fire, and all other risks as may be included in the standard form of extended coverage endorsement (including flood if the Land is located in flood zone A or V, and including earthquake to the extent available at commercially reasonable rates or otherwise required by a Leasehold Mortgagee), in amounts such that the proceeds of such insurance shall not be less than the full replacement value of the buildings and Improvements or any other amount required by the Leasehold Mortgagees and approved by Lessor which is reasonably and commercially available.

(b) Liability and Property Damage Insurance. During the Term of the Ground Lease, Lessee shall keep in full force and effect a policy or policies of public liability and property damage insurance against liability for bodily injury to or death of any person or property damage arising out of the Development and/or the Land. If reasonably and commercially available, the limits of such insurance shall not be less than ten million dollars (\$10,000,000) combined single limit for injury to persons or death for any one occurrence, and not less than five million dollars (\$5,000,000) for property damage to others' property.

(c) Workers' Compensation Insurance. Lessee shall carry workers' compensation insurance covering all persons employed by Lessee in connection with the Development and with

respect to whom death, bodily injury and sickness insurance claims could be asserted against the Lessor or Lessee.

(d) **Builders Risk Insurance.** Lessee shall require its contractor(s) to carry builder's risk insurance, at contractor's own cost and expense, at all times during the construction of the Improvements and until Lessee has filed with the Lessor a certificate of fire, liability and property damage insurance on the completed Improvements, and shall provide to Lessor prior to commencement of construction a certificate evidencing the same. Lessee shall request its contractor's insurance carrier to provide a certificate which shall state that the insurance coverage shall not be cancelled or excluded on account of completion, occupancy or use of the improvements unless and until (1) Lessor is given at least 30 days prior written notice of cancellation after completion of construction or (2) there is on file with Lessor with respect to the Improvements the certificate required evidencing liability and property damage insurance coverage.

(e) **Review.** The public liability and property damage insurance requirements may be reviewed by Lessor every five years, for the purpose of (in consultation with its insurance advisors) adjusting the specific policy requirements, and minimum limits of such insurance from time to time, to requirements and minimum limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards. However, in no event will Lessee be required to change specific policy requirements more frequently than every five years, nor increase the amount of coverage for any five-year period by more than the lesser of (1) 50% and (2) two times the CPI increase since the last increase under this Section.

### **Section 5.2 Insurance Policies and Premiums.**

(a) All policies of insurance required under this Ground Lease shall name the Lessor, including its members, officers, employees and agents, and the Leasehold Mortgagees, as additional insureds as their respective interests may appear; provided, however, that the Leasehold Mortgagees for so long as the Leasehold Mortgages are outstanding, shall be added to the "Loss Payable Endorsement" of all insurance policies required to be carried by Lessee hereunder, and all insurance proceeds shall be payable to the most senior Leasehold Mortgagee and applied in accordance with the terms of such Leasehold Mortgagee's Leasehold Mortgage Documents and applicable Law. Duplicate copies of such policies or certificates of such insurance shall be promptly furnished to the Leasehold Mortgagees and the Lessor.

(b) Any policy of insurance shall provide that any change or cancellation of said policy must be in writing to the Leasehold Mortgagees, Lessee, and the Lessor at their respective principal offices at least 30 days before the effective date of said change or cancellation.

### **Section 5.3 Proceeds of Insurance Upon Damage or Destruction.**

(a) For so long as a Leasehold Mortgage on the Development is outstanding, all fire and special or extended coverage (casualty) and builders' risk insurance proceeds shall be applied, subject to the rights of the most senior Leasehold Mortgagee, to the payment of the costs of repairing or rebuilding that part of the Development damaged or destroyed if Lessee agrees in writing within 90 days after payment of the proceeds of insurance that such repair or rebuilding is economically feasible. If the Development is not repaired or replaced, all such proceeds shall be applied in a manner consistent with the terms of the most senior Leasehold Mortgage Documents. The balance, if any, after payment to the most senior Leasehold Mortgagee, shall, subject to the



rights of the other Leasehold Mortgagees, be paid to Lessee and, subject to the prior written consent of each Leasehold Mortgagee, Lessee may terminate this Ground Lease, in which case this Ground Lease shall become void from the time of termination, and from that date the parties hereto shall be released from further obligation hereunder.

(b) In the event all Leasehold Mortgages have been paid in full, all insurance proceeds received under the policies set forth in this Article 5 shall be applied to the payment of the costs of repairing or rebuilding that part of the Development damaged or destroyed, if Lessee agrees in writing within 90 days after the payment of the proceeds of insurance that such repair or rebuilding is economically feasible. If Lessee decides that such repair or replacement is not economically feasible, the proceeds shall be paid to Lessee and this Ground Lease shall terminate, and shall become void from the time the decision is made by Lessee to rebuild, and from that date the parties hereto shall be released from further obligation hereunder.

(c) Upon the occurrence of any loss, damage or destruction to the Improvements or operations of the Development resulting from such damage or destruction, Lessee's obligation to pay rent as set forth in Section 2.3 (other than Monitoring Fee) shall be abated, subject to the following:

(i) If only a portion of the Improvements is damaged or destroyed, the rent (other than Monitoring Fee) shall be abated or reduced by the percentage of the amount of damage or destruction to the Improvements until the Improvements are repaired or rebuilt and approved for occupancy by the City.

(d) Notwithstanding anything to the contrary contained herein, in no event may Lessor or Lessee exercise any right to terminate the Lease in connection with any casualty or similar matter without the prior written consent of each Leasehold Mortgagee (each, in its sole and absolute discretion).

#### **Section 5.4 Hold Harmless and Indemnity.**

(a) Indemnification of Lessor. To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Lessee shall indemnify and hold Lessor harmless from and shall defend (including payment of attorney's fees) Lessor against all liability, penalties, losses, damages, costs and expenses including attorney's fees, claims or judgment arising from any injury to any person or persons or any damage to any property occurring in, on or about the Development and/or the Land, or as a result of any accident or other occurrence during the Term, occasioned in any way as a result of Lessee's or Lessee's officers', employee', agents', servants', concessionaires', licensees', contractors' or invitees' use, maintenance, occupation or operation of the Development and/or the Land; provided, however, that Lessee shall not be required to indemnify Lessor for any damage or injury of any kind arising as the result of Lessor's negligent act or omission or misconduct or that of its officers, agents, employees or contractors. Notwithstanding the foregoing or anything else to the contrary contained herein, but without limiting Lessor's rights under any insurance maintained by Lessee, no Leasehold Mortgagee or subsequent lessee shall be required to indemnify Lessor for any act or omission of the prior lessee under this Ground Lease (or to cure any failure of any such prior lessee to indemnify the Lessor).

(b) Indemnification of Lessee. Lessor shall indemnify and hold Lessee harmless from and shall defend (including payment of attorneys' fees) Lessee against all liability, penalties, losses, damages, costs and expenses including attorneys' fees, claims or judgment arising from

any injury to any person or persons or any damage to any property occurring in, on or about the Development and/or the Land, or as a result of any accident or other occurrence during the Term occasioned in any way as a result of Lessor's or Lessor's officers', employees', agents', servants', concessionaires', licensees', contractors' or invitees' use, maintenance, occupation or operation of the Development and/or the Land; provided, however, that Lessor shall not be required to indemnify Lessee for any damage or injury of any kind arising as the result of Lessee's negligent act or omission or misconduct or that of its officers, agents, employees or contractors.

## ARTICLE 6

### **PROVISIONS RESPECTING CONDEMNATION AND DAMAGE OR DESTRUCTION OF DEVELOPMENT**

#### **Section 6.1 Condemnation or Damage or Destruction of Development.**

(a) If the Development or any part thereof shall be taken or condemned, for any public or quasi-public purpose or use by any competent entity in appropriate proceedings, or by any right of eminent domain, the whole compensation therefore shall be paid directly to the most senior Leasehold Mortgagee, subject to the terms of the Leasehold Mortgage Documents and applicable Laws. In the event that the Leasehold Mortgages have been paid in full, all proceeds resulting from any taking or condemnation of the Development or any portion thereof, shall be paid to Lessee.

(b) Subject to the rights of the most senior Leasehold Mortgagee, all condemnation proceeds received by the Leasehold Mortgagees, or paid to Lessee, in compensation for taking of less than substantially all of the Development shall be applied as follows:

(i) If the Development or any part thereof is taken without any material loss of or damage resulting to the Development, but creating a right to compensation therefor, the net condemnation award shall be applied pursuant to the terms of the most senior Leasehold Mortgage Documents, or otherwise, subject to the rights of the other Leasehold Mortgagees, be paid to Lessee;

(ii) If the Development or any part thereof is taken with material loss of or any damage to the Development resulting from such taking, and Lessee agrees in writing within 90 days after payment of the condemnation award that continuation of the operation of the Development and reconstruction or restoration of all or any part of the Development taken or damaged is economically feasible, then the net condemnation award shall be applied, subject to the rights of the most senior Leasehold Mortgagee, first to the reconstruction or restoration, and the balance, if any, subject to the rights of the other Leasehold Mortgagees, shall be paid to Lessee. In the event of such taking and subsequent determination to proceed with reconstruction or restoration, the rights and obligations of the parties to this Ground Lease shall continue in full force and effect, subject to the rights of the most senior Leasehold Mortgagee.

(c) Upon the occurrence of a loss of, or any damage to, the Development or operation of the Development, resulting, from such taking, Lessee's obligation to pay Rent as set forth in Section 2.3 (other than Monitoring Fee) shall be abated, subject to the following:

(i) If only a portion of the Improvements is damaged or destroyed, the Rent (other than Monitoring Fee) shall be abated or reduced by the percentage of the amount of damage or destruction to the Improvement.

(d) If the entire Development shall be taken as provided in this Section, or, in the case of a partial taking, there is a decision not to continue with the Development and carry out its reconstruction or restoration pursuant to (b) above, then the net condemnation award for the Development shall be paid to the most senior Leasehold Mortgagee in accordance with the terms of that Leasehold Mortgagee's Leasehold Mortgage Documents, and the balance (if any) shall be paid, subject to the rights of the other Leasehold Mortgagees, to the Lessee. At the election of Lessor and Lessee, this Ground Lease shall then terminate, and shall become void from the time possession thereof is required for public use, and from that date the parties hereto shall be released from further obligation hereunder.

(e) Lessor shall be entitled to all condemnation proceeds for the taking of the Land in the event the Land is taken by eminent domain, provided that the award to which Lessor is entitled for such taking shall take into consideration the fact that Lessor's interest in the Land is limited to the fee interest in the Land, as encumbered by this Ground Lease and, upon the expiration of the Term, a reversionary interest in the Improvements.

(f) Notwithstanding any other provision of this Ground Lease, in no event may Lessor or Lessee exercise any right to terminate the Lease in connection with any condemnation or similar matter without the prior written consent of each Leasehold Mortgagee (each in its sole and absolute discretion).

**Section 6.2 Lessee, Lessor and Leasehold Mortgagees to be Made Parties in Legal Proceedings.**

(a) In the event proceedings shall be instituted (1) for the exercise of the power of eminent domain, or (2) as a result of any damage to or destruction of the Development, Lessee, Lessor, and the Leasehold Mortgagees (at their election) shall be made parties thereto, and if not made parties thereto by the petitioning party, at their election, shall be brought into the proceedings by appropriate proceedings of parties thereto so that adjudication may be made of such damages, if any, as are to be paid to Lessee, Lessor, or the Leasehold Mortgagees as compensation for loss of their rights in the Development or the Land, or for damage to or destruction of the Development.

(b) The Lessor, Lessee and the Leasehold Mortgagees shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration, or adjustment of any and all (1) legal proceedings affecting Lessee, the Lessor and the Development, or (2) claims and demands for damages on account of damage to or destruction of the Development, or for damages on account of the taking or condemnation of the Development or the Land.

**Section 6.3 Waiver of Eminent Domain.**

(a) So long as Lessee is not in breach of any of the material terms, conditions or covenants of this Ground Lease, after notice and the expiration of applicable cure periods, the Lessor agrees not to exercise its own right of eminent domain against the Development for the term of this Ground Lease.

**Section 6.4 Waiver of CCP Section 1265.130.**

Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Marin, State of California to terminate this Ground Lease in the event of a partial taking of the Development.

## ARTICLE 7

### PARTICULAR COVENANTS

#### **Section 7.1 Non-Discrimination Clause.**

(a) Lessee herein covenants by and for Lessee and Lessee's successors and assigns and all persons claiming under Lessee or through Lessee that this Ground Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital or familial status, national origin or ancestry, or handicap, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Land herein leased nor shall Lessee or any person claiming under or through Lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Residents or vendees in the Land herein leased.

(b) The obligations of Lessee and the Lessor to comply with this section inures to the benefit of each to the other and to the Leasehold Mortgagees where applicable. The Leasehold Mortgagees, as appropriate, shall be entitled to invoke any remedies available by Applicable Law to redress any breach of these subsections or to compel compliance therewith by Lessee and Lessor.

#### **Section 7.2 Lessee to Extend Vendor's Warranties to Lessor.**

Lessee covenants that it will, to the extent available at no cost to Lessee, extend to the Lessor all vendor's warranties received by Lessee in connection with the provision, construction and equipment of the Land and any improvements thereon, including any warranties given by contractors, manufacturers or service organizations who have performed construction work on the Land; provided, however, that Lessor's rights to such warranties shall be subordinate to those of the most senior Leasehold Mortgagee. If requested, Lessee shall execute and deliver appropriate instruments to the Lessor to accomplish the foregoing, all without cost to Lessee.

#### **Section 7.3 Ground Leases and Contracts.**

Lessee covenants that it will require a provision in all contracts involving the Development and in all leases to its Residents in the Development that these contracts and leases require compliance with the terms and conditions of this Ground Lease applicable to such contracts and leases.

#### **Section 7.4 Lessee's Right of First Refusal.**

(a) If Lessor wishes to sell or transfer its interest in the Land and this Ground Lease, Lessor shall first give 45 days' written notice to Lessee so that Lessee may have the first right to purchase the Land. The notice shall contain the purchase price and a complete description of the terms on which Lessor wishes to sell or transfer the Land. Within 45 days of receipt of the notice given by Lessor, Lessee shall in writing either accept the offer to purchase the Land on the terms provided in the notice or reject the offer. Failure to accept the offer in writing within the 45-day period shall be deemed a rejection. If the terms of the sale or transfer change or if Lessor desires to sell or transfer the Land after expiration of a 90-day period from the date Lessee receives the last notice from Lessor, the sale or transfer shall again be subject to Lessee's right of first refusal contained in this Section.

(b) In the event that Lessee exercises its right to purchase the interest of Lessor on the terms and conditions set forth in this Section, Lessor and Lessee intend that the rights under this Section shall be specifically enforceable, without limitation on the right of Lessee or Lessor to resort to any other remedy available at law. If required by a Leasehold Mortgagee, Lessee shall execute an assignment of Lessee's right of first refusal in favor of the Leasehold Mortgagee and shall notify Lessor of the assignment in writing, and Lessor hereby consents to such assignment.

(c) Notwithstanding Section 7.4(a) and Section 7.4(b), neither Lessee nor any Leasehold Mortgagee shall have a right to purchase the interest of Lessor in the Land and this Ground Lease in the event Lessor transfers all of its interest in the Land, and all of its rights and obligations under this Ground Lease from and after the effective date of the sale or transfer (A) by operation of Law, or (B) to (1) another governmental entity, (2) an entity all of whose members are also governmental entities, or (3) a not for profit entity established and operated for the purpose of affordable housing; provided, however, that in each such instance any such sale or transfer shall be expressly subject to this Ground Lease, and neither Lessee's nor any Leasehold Mortgagee's other rights arising out of this Ground Lease shall be affected or disturbed in any way by any such sale or transfer. Each covenant, agreement or obligation of Lessor under this Ground Lease is intended to and shall constitute a covenant running with the title to the Land and shall be binding upon any subsequent owner of the Land. At such time as Lessor shall sell or transfer its entire interest in the Land and this Ground Lease, all Lessor obligations and liability arising under this Ground Lease from and after the effective date of such sale or transfer shall terminate as to Lessor, and thereupon all such liabilities and obligations shall be binding upon the transferee,

#### **Section 7.5 Estoppel Certificates.**

Lessor and Lessee agree that at any time and from time to time upon not less than 20 days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or Investor or a permitted assignee, Lessor or Lessee will execute and deliver to the other party or to such Leasehold Mortgagee or Investor a statement in writing certifying (a) that this Ground Lease is unmodified and in full force and effect (or specifying any known amendments if applicable); (b) the date through which the Rent has been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default (or any conditions existing which, but for the passage of time or the giving of notice, would constitute a default) set off, defense or other claim against Lessor or Lessee, as applicable, other than those, if any, so specified in the estoppel. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Lessor, Lessee or any Leasehold Mortgagee or Investor, as the case may be, in this Ground Lease or by any prospective Leasehold Mortgagee or Investor or permitted assignee of any Leasehold Mortgagee or Investor.

#### **Section 7.6 No Land Encumbrances.**

Lessor shall not encumber the Land without the prior written consent of each Leasehold Mortgagee, which consent shall be granted or withheld in such Leasehold Mortgagee's sole and absolute discretion. Lessor hereby approves the HCD Rider substantially in form attached hereto as Exhibit C and, following the permanent conversion of the construction loan for the Lessee Improvements, the TCAC Rider substantially in form attached hereto as Exhibit D. In the event of any default under a deed of trust, mortgage or other financing document which (1) encumbers Lessor's interest in the Land and (2) is prior to the Ground Lease, Lessee may cure such default and deduct all amounts reasonably expended in so doing from the next installment(s) of rent.

## ARTICLE 8

### **COVENANTS AND ASSURANCES OF LESSOR**

#### **Section 8.1 Lessor to Give Peaceful Possession.**

(a) Lessor covenants that to its actual knowledge it is seized in fee simple of, and has good and marketable title to, the Land and that except as set forth in the Title Reports, and the HCD Rider and TCAC Rider, the Land is free of all easements, covenants, conditions and restrictions. Lessor covenants and warrants that it has the full right and authority to make this Ground Lease. Lessor covenants and warrants that so long as Lessee is not in default under this Ground Lease and is paying the Rent and performing all of the covenants and conditions of this Ground Lease, Lessee and the Residents shall have, hold and enjoy, during the Ground Lease Term, peaceful, quiet and undisputed possession of the Land herein leased without hindrance or molestation by or from Lessor or anyone acting by or through Lessor so long as Lessee.

(b) Lessor covenants and agrees that Lessor shall not mortgage, convey, pledge, or otherwise encumber the Land without the written consent of Lessee and Leasehold Mortgagees, which written consent may be withheld in the Lessee or Leasehold Mortgagees' sole discretion. Any document evidencing such encumbrances shall be expressly subordinate to the leasehold estate created hereunder and any Leasehold Mortgagees. In such event, Lessee shall not be required, nor shall Lessee be permitted without the consent of all Leasehold Mortgagees, to subordinate the leasehold established hereunder to any mortgage entered into by Landlord after the date hereof. However, nothing in this Section shall limit any City exercise of its regulatory or governmental authority, including without limitation pursuant to Section 3.10 above

#### **Section 8.2 Lessor to Ground Lease Development with Marketable Title.**

The Lessor covenants and warrants that there are no outstanding liens and encumbrances of record that will interfere with Lessee's possession of the Land.

#### **Section 8.3 Lessor to Obtain Necessary Governmental Approvals.**

The Lessor as landlord (not as a public body) covenants that as of the date of this Ground Lease, all necessary approvals from any and all governmental agencies in compliance with all federal, state, and local laws, ordinances, and regulations requisite to leasing of the Land have been obtained.

## ARTICLE 9

### **DEFAULTS AND REMEDIES**

#### **Section 9.1 Default of Lessee.**

(a) Any one or more of the following events shall constitute an "Event of Default":

(i) Failure of Lessee to make timely payment of Rent otherwise due pursuant to this Ground Lease All Rent payments shall first be applied to accrued and unpaid Rent and then to Rent currently due.

(ii) Failure to make any monetary payment (other than Rent) due to Lessor under the Ground Lease, and continuance of such failure for 30 days, in addition to a grace period of 21 days after receipt by Lessee of written notice from Lessor specifying such failure;

(iii) Failure of Lessee to observe and perform any other material covenant, condition or agreement hereunder on its part to be performed and (i) continuance of such failure for a period of 60 days, in addition to a grace period of 21 days, after receipt by Lessee of written notice from Lessor or its agent specifying the nature of such default, or (ii) if by reason of the nature of such default the same cannot be remedied within the said 60 days and grace period, Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same; and

(iv) Lessee's abandonment of the Land as determined under Civil Code Section 1951.3 or succeeding statutes.

(b) Notices given under this Section shall specify the alleged default and the applicable Ground Lease provisions and shall demand that Lessee perform this Ground Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this Ground Lease unless Lessor so elects in the notice, and in no event shall any termination of this Ground Lease be effective unless the provisions of Article 4 have been complied with.

(c) Subject to Section 10.19 and Article 6, whenever any Event of Default referred to in (a)(i), (a)(ii) or (a)(iii) above shall have occurred and be continuing, the Lessor may take whatever action at law or in equity as may appear necessary or reasonable to enforce performance or observance of any obligations, agreements or covenants of Lessee under this Ground Lease. If Lessor terminates the Ground Lease after an Event of Default, which termination right shall at all times be subject to the rights of Leasehold Mortgagees under Article 4, Lessor shall have the right to hire a property manager for the Development, to release or sell the Development, or to take any other action it desires with the Development. Upon Lessor's termination of this Ground Lease after an Event of Default, subject to the rights of Leasehold Mortgagees under Article 4, Lessee shall have no further monetary or other obligations or liabilities under this Ground Lease.

## **Section 9.2 Default of Lessor.**

(a) Lessor shall be in default or breach of this Ground Lease if Lessor fails to observe or perform any material covenant, condition or agreement hereunder on its part to be performed, and (A) continuance of such failure for a period of 60 days after receipt by the Lessor of written notice specifying the nature of such default, or (B) if by reason of the nature of such default the same cannot be remedied within said 60 days, the Lessor fails to proceed with reasonable diligence after - receipt of the notice to cure the default.

(b) If the Lessor breaches or defaults under the Ground Lease, Lessee shall give the Lessor and the Leasehold Mortgagees written notice requiring that the breach-or default be remedied by the Lessor. If the default or breach is not cured within the time set forth in (a) above, Lessee or the Leasehold Mortgagees may take any action at law or in equity as may be necessary to protect their respective interests. Such action shall include but is not limited to the right of (i) Lessee or the Leasehold Mortgagees to cure such default and recover any expenditure with interest thereon (at the reference lending rate then in effect at the largest financial institution in the State of California, or at the maximum amount allowed under applicable law, if less), from the

Lessor within 30 days after sending to Lessor a statement therefor, (ii) any rights or remedies granted to Lessee and/or the Leasehold Mortgagees under the Leasehold Mortgage Documents or the laws of the State of California. Lessee and Leasehold Mortgagees shall have the right to offset expenses incurred by Lessee or the Leasehold Mortgagees to cure such default against Rent due under Section 2.3.

## **ARTICLE 10**

### **GENERAL PROVISIONS**

#### **Section 10.1 HCD Rider and TCAC Rider.**

The Ground Lease is amended by the HCD Rider and, following the permanent conversation of the construction loan for the Lessee Improvements, the TCAC Rider. In the event of any conflict or inconsistency between the other terms of the Ground Lease and either the HCD Rider or the TCAC Rider, the terms of the HCD Rider or TCAC Rider shall govern and control. In the event of any conflict or inconsistency between the HCD Rider and the TCAC Rider, the HCD Rider shall take precedence.

#### **Section 10.2 No Third Party Beneficiary.**

The provisions of this Ground Lease are for the exclusive benefit of Lessee and Lessor and their successors and assigns, and not for the benefit of any third person, nor shall this Ground Lease be deemed to have conferred any rights, express or implied, upon any third person, except those rights conferred on the Leasehold Mortgagees by this Ground Lease, with respect to which each Leasehold Mortgagee is hereby made an express third party beneficiary.

#### **Section 10.3 Instrument is Entire Agreement.**

This Ground Lease and the attached Exhibits constitute the entire agreement between the parties as to the lease of the Land by Lessor to Lessee. The Recitals, exhibits, and defined terms herein and therein, are incorporated into this Ground Lease by this reference. This Ground Lease shall completely and fully supersede all inconsistent other prior understandings or agreement, both written and oral, between the Lessor on the one hand, and Lessee or General Partner on the other hand, relating to the Ground Lease of the Land by the Lessor to Lessee, including without limitation the Option Agreement.

#### **Section 10.4 Amendment of Ground Lease.**

(a) No amendment to this Ground Lease shall be effective unless (1) the amendment is in writing and executed by both Lessor and Lessee and (2) written consent to the amendment has been obtained from each Leasehold Mortgagee.

(b) Lessor and Lessee acknowledge and agree that Leasehold Mortgagees may require amendments to this Ground Lease as a condition precedent to providing Leasehold Mortgages. Lessor agrees to cooperate with Lessee and Leasehold Mortgagees, and Lessor's approval of amendments shall not be unreasonably withheld; provided, however, that any such amendment shall not in any way (1) affect Lessor's fee estate or other interest in the Land, (2) affect the Term, rent or any amount otherwise payable to Lessor under this Ground Lease, or (3) otherwise in any material respect adversely affect any rights of Lessor under this Ground Lease or (except as otherwise expressly provided herein) Section 2.4.



**Section 10.5 Notices.**

all notices, demands and other formal communications hereunder shall be deemed given if: (a) delivered personally or by courier, (b) sent by overnight express delivery, or (c) mailed by registered or certified mail (return receipt requested), postage prepaid, to a party at its respective address set forth below (or at such other address as shall be specified by the party by like notice given to the other party(ies), addressed:

- (1) if to the Lessor:

City of San Rafael  
1400 Fifth Avenue, Room 202  
San Rafael, California 94901

*with copy to:*

City of San Rafael  
1400 Fifth Avenue, Room 202  
San Rafael, CA 94901

- (2) If to Lessee:

Centertown II, LP  
c/o BRIDGE Housing Corporation  
600 California St #900  
San Francisco, CA 94108  
Attn: General Counsel

And:

Centertown II, LP  
EAH Inc.  
22 Pelican Way  
San Rafael, CA 94901  
Attn: Welton Jordan  
Chief Real Estate Development Officer

With a copy to:

Goldfarb & Lipman LLP  
1300 Clay Street, 11th Floor  
Oakland, CA 94612  
Attention: Erica Williams Orcharton

And:

NHT Equity, LLC  
2245 North Bank Drive, Suite 200  
Columbus, Ohio 43220  
Attention: NAHT Asset Management

And

SAHF Affordable Housing Communities Fund 2019 (MS) Limited  
Partnership  
c/o NHT Equity, LLC  
2245 North Bank Drive, Suite 200  
Columbus, Ohio 43220  
Attention: NAHT Asset Management

With a copy to:

Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102  
Attention: Jill H. Goldstein, Esq.

The Lessor, the Leasehold Mortgagees and Lessee may, by like notice, designate any further or different addresses to which subsequent notices shall be sent.

**Section 10.6 Recording of Memorandum.**

The Lessor shall record the Memorandum of Ground Lease, substantially in the form attached hereto as Exhibit F (“Memorandum”), in Official Records.

**Section 10.7 Accessibility; Disability Laws.**

(a) Neither the Land nor the Improvements have undergone an inspection by a Certified Access Specialist (CASp).

(b) “A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

(c) Since compliance with the Americans with Disabilities Act (“**ADA**”) and other federal and state disability laws (“**Disability Laws**”) is dependent upon Lessee’s specific use of the Land, Lessor makes no warranty or representation as to whether or not the Land complies with ADA or Disability Laws. In the event that Lessee’s use of the Land requires modifications or additions to the Improvements in order to be in compliance with the ADA or Disability Laws, Lessee agrees to make any such necessary modifications and/or additions at Lessee’s sole cost and expense.

**Section 10.8 Non-Waiver of Breach.**

Neither the failure of the Lessor or Lessee to insist upon strict performance of any of the covenants and agreements of this Ground Lease nor the failure by the Lessor or Lessee to exercise any rights or remedies upon default while the Lessor or Lessee is in default hereunder shall be deemed a waiver or relinquishment (1) of any covenant herein contained or of any of the rights or remedies of the Lessor or Lessee hereunder, (2) of the right in the future of the Lessor or Lessee to insist upon and to enforce by mandamus or other appropriate legal remedy a strict compliance with all of the covenants and conditions hereof, or (3) the right of the Lessor to recover possession of the Land after the expiration of applicable cure periods.

**Section 10.9 Effectiveness: Counterparts.**

This Ground Lease shall become effective upon the Commencement Date. This Ground Lease may be executed in two counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 10.10 Ground Lease Binding on Successors.**

Subject to Section 4.2, this Ground Lease and all its provisions and attached Exhibits shall inure to the benefit of, and shall be binding upon, the Lessor, Lessee and their respective successors and assigns. Without limiting the foregoing, all rights herein granted to any Leasehold Mortgagee shall also apply to any Leasehold Mortgagee of any successor or assign of Lessee.

**Section 10.11 Relationship of Parties.**

Nothing contained in this Ground Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of association whatsoever between Lessor and Lessee, it being expressly understood and agreed that neither the computation of any payments and other charges hereunder nor any other provisions contained in this Ground Lease, nor any act or acts of the parties hereto, shall be deemed to create any relationship between Lessor and Lessee other than the relationship of landlord and tenant.

**Section 10.12 Termination: Holding Over.**

This Ground Lease shall terminate without further notice upon the expiration of the Term hereof, and any holding over by Lessee after the expiration of said Term shall not constitute a renewal hereof or give Lessee any rights hereunder or in or to the Land, except as otherwise herein provided, it being understood and agreed that this Ground Lease cannot be renewed, extended or in any manner modified except in writing signed by Lessor and Lessee (and consented to by all Leasehold Mortgagees). Upon termination of this Ground Lease, Lessee shall convey the Improvements to Lessor by quit claim deed.

**Section 10.13 Consents; Further Acts.**

Whenever in this Ground Lease the consent or approval of either Lessor or Lessee is required or permitted, the party requested to give such consent or approval will act promptly and will not unreasonably withhold its consent or approval unless expressly provided otherwise herein. Each party to this Ground Lease agrees to perform any further acts and to execute and deliver any documents that may be reasonably convenient or necessary to carry out this Ground Lease.

**Section 10.14 Construction of Words.**

Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, association, partnerships and corporation, and words of either gender shall include the other gender.

**Section 10.15 Titles.**

The titles and headings are inserted only for convenience, and are in no way to be construed as a part of this Ground Lease or as a limitation on the scope of the particular provisions to which they refer.

**Section 10.16 Days of the Week.**

A “**business day**,” as used herein, shall mean any day other than a Saturday, Sunday or holiday, as defined in Section 6700 of the California Government Code. If any date for performance herein falls on a day other than a business day, the time for such performance shall be extended to 5:00 pm on the next business day.

**Section 10.17 Invalidity of Particular Provisions.**

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

**Section 10.18 Assignment.**

(a) Except as provided in this Section or Article 4, Lessee shall not assign or transfer its interest in the Development or sublease all or any part of the Development or allow any other person or entity (except Lessee’s authorized representatives) to occupy or use all or any part of the Development without first obtaining Lessor’s written consent, which shall not be unreasonably withheld, provided, however, that nothing contained herein shall prohibit Lessee from conducting a multi-family residential rental business on the Development, including the renting of Dwelling Units to Residents, in accordance with the terms of this Ground Lease, nor require Lessee to obtain Lessor’s consent thereto. Lessee shall have the right to encumber its leasehold interests in accordance with Article 44. Any assignment or transfer without Lessor’s consent shall be voidable, and, at Lessor’s election, shall constitute a default. No consent to any assignment or transfer shall constitute a waiver of this Section.

(b) If Lessee or any approved successor is a partnership, a withdrawal or change, voluntarily, involuntarily or by operation of law, of a general partner or the dissolution of the partnership, or the transfer of any interest resulting from the death or incapacity of a general partner, shall be deemed a voluntary assignment requiring Lessor’s consent; provided, however, that:

(i) a transfer of any interest among the partners or to an entity wholly owned or controlled by the partner making the transfer, shall not be deemed a prohibited assignment or an assignment which requires the consent of Lessor;

(ii) the removal of a general partner by the investor limited partner pursuant to the terms of the partnership agreement shall not be deemed a voluntary assignment which requires the consent of Lessor as long as the Lessor has the prior right to approve the substitute general partner; and

(iii) Landlord consents to those purchase options and rights of first refusal in favor of Lessee's general partner or its designee pursuant to the terms of Lessee's partnership agreement, and agrees that transfer of title to the Development in accordance therewith shall not constitute a default under this Ground Lease nor require Lessor's consent, provided that Lessee gives Lessor at least 30 days prior written notice of such transfer, accompanied by documentation reasonably requested by Lessor and contact information for such transferee, and provided that the transferee agrees to assume the duties and obligations of the original Lessee respecting the Lease on the same terms as those imposed on the original Lessee.

(c) If Lessee or an approved successor is a corporation, any dissolution, merger, consolidation, or other reorganization of Lessee, or the sale or transfer of more than 50% of the capital stock of Lessee, or more than 50% of the value of the assets of Lessee, shall be deemed a voluntary assignment requiring Lessor's consent.

(d) Anything contained in this Section to the contrary notwithstanding, a transfer by Lessee or an approved successor hereunder of the leasehold estate or any interest therein, to an entity wholly owned or controlled by Lessee or approved successor shall not constitute a voluntary assignment or require the prior approval of Lessor. Nothing contained herein shall prohibit the Lessee or require the consent of Lessor to a transfer of any interest by Lessee resulting from a sale of stock or interest by the Lessee to the public through a recognized exchange or over-the-counter.

(e) Except as otherwise specifically provided herein, no interest of Lessee in this Ground Lease shall be assignable by operation of law (including, without limitation, the transfer of this Ground Lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment:

(i) If Lessee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which Lessee is the bankrupt; provided, however, that in the case of an involuntary petition for bankruptcy, Lessee shall have 90 days to cause such petition to be withdrawn or dismissed.

(ii) If a writ of attachment or execution is levied on this Ground Lease, which writ is not withdrawn or dismissed within 90 days.

(iii) If, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the premises, which appointment is not withdrawn or dismissed within 90 days.

(f) An involuntary assignment shall constitute a default by Lessee and Lessor shall have the right to exercise its remedies under this Ground Lease.

(g) Except as otherwise permitted herein, Lessor reserves the right to condition such consent upon the conditions that the financial net worth and business experience of the proposed assignee or transferee is, in the opinion of Lessor, reasonably comparable to that of Lessee.

Subject to the above condition, Lessor agrees not to unreasonably withhold its consent to any assignment or transfer.

(h) Lessee agrees to pay Lessor for Lessor's actual and reasonable costs including attorney's fees, incurred in conjunction with the processing and documentation of any such requested consent, assignment, transfer of ownership of this Ground Lease or Lessee's interest in and to the premises; provided, however, that Lessee's total obligation hereunder shall not exceed \$2,500 for each transaction, subject to adjustment by the CPI increase (if any) from and after the Commencement Date.

(i) Each transfer or assignment to which there has been consent shall be subject to Section 10.20 and shall pursuant to be an instrument in writing in form satisfactory to Lessor, and shall be executed by the transferor or assignor, and the transferee or assignee, shall agree in writing for the benefit of the Lessor herein to assume, to be bound by, and to perform the terms, covenants and conditions of this Ground Lease to be done, kept and performed by Lessee, including the payment of all amounts due or to become due under this Ground Lease directly to Lessor. One executed copy of such written instrument shall be delivered to Lessor. Failure to first obtain in writing Lessor's consent or failure to comply with this provision shall operate to prevent any such transfer or assignment from becoming effective.

(j) As used in this Section 10.18, the term "involuntary assignment" shall not include any judicial or non-judicial proceeding against the Development by a Leasehold Mortgagee.

#### **Section 10.19 Applicable Law.**

This Ground Lease shall be governed by and construed in accordance with the laws of the State of California, including its statutes of limitations but without regard to its conflict of laws principles.

#### **Section 10.20 Requests for Approval.**

Whenever Lessor or Lessee is required to obtain prior written consent on any matter from the other party, and no specific time for response is set by terms of this Ground Lease, then after notice has been duly given as required by this Ground Lease and no response has been given to the other party for ten business days after receipt of such notice, and three business days after further notice specifically identified in all **BOLD ALL CAPITAL LETTERS** as a "**SECOND NOTICE**" and specifically stating "**FAILURE TO RESPOND BY [INSERT SPECIFIC THREE BUSINESS DAYS RESPONSE DEADLINE] WILL BE DEEMED APPROVAL OF THE MATTERS CONTAINED IN THE ORIGINAL NOTICE DATED [INSERT ORIGINAL NOTICE DATE],**" then written consent shall be deemed to have been given by the party failing to respond.

#### **Section 10.21 Non-Recourse and Non-Liability.**

(a) Notwithstanding any other provision in this Ground Lease, Lessee, its partners and their respective successors and assigns, shall not have any personal liability under this Ground Lease. In the event of any default by Lessee, Lessor's remedy shall be limited to its right to terminate this Ground Lease and recover the Development as provided herein. Lessor may seek appropriate interim remedies not inconsistent herewith, but, in no event, shall Lessor assert any claim or have any right to seek or obtain any judgment against Lessee or any partners of Lessee for rent, damages or any other obligations, or exercise any offset against any assets of Lessee held by Lessor or funds owed by Lessor to Lessee or any of its partners.

(b) Similarly, no member, official or employee of Lessor shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by Lessor or for any amount which may become due to Lessee or its successors, or on any obligations under the terms of this Ground Lease. Lessee hereby waives and releases any claim it may have against the members, officials or employees of Lessor with respect to any default or breach by Lessor or for any amount which may become due to Lessee or its successors, or on any obligations under the terms of this Ground Lease.

**Section 10.22 List of Exhibits.**

The following Exhibits are attached hereto and incorporated herein by this reference:

- Exhibit A: Land Legal Description
- Exhibit B: Initial Leasehold Mortgagees and Investor(s)
- Exhibit C: HCD Rider
- Exhibit D: TCAC Rider
- Exhibit E: Schedule of Performance
- Exhibit F: Memorandum
- Exhibit G: \_\_\_\_\_
- Exhibit H: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Land Ground Lease as of the day and year first above written.

Approved as to Form:

\_\_\_\_\_  
Lessor's Attorney

Attest:

\_\_\_\_\_  
City Clerk

LESSOR:

CITY OF SAN RAFAEL, a municipal corporation

By: \_\_\_\_\_  
City Manager

LESSEE:

CENTERTOWN II, LP., a California limited Partnership

By: Centertown II, LLC,  
a California limited liability company, its managing general partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit corporation, its managing member

By: \_\_\_\_\_  
Smitha Seshadri,  
Executive Vice President

By: EAH Inc.,  
a California nonprofit public benefit  
corporation, its managing member

By: \_\_\_\_\_  
Welton Jordan,  
Assistant Secretary and Chief  
Real Estate Development Officer



## Exhibit A

### LAND LEGAL DESCRIPTION

All the lands shown upon that certain Map entitled, "Map of Centertown, an Air-Space Condominium", filed for record on December 13, 1983 in Volume 18 of Maps, at Page 98, Marin County Records.

#### PARCEL One-A:

Beginning at a point on the Westerly line of "C" Street distant thereon 109 feet and 8 inches Northerly from the intersection of said Westerly line of "C" Street and the Northerly line of Second Street, said point of beginning being the Southeast corner of that Lot conveyed by Loretta Ceaser to John Mirata by Deed recorded in Book 165 of Deeds, at Page 269, running thence Westerly at a right angle to "C" Street and along the Southerly line of the Lot so conveyed by Ceaser to Mireta 150 feet; thence Southerly at a right angle 42 feet; thence Easterly at a right angle 150 feet to the Westerly line of "C" Street thence Northerly along the said line of "C" Street 42 feet to the point of beginning.

Being a portion of Block 15 of the Townsite of the Town of San Rafael.

The above Parcels being all the lands, as shown upon that Parcel Map entitled, "Parcel Map Being a Reversion to Acreage of Lands of San Rafael Redevelopment Agency as described in Doc. No. 89-0044735 and Doc. No. 89-0069342, Marin County Records, Portion Block 15 'Map of Townsite of San Rafael' recorded in Rack 1, Pull 4, Marin County Records, San Rafael, Marin County, California", filed for record on August 1, 1990 in Volume 24 of Parcel Maps, at Page 92, Marin County Records.

Excepting from the above described parcel all buildings, structures and improvements of every kind, now existing or to be constructed on or under the surface of the above described property for a term of years equal to and to run concurrently with the term of that certain Ground Lease between the City of San Rafael, a municipal corporation, as lessor and Centertown II, LP, a California limited partnership, as lessee a Memorandum of which was recorded \_\_\_\_\_, 2021 as Document No. 2021-\_\_\_\_\_, and any amendments thereto, Marin County Records.

APN: 011-254-19

Exhibit A

**Exhibit B**

**INITIAL LEASEHOLD MORTGAGES AND INVESTOR(S)**

**Loans Secured by Leasehold Mortgages**

1. Umpqua Bank – \$ \_\_\_\_\_
2. Department of Housing and Community Development – \$ \_\_\_\_\_
3. County of Marin – \$ \_\_\_\_\_
4. City of San Rafael – \$ \_\_\_\_\_
5. BRIDGE and EAH (Seller Loan) – \$ \_\_\_\_\_

**Leasehold Mortgagees**

Umpqua Bank  
One Capitol Mall, Suite 610  
Sacramento, California 95814  
Attention: Monica Sharp

Department of Housing and Community Development  
State of California  
Asset Management and Compliance  
P.O. Box 952054  
Sacramento, CA 94252-2054  
Attn: Program Manager  
LPR Loan No.: \_\_\_\_\_

County of Marin  
Community Development Agency  
3501 Civic Center Drive, Suite 308  
San Rafael, CA 94903  
Attention: Housing and Federal exhibit eGrants Division

City of San Rafael  
1400 Fifth Avenue, Room 202  
San Rafael, California 94901  
Attention: \_\_\_\_\_  
\_\_\_\_\_@cityofsanrafael.org

With copy to:

City of San Rafael  
1400 Fifth Avenue, Room 202  
San Rafael, CA 94901  
Attn: Robert Epstein, City Attorney  
rob.epstein@cityofsanrafael.org

Exhibit B

BRIDGE Housing Corporation  
600 California St #900  
San Francisco, CA 94108  
Attn: General Counsel

EAH Inc.  
22 Pelican Way  
San Rafael, CA 94901  
Attn: Chief Real Estate Development Officer

**Investor(s)**

NHT Equity, LLC  
2245 North Bank Drive, Suite 200  
Columbus, Ohio 43220  
Attention: NAHT Asset Management

And:

SAHF Affordable Housing Communities Fund 2019 (MS) Limited Partnership  
c/o NHT Equity, LLC  
2245 North Bank Drive, Suite 200  
Columbus, Ohio 43220  
Attention: NAHT Asset Management

With copy to:

Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102  
Attention: Jill H. Goldstein, Esq.

Exhibit B

**Exhibit C**

**HCD RIDER**

***[to be attached]***

Exhibit C



**Exhibit D**

**TCAC RIDER**

***[to be attached]***

Exhibit D

**Exhibit E**

**SCHEDULE OF PERFORMANCE**

Construction Financing Closing	On or about October 2021
Start of Construction	On or about November 1, 2021
Construction Complete	Nov 30, 2022 but no later than December 31, 2023
	_____ 20__
	_____ 20__
	_____ 20__

Exhibit E

**Exhibit F**

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APN Nos. \_\_\_\_\_ Space Above This Line For Recorder's Use

To be recorded without fee per Government Code Section 27383  
Exempt from Building Homes and Jobs Acts fee Per Government Code Section 27388.1(a)(2)

THE UNDERSIGNED DECLARES: DOCUMENTARY TRANSFER TAX IS \$ \_\_\_\_\_  
\_\_\_\_\_ Computed on full value of property conveyed, or  
\_\_\_\_\_ Computed on full value less liens and encumbrances  
remaining at time of sale.  
\_\_\_\_\_ Unincorporated area X City of San Rafael

**MEMORANDUM OF GROUND LEASE**

This Memorandum of Ground Lease is made and entered into as of this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021 by and between the CITY OF SAN RAFAEL, a municipal corporation  
("Lessor") and CENTERTOWN II, LP, a California limited partnership ("Lessee").

**RECITALS**

A. Lessor is the owner of all that certain real property (the "Land") situated in the City  
of San Rafael, County of Marin, California, commonly known as 855 "C" Street, and more  
particularly described in Exhibit A attached hereto.

B. Lessor wishes to lease to Lessee and Lessee wishes to lease from Lessor the  
Land together with all rights, privileges and easements appurtenant to the Land.

**AGREEMENT**

NOW, THEREFORE, Lessor and Lessee hereby agree as follows:

1. Upon the covenants and conditions and for the consideration set forth in  
that certain unrecorded Ground Lease of even date herewith by and between Lessor and Lessee  
(hereinafter referred to as the "Ground Lease"), Lessor does hereby lease the Land to Lessee,  
and Lessee does hereby lease the Land from Lessor. By this reference the Ground Lease is  
incorporated in this instrument and made a part hereof.

2. The term of the Ground Lease shall commence on \_\_\_\_\_,  
2021, and shall terminate at midnight on \_\_\_\_\_, 2120, unless the term is  
sooner terminated under the Ground Lease.

Exhibit F



3. Fee simple title to all buildings, structures and improvements that now, or may from time to time be situated upon, the Land and all equipment, partitions, machinery and fixtures that are now or may from time to time be used or intended to be used in connection with such improvements shall be and remain in Lessee throughout the term of the Ground Lease.

4. Lessee shall pay to Lessor during the term of the Ground Lease certain rent described more particularly in the Ground Lease.

5. Section 7.4 of the Ground Lease titled "Lessee's Right of First Refusal" grants Lessee the right of first refusal to purchase the property described in the Ground Lease. Reference is made to the Ground Lease for further particulars relating to Lessee's right of first refusal. Notice is hereby given that Lessee's right may be assigned to certain Leasehold Mortgagees defined in the Ground Lease.

6. This Memorandum of Ground Lease shall not be deemed to modify, alter or amend the Ground Lease. In the event any conflict exists between the Ground Lease and this instrument, the Ground Lease shall for all purposes govern and determine the relationship between Lessor and Lessee and their respective rights and duties.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Ground Lease effective as of the date first above written.

Approved as to Form:

LESSOR:

CITY OF SAN RAFAEL, a  
municipal corporation

\_\_\_\_\_  
Lessor's Attorney

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

[Name]

[Title]

Attest:

\_\_\_\_\_  
Secretary

LESSEE:

CENTERTOWN II, LP., a California limited  
Partnership

Centertown II, LLC,  
a California limited liability company, its  
managing general partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit corporation, its  
managing member

\_\_\_\_\_

Exhibit F

By: Smitha Seshadri,  
Executive Vice President

By: EAH Inc.,  
a California nonprofit public benefit corporation, its  
managing member

By: \_\_\_\_\_  
Welton Jordan,  
Assistant Secretary and Chief Real Estate  
Development Officer

Exhibit F

**NOTARY**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (here insert name and title of the officer), personally appeared \_\_\_\_\_ who 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 by 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**NOTARY**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (here insert name and title of the officer), personally appeared \_\_\_\_\_ who 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 by 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Exhibit F

**Exhibit A**

**LAND LEGAL DESCRIPTION**

***[same as Exhibit A above]***

APN: 011-254-19

Exhibit F

# CITY OF SAN RAFAEL

## NOTICE OF PUBLIC HEARING

The City Council of the City of San Rafael will hold a public hearing:

**PURPOSE:** Public Hearing: To consider adoption of an ordinance approving a Ground Lease of real property at 855 C Street, to Centertown II, LP, a California limited partnership, for 99 years. This Lease is the next stage of the transaction contemplated by Resolution No. 14851, adopted by the City Council of the City of San Rafael on August 17, 2020, which approved an agreement granting an option to lease the property to Centertown II, LLC, which is an affiliate of Centertown II, LP.

**DATE/TIME/PLACE:** Monday, September 13, 2021 at 7:00 p.m.  
Consistent with Executive Orders No.-25-20 and No. N-29-20 from the Executive Department of the State of California and the Marin County Shelter in Place Order, the San Rafael City Council hearing of September 13, 2021 will not be physically open to the public and the meeting will be streamed live to YouTube at [www.youtube.com/cityofsanrafael](http://www.youtube.com/cityofsanrafael). Instructions on how to participate online will be available on the YouTube channel. You will also be able to listen/speak by telephone. The number will be provided on agenda.

**WHAT WILL HAPPEN:** You may comment on the proposed Lease Agreement ordinance. The City Council will consider all public testimony and will then decide whether to pass the Lease to print.

**IF YOU CANNOT ATTEND:** You may send a letter to City Clerk, City of San Rafael, 1400 Fifth Avenue, Room 209, San Rafael, CA 94903 or by email [Lindsay.Lara@cityofsanrafael.org](mailto:Lindsay.Lara@cityofsanrafael.org).

**FOR MORE INFORMATION:** You may contact Danielle O’Leary, Director of Economic Development and Innovation, at (415) 485-3460 or [Danielle.OLeary@cityofsanrafael.org](mailto:Danielle.OLeary@cityofsanrafael.org). Office hours are Monday through Friday, 8:30 a.m. to 5:00 p.m.

SAN RAFAEL CITY COUNCIL

/s/ LINDSAY LARA  
LINDSAY LARA, City Clerk