



AGENDA

SAN RAFAEL CITY COUNCIL – MONDAY, SEPTEMBER 20, 2021

REGULAR MEETING AT 7:00 P.M.

Watch on Webinar: <https://tinyurl.com/cc-2021-09-20>

Watch on YouTube: www.youtube.com/cityofsanrafael

Listen by phone: (669) 900-9128

ID: 899-2635-9885#

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.

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.
- 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 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: 838-2957-5412# - 5:30 P.M.

1. Mayor Kate to announce Closed Session items.

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, Robert Epstein, Nadine Hade, Sylvia Gonzalez, Susan Andrade-Wax, Catherine Quffa, Kelly Albrecht
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. **Ground Lease to Centertown II, LP of 855 C Street**

Final Adoption of Ordinance 2000: 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 (CC)

Recommended Action – Final Adoption of Ordinance 2000

b. **Marin Endurance Festival Special Event Street Closure**

Resolution Authorizing the Temporary Closure of Point San Pedro Road from Riviera Drive to Biscayne Drive for the Marin Endurance Festival on October 30th and 31st, 2021 (PD)

Recommended Action – Adopt Resolution

c. **Francisco Boulevard East Resurfacing Project**

Resolution Awarding and Authorizing the City Manager to Execute a Construction Agreement for the Francisco Boulevard East Resurfacing Project, City Project No. 11389, to Ghilotti Construction Company, Inc. in the Amount of \$1,136,140.00, and Authorizing Contingency Funds in the Amount of \$173,860.00, for a Total Appropriated Amount of \$1,310,000.00 (PW)

Recommended Action – Adopt Resolution

OTHER AGENDA ITEMS

6. Other Agenda Items:

a. **Climate Emergency Declaration**

Resolution Adopting a Climate Emergency Declaration and Establishing a New Long-Term Target for Greenhouse Gas Reductions (CM)

Recommended Action – Adopt Resolution

b. **Grand Jury Report on Adapting to Climate Change**

Resolution Approving and Authorizing the Mayor to Execute the City of San Rafael's Final Response to the 2019-2020 Marin County Civil Grand Jury Report Entitled, "Climate Change: How Will Marin Adapt?" (CM)

Recommended Action – Adopt Resolution

c. **Fiscal Year 2020-2021 City-Wide Budget Amendments and Fiscal Year 2021-2022 Update**

- i. Resolution Adopting Amendments to the City of San Rafael Budget for Fiscal Year 2020-2021 for the Purpose of Confirming Authorized Appropriations and Transfers (Fin)

Recommended Action – Adopt Resolution

- ii. Resolution Adopting Amendments for Fiscal Year 2021-2022 for the Purposes of Personnel Changes (Fin)
Recommended Action - Adopt Resolution

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None.

ADJOURNMENT:

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

ORDINANCE NO. 2000

**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. 2000 was introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 13th day of September 2021 and ordered passed to print by the following vote, to wit:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

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



LINDSAY LARA, City Clerk

**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 2nd 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.¹

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 Lease² 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:

¹ Developer to prepare and distribute Assignment Agreement.

² 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 conversation 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 Mortgages. 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 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

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 C

HCD RIDER

[to be attached]

Exhibit D

TCAC RIDER

[to be attached]

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 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.

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

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

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 A

LAND LEGAL DESCRIPTION

[same as Exhibit A above]

APN: 011-254-19

SUMMARY OF ORDINANCE NO. 2000

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

This Summary concerns a proposed ordinance of the City Council of the City of San Rafael, designated as Ordinance No. 2000, which will approve a ground lease of City-owned property at 855 C Street, San Rafael, to Centertown II, LP. Ordinance No. 2000 is scheduled for adoption by the San Rafael City Council at its regular meeting of September 20, 2021. The City Clerk has been directed to publish this Summary pursuant to City Charter and California Government Code section 36933(c)(1).

SUMMARY OF AMENDMENT TO MUNICIPAL CODE

The City-owned property at 855 C Street is currently subject to a long-term ground lease with Centertown Associates Ltd., entered into in November 1989, and the property has been improved with an apartment complex called Centertown, which has units affordable to low-income residents. On August 17, 2020, the San Rafael City Council granted to Centertown II, LLC, an affiliate of Centertown II, LP, an option to enter into a new ground lease (and cancel the existing lease) that would facilitate refinancing the property for needed repairs and refurbishment of the apartment complex. The option to lease has been exercised, and Ordinance No. 2000 will approve a 99-year ground lease of the property at 855 C Street to Centertown II, LP, with a one-time payment to the City of \$83,000 on closing, plus a lease payment of \$1 per year, plus annual monitoring fees and costs. The lease requires at least 48% of the units to be leased to low-income tenants, and financing obligations will require that the remaining units also be leased to low-income tenants.

Copies of Ordinance No. 2000 will be available for public review as of Wednesday, September 15, 2021, at the San Rafael City Clerk's Office, 1400 Fifth Avenue, 2nd 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 Danielle O'Leary, Director of Economic Development and Innovation (415) 485-3460 for information.

LINDSAY LARA
San Rafael City Clerk
Dated: 9/15/2021



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Police Department

Prepared by: Lisa Holton, Lieutenant

City Manager Approval: 

TOPIC: MARIN ENDURANCE FESTIVAL SPECIAL EVENT STREET CLOSURE

SUBJECT: RESOLUTION AUTHORIZING THE TEMPORARY CLOSURE OF POINT SAN PEDRO ROAD FROM RIVIERA DRIVE TO BISCAYNE DRIVE FOR THE MARIN ENDURANCE FESTIVAL ON OCTOBER 30TH AND 31ST, 2021.

RECOMMENDATION: Adopt a resolution authorizing the temporary closure of Point San Pedro Road from Riviera Drive to Biscayne Drive for The Marin Endurance Festival on October 30th and 31st, 2021.

BACKGROUND:

The Marin Endurance Festival is a fundraising event produced by Mascot Sports on Point San Pedro Road between Main Drive and China Camp State Park. Advance approval for this two-day event requires a resolution of the City Council as it will close portions of Point San Pedro Road.

All street closures for special events are coordinated with the Police Department Traffic Division, Parking Services and Public Works Department as well as other departments that require input for the service that is needed. Individual operational planning for the event’s logistics will be generated by the appropriate staff in each department.

All event organizers are required to submit an Event Application, fulfill insurance requirements indemnifying the City from liability associated with the event, provide information regarding operation, logistics and activities included in the event, as well as adhere to any local, state and/or federal rules and regulations. City staff will ensure event organizers effectively manage community notifications of the event, as well as associated road closures.

ANALYSIS:

Specific street closure times will be determined by Event Staff and the Traffic Sergeant as needed for each event day and schedule. The public will be notified in advance of the events. Road closures will be coordinated in an effort to reduce impact on neighborhood residents. Much of the traffic control for the event can be accomplished through lane closures only. However, for

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

the safety of drivers and event participants, it will be necessary to close portions of Point San Pedro Road between Riviera Drive and Biscayne Drive intermittently between 8:30 a.m. and 12:30 p.m. on Saturday, October 30, 2021 and Sunday, October 31, 2021. Traffic control personnel and vehicle escorts will be provided to assist residents in navigating detours. The roadways will be re-opened as soon as it can be accomplished safely, but no later than 12:30 p.m.

COMMUNITY OUTREACH:

Merchants, businesses, residents, and general public are notified of the street closures through a variety of traditional methods which may include but are not limited to mailed public notification, public service messages, HOA's websites/newsletters, mobile message boards, event posters, etc.

FISCAL IMPACT:

Pursuant to the current City policy, Police, Public Works and Parking Services fees and/or costs will be assessed and reimbursed by the event organizer unless directed otherwise.

RECOMMENDED ACTION:

Adopt a resolution authorizing the temporary closure of Point San Pedro Road from Riviera Drive to Biscayne Drive for The Marin Endurance Festival on October 30th and 31st, 2021.

ATTACHMENT:

1. Resolution

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE TEMPORARY CLOSURE OF POINT SAN PEDRO ROAD FROM RIVIERA DRIVE TO BISCAYNE DRIVE FOR THE MARIN ENDURANCE FESTIVAL ON OCTOBER 30TH AND 31ST, 2021

WHEREAS, the Marin Endurance Festival will be held on October 30-31, 2021; and

WHEREAS, temporary road closures are required to facilitate the event; and

WHEREAS, California Vehicle Code section 21101(e) permits cities to temporarily close a portion of any street for celebrations, parades, local special events, and other purposes, when, in the city's opinion, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing; and

WHEREAS, California Vehicle Code section 21103 requires the City to place signs giving notice of the closure at all entrances to the road experiencing temporary closure; and

WHEREAS, after reviewing plans for the events and the traffic patterns, City staff has determined and recommended that, in the interest of the safety and welfare of pedestrian and auto traffic in the Peacock Gap area, Point San Pedro Road should be temporarily closed to through traffic for portions of both October 30 and October 31, 2021; and

WHEREAS, the specific time periods for the above temporary closures shall be as determined by the City's Events Coordinator in consultation with the Police Department, and the Events Coordinator shall give timely notice to the public of those time periods by signage and/or other appropriate means.

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

1. That all the above findings are true and correct;
2. That, pursuant to the authority of Vehicle Code section 21101(e), for the safety and protection of persons, both pedestrians and vehicle drivers, the City Council hereby authorizes the temporary closure of the above listed street as set forth above.
3. That, pursuant to Vehicle Code section 21103, the City shall post notices of the closure at all entrances of the above listed street.

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 20th day of September 2021, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Lindsay Lara, City Clerk



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

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

City Manager Approval: _____

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

File No.: 16.06.94

TOPIC: FRANCISCO BOUVELARD EAST RESURFACING PROJECT

SUBJECT: RESOLUTION AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT FOR THE FRANCISCO BOUVELARD EAST RESURFACING PROJECT, CITY PROJECT NO. 11389, TO GHILOTTI CONSTRUCTION COMPANY, INC. IN THE AMOUNT OF \$1,136,140.00, AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$173,860.00, FOR A TOTAL APPROPRIATED AMOUNT OF \$1,310,000.00

RECOMMENDATION: Adopt the resolution awarding and authorizing the City Manager to execute a construction agreement for the Francisco Boulevard East Resurfacing Project to Ghilotti Construction Company, Inc. in the amount of \$1,136,140.00 and authorizing contingency funds in the amount of \$173,860.00, for a total appropriated amount of \$1,310,000.00.

BACKGROUND: Francisco Boulevard East is one of the busiest arterials in the City, used as a primary connector for several neighborhoods to downtown San Rafael, San Rafael High School, and other highly frequented destinations including Highway 101 and Interstate 580.

The Department of Public Works has almost completed construction of the Francisco Boulevard East Sidewalk Widening Project, which was funded through an Active Transportation Program (ATP) Federal Grant that focuses on pedestrian and bicycle improvements along the corridor. The funding for the sidewalk widening project did not allow resurfacing of the roadway as an acceptable use of the grant funds, so the Department of Public Works developed a separate resurfacing project sequentially with the construction of the sidewalk project.

The resurfacing project will include grinding the existing asphalt, placement of new hot mix asphalt with reinforcing pavement fabric, and new traffic striping on Francisco Boulevard East from Vivian Street to Grand Avenue.

On August 19, 2021, the project was advertised in accordance with San Rafael's Municipal Code.

ANALYSIS: On September 9, 2021, the following bids were received and read aloud:

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

<u>NAME OF BIDDER</u>	<u>AMOUNT</u>
Ghilotti Construction Company Inc.	\$1,136,140.00
Ghilotti Bros., Inc.	\$1,228,443.00

The construction bids have been reviewed by Public Works staff and the low bid from Ghilotti Construction Company Inc. in the amount of \$1,136,140.00 was found to be both responsive and responsible. City staff recommends awarding the construction contract to Ghilotti Construction Company Inc. for the amount bid, and also recommends the City Council authorize a construction contingency of approximately fifteen percent in an amount of \$173,860.00 for a total authorized amount of \$1,310,000.00.

PUBLIC OUTREACH: Staff has discussed this project for years with the community as part of the outreach for the Francisco Boulevard East Sidewalk Widening Project. In addition, Staff has posted updates on the Department of Public Works news blogs and added updates on the City's Francisco Boulevard East website.

FISCAL IMPACT: Staff proposes to appropriate construction funding for this project in the amount of \$1,310,000.00 utilizing State Bill 1 (SB1) Road Maintenance and Rehabilitation Account (RMRA) that deposits funds annually into the City's Gas Tax 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 Francisco Boulevard East Resurfacing Project to Ghilotti Construction Company Inc. in the amount of \$1,136,140.00 and authorizing contingency funds in the amount of \$173,860.00, for a total appropriated amount of \$1,310,000.00

ATTACHMENTS:

1. Resolution awarding the construction agreement to Ghilotti Construction Company Inc.
2. Contract to be executed between the City and Ghilotti Construction Company Inc.

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT FOR THE FRANCISCO BOULEVARD EAST RESURFACING PROJECT, CITY PROJECT NO. 11389, TO GHILOTTI CONSTRUCTION COMPANY, INC. IN THE AMOUNT OF \$1,136,140.00 AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$173,860.00, FOR A TOTAL APPROPRIATED AMOUNT OF \$1,310,000.00

WHEREAS, on the 9th 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:

“Francisco Boulevard East Resurfacing Project”

City Project No. 11389

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

WHEREAS, the bid of \$1,136,140.00 from Ghilotti Construction Company 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 \$173,860.00;

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

1. The plans and specifications for the “Francisco Boulevard East Resurfacing Project”, City Project No. 11389 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 Construction Company 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 \$1,310,000.00 which includes the construction award amount and contingency, will be appropriated for City Project No. 11389, using \$1,310,000.00 in 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 20th day of September 2021 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

File No.: 16.06.94

LINDSAY LARA, City Clerk

Contract

This public works contract ("Contract") is entered into by and between the City of San Rafael ("City") and Ghilotti Construction Company, Inc., a corporation authorized to do business in California ("Contractor"), for work on the Francisco Blvd. East Resurfacing Project (City Project No. 11389) ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On September 20, 2021, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
 - 2.1 Notice Inviting Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Plans and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Potential Award;
 - 2.12 Notice to Proceed;
 - 2.13 Uniform Standards All Cities and County of Marin (available online at: <https://www.marincounty.org/-/media/files/departments/pw/engineering/2018-ucs-complete-set.pdf?la=en>); and
3. **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor \$1,136,140.00 ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within 15 working days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$1,000 per day for each day of unexcused delay in

achieving Final Completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

7. Labor Code Compliance.

7.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

7.2 Prevailing Wages. This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

7.3 DIR Registration. City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

8. Workers' Compensation Certification. Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. Conflicts of Interest. Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

City:

Department of Public Works
111 Morphew Street,
San Rafael, CA, 94901
Attn: Shawn Graf
Shawn.Graf@cityofsanrafael.org

Copy to: Iman Kayani

Contractor:

Name: Ghilotti Construction Company, Inc.
Address: 2301 Kerner Blvd.
City/State/Zip: San Rafael, CA 94901
Phone: (415) 256-1525
Attn: Thomas Smith
Email: tom@ghilotti.com

Copy to:

12. General Provisions.

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Marin County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Marin County, California.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 12.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code § 313.

The parties agree to this Contract as witnessed by the signatures below:

CITY:

Approved as to form:

s/ _____

s/ _____

Jim Schutz, City Manager

Robert F. Epstein, City Attorney

Date: _____

Date: _____

Attest:

s/ _____

Lindsay Lara, City Clerk

Date: _____

CONTRACTOR:

_____ Business Name

s/ _____

Seal:

Name, Title

Date: _____

Second Signature (See Section 12.8):

s/ _____

Name, Title

Date: _____

Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Manager

**Prepared by: Cory Bytof,
Sustainability Program Manager**

City Manager Approval: _____

TOPIC: CLIMATE EMERGENCY DECLARATION

**SUBJECT: RESOLUTION ADOPTING A CLIMATE EMERGENCY DECLARATION
AND ESTABLISHING A NEW LONG-TERM TARGET FOR GREENHOUSE
GAS REDUCTIONS**

RECOMMENDATION:

Adopt a Resolution declaring a climate emergency and establishing a new long-term target for greenhouse gas reductions.

BACKGROUND:

Climate Emergency Declaration

To address the growing environmental, economic, and societal threat posed by climate change, The Climate Mobilization, an international campaign formed during the 2014 People's Climate March, and other organizations are calling on governments around the world to adopt a Climate Emergency Declaration (CED) and mobilize their communities to take action to address the climate crisis. To date, over 2,000 local governments in 34 countries have joined the movement, including six in Marin County and dozens in the Bay Area. The City of San Rafael has received requests from several local organizations to adopt a CED, including Sustainable San Rafael, Organizing for Action, the Sierra Club, and the Marin Climate Action Network.

These requests to declare a climate emergency point to the increasing effects of climate change and need for accelerated action to stop and reverse climate change in a shorter time period than had been believed. A Climate Emergency Declaration allows the City to reset its long-term greenhouse gas reduction goal to align with State targets, while recommitting to rapid climate action. It also pronounces the need to include climate considerations in all the City's major decision-making, as implemented through our newly adopted General Plan 2040. The Climate Emergency Declaration has been vetted through and supported by the City Council's Sustainability Liaison, Maika Llorens Gulati, as well as community members and partners in our ongoing Climate Change Action Plan quarterly implementation forum.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

State of the Climate

2020 was another record-setting year with regard to the climate. 2011-2020 was the hottest decade on record. Wildfires scorched over 4.2 million acres in 2020 in California. The August Complex Fire last year in Mendocino County burned more than 1 million acres, making it the largest fire in California history. Currently there are dozens of wildfires burning in California, including the Dixie Fire, now the 2nd largest fire in CA history. Over 3,000 buildings have been destroyed this year alone, including many homes. In addition to wildfires, 2020 was the second-driest year in 90 years in the Marin Municipal Water District watershed, and Marin could be completely out of water by late summer 2022 at current usage rates if we have another dry winter season.

The International Panel on Climate Change (IPCC) released its most recent [report](#) in July 2021. United Nations Secretary-General António Guterres called the report nothing less than "a code red for humanity". While documenting the extreme climate-induced effects currently happening, the report also projects that in the coming years there will be increased drought and fire as well as increased extreme precipitation events. Essentially, there will be longer, dryer periods with higher potential for drought and wildfire, along with higher likelihood of atmospheric river events that cause more severe flooding and landslide events. These changes to the climate affect people dramatically, especially the most vulnerable members of our community, as we experience more extreme heat days, increased flooding and storm impacts, water restrictions, increased health impacts, and higher food costs.

City Actions

In 2006, San Rafael was one of the early signatories to the U.S. Conference of Mayors Climate Protection Agreement, committing the City to working towards meeting the goals of the [Kyoto Protocol](#). In 2009, the City adopted its first [Climate Change Action Plan](#) (CCAP), committing the City to a goal of reducing greenhouse gas emissions (GHG's), the pollution that causes climate change, 25% by 2020 and 80% by 2050. As of 2019 data, the most recent available, the City had reduced emissions 27% from the 2005 baseline, resulting in a [Platinum Level Beacon Award](#) for Sustainability just last month. In 2019, the City adopted an updated [CCAP 2030](#) setting a new interim target of 40% reduction by 2030 from 1990 levels, applying the State's recommended interim target for GHG reductions. The City conducts annual GHG inventories to track progress and provides reports to the City Council.

The City's CCAP was integrated into the recently adopted [General Plan 2040](#). This includes dozens of climate action and adaptation [policies and programs](#), as well as a Flood Risk and Sea Level Rise Adaptation Report. One Policy, C-5.2, ensures that decisions regarding future development, capital projects, and resource management are "consistent with San Rafael's CCAP and other climate goals, including greenhouse gas reduction and adaptation." Every two years the Sustainability Division develops a priority work plan and reports on CCAP progress, the latest of which was brought to the City Council on [May 17, 2021](#).

Councilmember Llorens Gulati acts as the Sustainability Liaison to the Council. As Liaison, Councilmember Llorens Gulati chairs the quarterly public CCAP implementation forums comprised of staff, partner agencies, and interested members of the community. The Liaison helps prioritize requests from the public and in shaping projects and programs for City Council action. As part of the CCAP implementation, a City Council Sustainability Liaison meets quarterly with primary staff involved with implementing the CCAP as well as the president of Sustainable San Rafael, with occasional additional meetings as needed to address specific initiatives of high importance such as the CED.

California Climate Goals

The State of California has responded to growing concerns over the effects of climate change by adopting a comprehensive approach to addressing emissions in the public and private sectors. This approach was officially initiated with the passage of the Global Warming Solutions Act of 2006 (AB 32), which requires the state to reduce its greenhouse gas (GHG) emissions to 1990 levels by 2020. The AB 32 Scoping Plan was developed to identify strategies for meeting the AB 32 goal and was adopted by the California Air Resources Board (CARB) in December 2008. Among many other strategies, it encouraged local governments to reduce emissions in their jurisdictions by 15 percent below 2005 baseline levels by 2020, and proposed an initial long-term goal established by Executive Order S-3-05 to reduce emissions 80 percent below 1990 levels by 2050.

In 2016, the State Legislature passed [SB 32](#), which set interim targets of 40% reductions below 1990 levels by 2030. CARB subsequently updated its Climate Change Scoping Plan in 2017 to lay out a strategy to achieve the 2030 target. In 2018, Executive Order B-55-18 committed California to achieve carbon neutrality – the point at which the removal of carbon from the atmosphere meets or exceeds emissions – by 2045.

ANALYSIS:

Alignment with Other Jurisdictions

As noted above, over 2,000 local governments in 34 countries have declared a climate emergency, including six here in Marin: Tiburon, Novato, Fairfax, San Anselmo, Corte Madera, and most recently the County of Marin. Most commit to similar measures and resolves, although some differ on the target date of carbon neutrality. Other large institutions such as the University of California have made declarations as well. Most recently, the American Institute of Architects declared a climate emergency “to immediately accelerate the de-carbonization of the built environment.”

Resetting the City’s Long-term Target

One primary aspect of this CED is to reset the City’s long-term greenhouse gas (GHG) reduction target from the current 80% below 1990 levels by 2050 target to becoming carbon neutral by no later than 2045 (i.e., zero emissions). This will be a challenging target to meet based on the current rate of reduction and lack of clear, evidence-based pathways. However, conformity with State targets is important for cities such as San Rafael in that it allows the City to align policies and take advantage of State mandates, incentives, and programs that help in reducing GHG’s. In addition, technologies and opportunities are changing rapidly and this target will keep San Rafael committed to innovation and leading edge practices and products. The City will continue to monitor and adjust targets and climate action programs as necessary. For example, if the State sets a sooner date for carbon neutrality and lays out a strategy to achieve it, the City will be able to amend our target to match.

Commitment to Implementation and Advocacy

This CED provides language committing the City to continue robust implementation of the CCAP. This aligns with our current practices, annual reports, [biennial priority-setting](#), and collaborative approach to climate action. It also commits the City to advocacy on behalf of climate action, giving examples such as advocating at the State and Federal level for a carbon tax and extended producer responsibility (EPR). This is a practice the City currently engages in for items that are in line with City Council Goals/Objectives or other legislative priorities. For example, the City has sent letters of support for community choice aggregation energy policies and product stewardship initiatives, among others. One of the four current [City Council Goals](#) Focus Areas is *Sustainability*,

Climate Change, and Disasters. The CED also commits the City to taking our CCAP and the CED into account when deliberating major decisions. San Rafael recently incorporated the CCAP into General Plan 2040, which is the guiding document for all major decisions the City will make.

Equity and Engagement

There are two other significant items to note in the CED. The CED acknowledges that the City cannot do this alone, and that all levels of government, institutions, residents and businesses need to be engaged in climate action if we are to meet our goals. This calls for increased community engagement and increasing support for programs like Resilient Neighborhoods. The CED also acknowledges the need to address racial justice and social equity, noting critically that frontline communities bear the brunt of the worst of climate impacts and need to be included in the benefits of climate action and adaptation planning. These considerations match the programs and priorities in the CCAP and General Plan.

Summary

Adopting a Climate Emergency Resolution puts the City in alignment with other local jurisdictions in Marin and adds our voice to the chorus calling for rapid climate action at the local, State, and Federal levels. It resets our long-term GHG reduction target to align with the State goal of carbon neutrality by 2045. It also recommits the City to robust climate action with a focus on equity, while acknowledging the need to include climate considerations in all of the City's major decision-making. It has been vetted through and supported by our community members and partners in our ongoing CCAP implementation forum.

COMMUNITY OUTREACH:

City Council Sustainability Liaison Llorens Gulati and staff have been in conversations with community members about this topic and the CED was discussed at the last CCAP quarterly community implementation forum. This item was also sent to the public through the City Manager's Snapshot.

FISCAL IMPACT:

There is no direct fiscal impact to adopting this resolution. However, funding for implementation of programs in the CCAP and the biennial priorities that require funding will come from grants, utility programs, the General Fund, and through other means. Any significant impacts to the General Fund not currently included in the budget will be brought to Council for review and formal acceptance prior to execution.

RECOMMENDED ACTIONS:

1. Adopt the Climate Emergency Declaration Resolution

ATTACHMENTS:

Attachment A: Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL ADOPTING A CLIMATE EMERGENCY DECLARATION AND ESTABLISHING A NEW LONG-TERM TARGET FOR GREENHOUSE GAS REDUCTIONS

WHEREAS, the City Council of the City of San Rafael is charged with protecting and promoting the health, safety, and welfare of San Rafael's residents, and sustaining the city's environment and livability; and

WHEREAS, the City Council concurs with the consensus among climate scientists that global climate and ecological crises are happening now, and that the current pace and scale of global climate action is not sufficient to avert substantial and increasing damage to the environment, economy, and human health; and

WHEREAS, atmospheric CO₂ is now 50 percent higher than at any time in human history, and global average temperatures are at the highest level ever recorded, and both trends are increasing; and

WHEREAS, our planet is rapidly approaching critical climate tipping points, as defined by the UN's Intergovernmental Panel on Climate Change Sixth Assessment Report, released August 9, 2021, that must be avoided to prevent cascading and uncontrollable effects on the survival of our species; and

WHEREAS, in 2018, the 4th National and California Climate Change Assessments warned that extreme weather and climate-related events in the United States are worsening, predicting increased heat waves in the western U.S., larger wildfires of greater intensity, declining snowpack and increasing drought, increased flooding and sea level rise, impaired agriculture, and substantial damage to the economy and human health, unless greenhouse gas emissions are immediately and dramatically curbed; and

WHEREAS, in 2016, the California State legislature passed SB 32, setting interim greenhouse gas reduction targets of 40% below 1990 levels by 2030, and on September 10, 2018, California Governor Brown signed Executive Order B-55-18 setting a new statewide goal of net zero greenhouse gas emissions as soon as possible and no later than 2045; and

WHEREAS, humanity can no longer safely emit greenhouse gases and must undertake an emergency mobilization across all sectors to: (1) reduce and remove excess greenhouse gases from the atmosphere; (2) preserve and restore the Earth's biodiversity; (3) implement measures to protect all people and species from the consequences of global warming; and (4) cultivate a just and equitable transition toward climate justice and resilience; and

WHEREAS, low-income communities, indigenous communities, and communities of color are experiencing the greatest impacts of climate change, and remediation of these impacts requires active collaboration with and protection of these and other vulnerable and historically exploited populations; and

WHEREAS, young people will inherit the legacy of our decisions on climate, and youth from diverse backgrounds are organizing locally and worldwide to demand climate justice and government action to mitigate the catastrophic impacts of the climate emergency and to restore a safe climate; and

WHEREAS, San Rafael has demonstrated climate leadership to reduce greenhouse gas emissions and enhance the quality of life in our community, including sustainable land use planning, adoption of its first Climate Change Action Plan in 2009, and an updated Climate Change Action Plan 2030; and

WHEREAS, in adopting its General Plan 2040, the City resolved to vigorously implement programs to achieve or exceed State GHG goals, including actions pursuant to its current Climate Change Action Plan priorities to reduce emissions through building electrification, electric vehicle adoption, and mandatory organics recycling, thereby addressing the three largest sectors of San Rafael's GHG footprint, and

WHEREAS, despite significant actions by San Rafael and other governmental entities to reduce greenhouse gas emissions, we currently face an increasingly urgent climate crisis that demands dramatic and accelerated action by all, including all levels of government, major institutions, residents, and businesses and that we must work with and empower our community to do their part if we are to avoid catastrophic consequences from climate change;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Rafael hereby declares that we are in a climate emergency, which threatens our city, region, state, nation, humanity and the natural world, requiring urgent action; and

BE IT FURTHER RESOLVED, in addition to the current goal of reducing greenhouse gas emissions to 40% below 1990 levels by 2030 currently in the Climate Change Action Plan, that the City Council of the City of San Rafael adopts the State of California's goal of achieving net zero greenhouse gas emissions as soon as possible and no later than 2045, including potential acceleration of these dates by the State; and

BE IT FURTHER RESOLVED, that the City Council of the City of San Rafael directs the City Manager to continue to work with staff to mobilize municipal and community actions to meet the growing climate emergency by reducing greenhouse gas emissions, increasing carbon sequestration, and preparing for climate impacts, including such actions identified in General Plan 2040 and the Climate Change Action Plan 2030, as amended or updated, to meet or exceed City climate goals as quickly as feasible; and

BE IT FURTHER RESOLVED, that the City Council of the City of San Rafael regards climate change to be a high priority in its annual goal-setting process and directs the City Manager to continue to identify financial and regulatory means to support San Rafael's climate actions and to consider specific funds for greenhouse gas and climate change mitigation and resilience measures, including for rapid implementation of those measures identified in the City Council's biennial climate action priorities; and

BE IT FURTHER RESOLVED, that the City Council of the City of San Rafael directs the City Manager to include a consideration of consistency with this Climate Emergency Resolution and San Rafael's Climate Change Action Plan in all relevant decision-making, just as it considers fiscal impact and General Plan consistency; and

BE IT FURTHER RESOLVED, that the City Council of the City of San Rafael commits to regularly assess and augment San Rafael's greenhouse gas reduction actions, policies and goals, and provide progress reports and metrics at least annually; and

BE IT FURTHER RESOLVED, that the City Council of the City of San Rafael commits to pursuing climate actions in an equitable and inclusive manner that furthers social equity, environmental justice, and economic vitality; and

BE IT FURTHER RESOLVED, that the City Council of the City of San Rafael affirms the need for the understanding, active participation and collaboration of the broader community for all actions and initiatives San Rafael may adopt in response to the climate emergency and commits to provide outreach, information and education for residents, businesses, and City staff on the urgency of climate responses and reduction of greenhouse gas emissions, as well as policies and strategies to advance sustainability and resilience; and

BE IT FURTHER RESOLVED, that the City Council of the City of San Rafael joins and will advocate for appropriate county, regional, state, national, and international climate action emergency mobilization efforts at all levels of government, including advocacy for actions beyond local authority, such as carbon pricing and extended producer responsibility, in order to reverse global warming and associated ecological crises.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on the 20th day of September 2021, by the following vote to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk



SAN RAFAEL
THE CITY WITH A MISSION

Agenda Item No: 6.b

Meeting Date: September 20, 2021

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Manager, Sustainability Division

Prepared by: Cory Bytof,
Sustainability Program Manager

City Manager Approval: 

TOPIC: GRAND JURY REPORT ON ADAPTING TO CLIMATE CHANGE

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF SAN RAFAEL'S FINAL RESPONSE TO THE 2019-2020 MARIN COUNTY CIVIL GRAND JURY REPORT ENTITLED, "CLIMATE CHANGE: HOW WILL MARIN ADAPT?"

RECOMMENDATION: Adopt a resolution approving the City of San Rafael's final response to the Marin County Civil Grand Jury's report entitled, "Climate Change: How Will Marin Adapt?"

BACKGROUND:

On September 11, 2020, the [2019-20 Marin County Civil Grand Jury](#) issued a report entitled [Climate Change: How Will Marin Adapt?](#) relating to coordinated efforts to respond to the effects of climate change in Marin County. The report focuses on the lack of coordination between the County and Marin cities and towns regarding the various threats and impacts associated with a changing climate.

Penal Code section 933 requires the City to respond to all reports no later than 90 days after the grand jury submits a final report. Subsequently, the City adopted a resolution on [November 16, 2020 approving a response to the grand jury report](#). This initial response included two grand jury recommendations that required additional analysis:

R1. The Board of Supervisors, in collaboration with the municipalities and other agencies affected by climate change, should convene a multi-jurisdictional task force (referred to in this report as the Marin Climate Adaptation Task Force) charged with developing a single, comprehensive, multi-jurisdictional adaptation strategy for all of Marin.

R4. Each member of the Marin Climate & Energy Partnership, should declare its support for broadening the partnership's mission and increasing its funding as necessary to enable it to support overall climate change planning efforts, including both mitigation and adaptation in cities, towns, and other member agencies throughout the county.

The grand jury requires a final response for items requiring additional analysis, which the City has now completed. Staff recommends that the City Council adopt the attached resolution

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

approving the City of San Rafael's revised and final response to the grand jury's report (Attachment 1).

ANALYSIS:

All of the City's responses to the Findings and Recommendations in the grand jury report can be found in the City's initial response as well as in the final response in Attachment 2. These items remain the same save for updates to any reference to the General Plan, which was in draft form when the response was made and is now an officially adopted City plan.

Since the initial Response in November 2020, City staff has been developing an internal City adaptation team, has been working on a grant to conduct adaptation planning in the greater Canal district, and has been meeting with others around the County to flesh out ways to better collaborate efficiently regarding adaptation planning. This is a new field of endeavor, and relatively few collaborative adaptation planning efforts have been actualized. City staff has been meeting with others from around the region through the Bay Adapt coalition and with staff at the State Office of Planning and Research to develop our planning efforts and to try to align with countywide, regional and statewide efforts. On [May 17, 2021](#), Staff brought forward the [2021-2023 Two-Year Sustainability Program Priorities](#), which included two priorities related to adaptation planning: 1) secure funding and conduct adaptation planning with a focus on equity and sea level rise, and 2) begin comprehensive adaptation planning with countywide coordination.

The City's detailed, final response can be found in Attachment 2. The revised recommendations numbered R1 & R4 are marked "will not be implemented because they are not warranted or are not reasonable" along with explanations for both. While each recommendation has merits, there are many cross-jurisdictional collaboratives in process currently including an effort to collaborate more formally through the Countywide Local Hazard Mitigation Plan. Therefore, staff believes that although they may be revisited in the future, neither of these recommendations should be pursued at this time. However, the City has a commitment to work cross-jurisdictionally when it comes to climate action and climate adaptation and is participating in all of these efforts to help determine the best ways to collaborate countywide and regionally.

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

OPTIONS:

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

1. Adopt the resolution as presented.
2. Adopt the resolution as amended.
3. Direct staff to return with additional information

RECOMMENDED ACTION:

Adopt a resolution approving the City of San Rafael's revised response to the Marin County Civil Grand Jury's report entitled, "Climate Change: How Will Marin Adapt?"

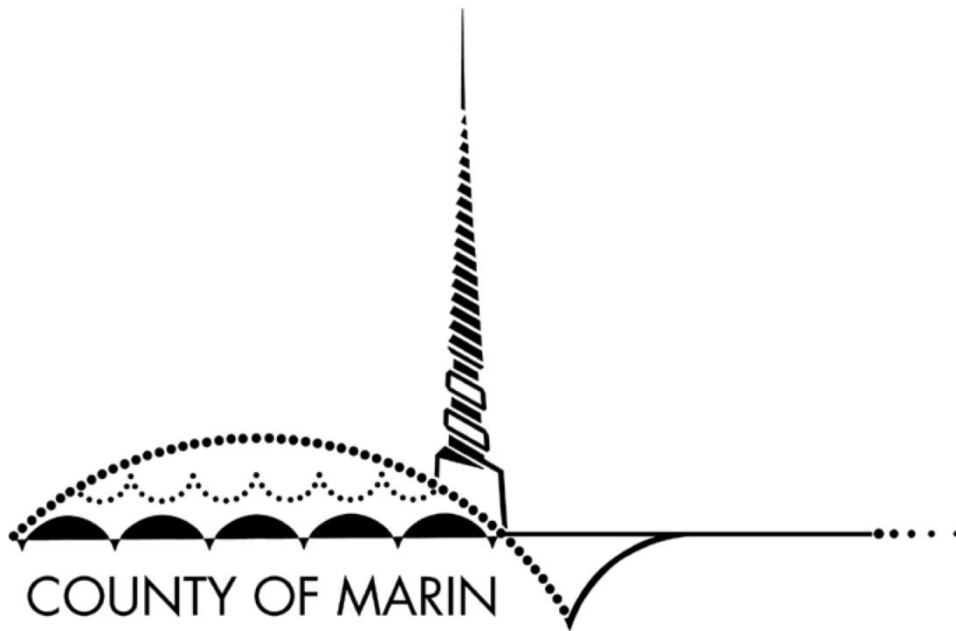
ATTACHMENTS:

1. Marin County Civil Grand Jury Report
2. Revised Response to Marin County Civil Grand Jury Report
3. Resolution

2019–2020 MARIN COUNTY CIVIL GRAND JURY

Climate Change: How Will Marin Adapt?

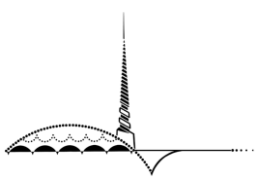
September 11, 2020



A Note about the Coronavirus Pandemic

The 2019–2020 Marin County Civil Grand Jury is issuing its reports during the unprecedented conditions of the COVID-19 pandemic. We are well aware that Marin County is in crisis and that critical public health concerns, operational difficulties, and financial challenges throughout the county have a greater claim to government attention right now than the important issues raised by this Grand Jury.

We are confident that, in due course, Marin will come through this crisis as strong as ever.



Climate Change: How Will Marin Adapt?

SUMMARY

Our planet is warming, glaciers and ice sheets are melting, sea levels are rising, we are witnessing more extreme weather events and wildfires, and ecosystems are being altered. The future pace of climate change is uncertain, but the trends are ominous. In Marin, a modest 10-inch sea level rise could reach 700 buildings and 8 miles of roads along the bay, and a 60-inch rise, combined with a 100-year storm surge, could inundate 12,000 buildings and 130 miles of roads.¹ According to one recent study, Marin County could lose as many as 10,000 homes to sea level rise by 2100.² In addition, public health will be threatened by more vector-borne disease, our environment will become less suitable for evergreen forests and more hospitable to highly flammable shrubs, and lower-income households will be disproportionately affected by heat waves and floods.

Efforts to address climate change fall into two categories: “Mitigation” measures reduce greenhouse gas emissions to slow climate change, while “adaptation” measures such as seawalls guard against the consequences of climate change.

Significant mitigation work has been done in Marin, but plans for adapting to climate change have taken a back seat and have focused almost exclusively on sea level rise. Are Marin’s county, city, and town governments doing enough to adapt to climate change? That is the question at the heart of this report.

This investigation was started in 2019, prior to the COVID-19 pandemic, and the financial strength of Marin’s public agencies will likely be significantly impaired in the short term. But the need for long-term planning and action is not diminished. The Grand Jury hopes that agencies addressed in this report will strongly consider implementing the jury’s recommendations as soon as they are able to do so.

The Grand Jury makes several interrelated, but not interdependent, recommendations to help Marin move forward in its climate change efforts, including the following:

- The county, in collaboration with the municipalities and other Marin agencies affected by climate change, should convene a multi-jurisdictional task force charged with developing a countywide adaptation strategy appropriate for adoption by each participant.
- The county government should consolidate all of its mitigation and adaptation programs in a new office that would coordinate and unify climate change efforts at the county level.

¹ BVB Consulting LLC, *Marin Shoreline Sea Level Rise Vulnerability Assessment*, Bay Waterfront Adaptation & Vulnerability Evaluation (Marin County Department of Public Works, June 2017), pp. 25, 43, 63, https://www.marincounty.org/-/media/files/departments/cd/planning/sea_level_rise/baywave/vulnerability-assessment-final/final_allpages_bvbconsulting_reduced.pdf?la=en.

² Climate Central and Zillow, *Ocean at the Door: New Homes and the Rising Sea*, research brief, July 31, 2019, downloadable supporting data, accessed October 8, 2019, <https://www.climatecentral.org/news/ocean-at-the-door-new-homes-in-harms-way-zillow-analysis-21953>.

- The Marin Climate & Energy Partnership should expand its mission beyond greenhouse gas reduction to include adaptation planning support for the cities, towns, and other members.
- The county should study the feasibility of reorganizing the Marin Flood Control and Water Conservation District into a new agency governed by the county and all 11 cities and towns, with an expanded mission that includes climate change adaptation projects.

APPROACH

The Marin County Civil Grand Jury investigated the actions taken by Marin’s county, city, and town governments to prepare for the potential consequences of climate change, assessed the adequacy of those efforts, and has recommended additional actions that would enhance the county’s ability to meet the climate challenge.

In carrying out this investigation, the Grand Jury—

- Interviewed elected officials, department heads, and staff in the Marin County government and in Marin’s city and town governments, as well as representatives from various climate-related organizations in Marin and the Bay Area.
- Reviewed reports, studies, plans, and California state guidance documents dealing directly or indirectly with climate change.
- Attended community meetings focused on various efforts throughout the county to reduce greenhouse gas emissions and plan for the potential effects of climate change.

The more the Grand Jury delved into climate change, the greater its appreciation for the complexity and evolving nature of the topic, as well as for the individuals throughout the county who are dedicated to confronting this global challenge at the local level. The Grand Jury was under no illusion that it could master all aspects of the subject or provide foolproof recommendations for the best path forward. But the Grand Jury hopes that the issues and suggestions raised in this report will increase awareness and prompt thoughtful discussion.

BACKGROUND: THE CHALLENGE OF CLIMATE CHANGE

There is broad scientific consensus that human actions over the past century or more—particularly the burning of fossil fuels and land-use practices such as deforestation and food

production—have been changing Earth’s climate. Both globally and locally, the signs of climate change are increasingly evident:

- Worldwide, the years 2015–2019 were the five warmest years on record,³ and May 2020 tied with May 2016 as the warmest May on record.⁴ From 1895 to 2018, the average temperature in Marin County increased by 2.3°F.⁵
- Over the past century, sea level in the Bay Area rose by about 8 inches, and the rate of sea level rise has accelerated significantly since 2011.⁶
- The 2012–2016 California drought resulted in the most severe moisture deficits in the last 1,200 years and a record-low Sierra snowpack.⁷
- Fueled by drought-parched trees and shrubs and driven by high winds, California’s 2017 and 2018 wildfires were the deadliest and costliest in state history.⁸ Marin was spared the flames, but not the smoke and soot. The threat of fires in 2019 led PG&E to shut off electric power to almost the entire county for multiple days.
- In March 2018, Marin County Public Health issued a warning that potentially lethal levels of shellfish toxins, probably caused by “an increasingly unpredictable climate,” were detected in the waters of Drakes Bay and north of Stinson Beach.⁹ Other climate-related county health advisories in recent years have included alerts about infectious diseases such as West Nile and Zika virus.¹⁰

According to California’s latest Climate Change Assessment, annual average temperatures in the Bay Area will likely increase by approximately 4.4°F by the middle of this century and 7.2°F by the end of the century—unless there are significant efforts throughout the world to limit or

³ National Oceanic and Atmospheric Administration, “2019 Was 2nd Hottest Year on Record for Earth Say NOAA, NASA,” news release, January 15, 2020, <https://www.noaa.gov/news/2019-was-2nd-hottest-year-on-record-for-earth-say-noaa-nasa>.

⁴ National Oceanic and Atmospheric Administration, National Centers for Environmental Information, “State of the Climate: Global Climate Report for May 2020,” June 2020, accessed June 17, 2020, <https://www.ncdc.noaa.gov/sotc/global/202005>.

⁵ Steven Mufson, Chris Mooney, Juliet Eilperin, and John Muyskens, “Extreme Climate Change Has Arrived in America,” *Washington Post*, August 13, 2019, <https://www.washingtonpost.com/graphics/2019/national/climate-environment/climate-change-america/>.

⁶ David Ackerly, Andrew Jones, Mark Stacey, and Bruce Riordan (University of California, Berkeley), *San Francisco Bay Area Summary Report*, California’s Fourth Climate Change Assessment, CCCA4-SUM-2018-005 (January 2019), p. 31, https://www.energy.ca.gov/sites/default/files/2019-11/Reg_Report-SUM-CCCA4-2018-005_SanFranciscoBayArea_ADA.pdf.

⁷ Ackerly et al., *San Francisco Bay Area Summary Report*, p. 17.

⁸ Mark Northcross, “Rebuild to Fail or Rebuild to Adapt: How CRA Lending Can Guide Climate Change Disaster Response,” Strategies to Address Climate Change Risk in Low- and Moderate-Income Communities, *Federal Reserve Bank of San Francisco Community Development Innovation Review*, 14, issue 1 (2019): p. 39, https://www.frbsf.org/community-development/files/CDIR_vol_14_issue_1.pdf; and Steve Gorman, “Year’s Most Destructive California Wildfire Declared Extinguished after Two Weeks,” Reuters, November 7, 2019, <https://www.reuters.com/article/us-california-wildfire/years-most-destructive-california-wildfire-declared-extinguished-after-two-weeks-idUSKBN1XI0BA>.

⁹ County of Marin, “Public Health Warning for Shellfish Toxins,” news release, March 7, 2018, <https://www.marincounty.org/main/county-press-releases/press-releases/2018/hhs-shellfishtoxins-030718>.

¹⁰ Richard Halsted, “Marin Supervisors Receive Harrowing Report on Climate Change, Sea Level Rise,” *Marin Independent Journal*, April 13, 2019, <https://www.marinij.com/2019/04/13/marin-supervisors-receive-harrowing-report-on-climate-change-sea-level-rise/>.

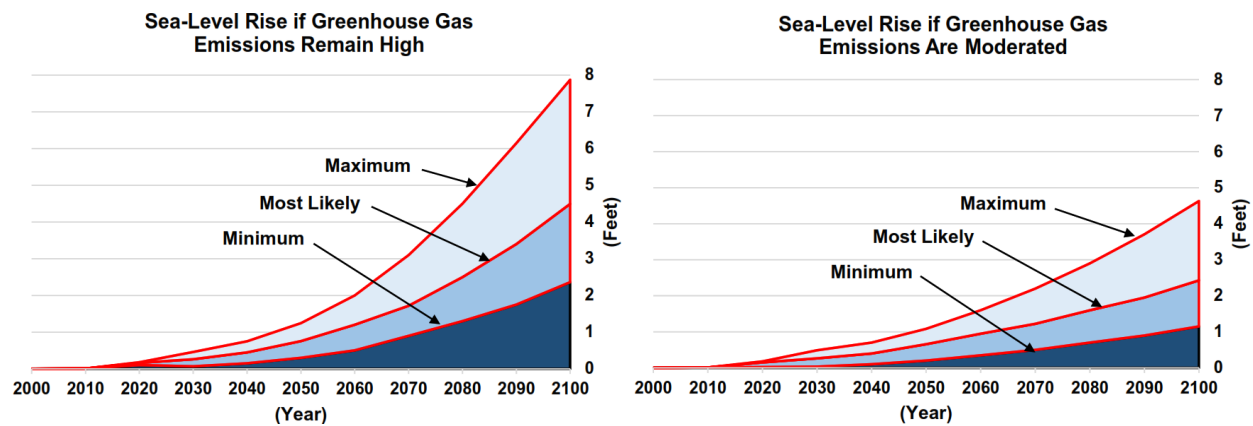
reduce greenhouse gas emissions. Even with significant reduction efforts, the temperature increase is projected to be approximately 3.3°F by mid-century and 4.2°F by century's end.¹¹

Ongoing global warming, in turn, will increase the volume of water in oceans through thermal expansion and the addition of meltwater from glaciers and ice sheets, resulting in rising seas throughout the world. In the Bay Area, assuming emissions worldwide are moderated, median sea level rise is projected to be about 8 inches by 2050 and 2.4 feet by the year 2100. But if emissions remain high, sea level rise by 2100 would likely be about 4.5 feet, and it could approach 8 feet. Figure 1 shows sea level rise projections for the Bay Area under the two scenarios: continued high emissions and moderate emissions.

As sea level rises, more and more land along the shoreline will flood and then remain permanently underwater. But that will just be the new baseline. On top of that baseline will be the periodic flooding caused by El Niño events, king tides, large waves, stream runoff, and storm surges. For example, storm surge in California can elevate sea level by as much as 3 feet, temporarily transforming a 1-foot sea level rise into a 4-foot sea level rise.¹²

Low-lying shoreline communities along the bay and in West Marin—including homes, businesses, utilities, ferry facilities, marinas, boat launches, and roads—will be directly affected by sea level rise. The severity of the impacts will be determined by the magnitude and timing of

Figure 1. Projections of Sea Level Rise in the San Francisco Bay Area, 2000–2100



Note: For each scenario, the minimum sea level rise levels will occur with near certainty, the most likely levels represent the statistical averages, and the maximum levels are statistically plausible but less likely. The high emissions scenario is commonly referred to as the business-as-usual scenario and technically called Representative Concentration Pathway (RCP) 8.5. The moderate emissions scenario is technically called RCP 4.5.

Source: Based on D. W. Pierce, J. F. Kalansky, and D. R. Cayan (Scripps Institution of Oceanography), *Climate, Drought, and Sea Level Rise Scenarios for the Fourth California Climate Assessment*, California's Fourth Climate Change Assessment, CCCA4-CEC-2018-006 (August 2018), Figure 43 and Table 5, https://www.energy.ca.gov/sites/default/files/2019-11/Projections_CCCA4-CEC-2018-006_ADA.pdf.

¹¹ Ackerly et al., *San Francisco Bay Area Summary Report*, p. 14.

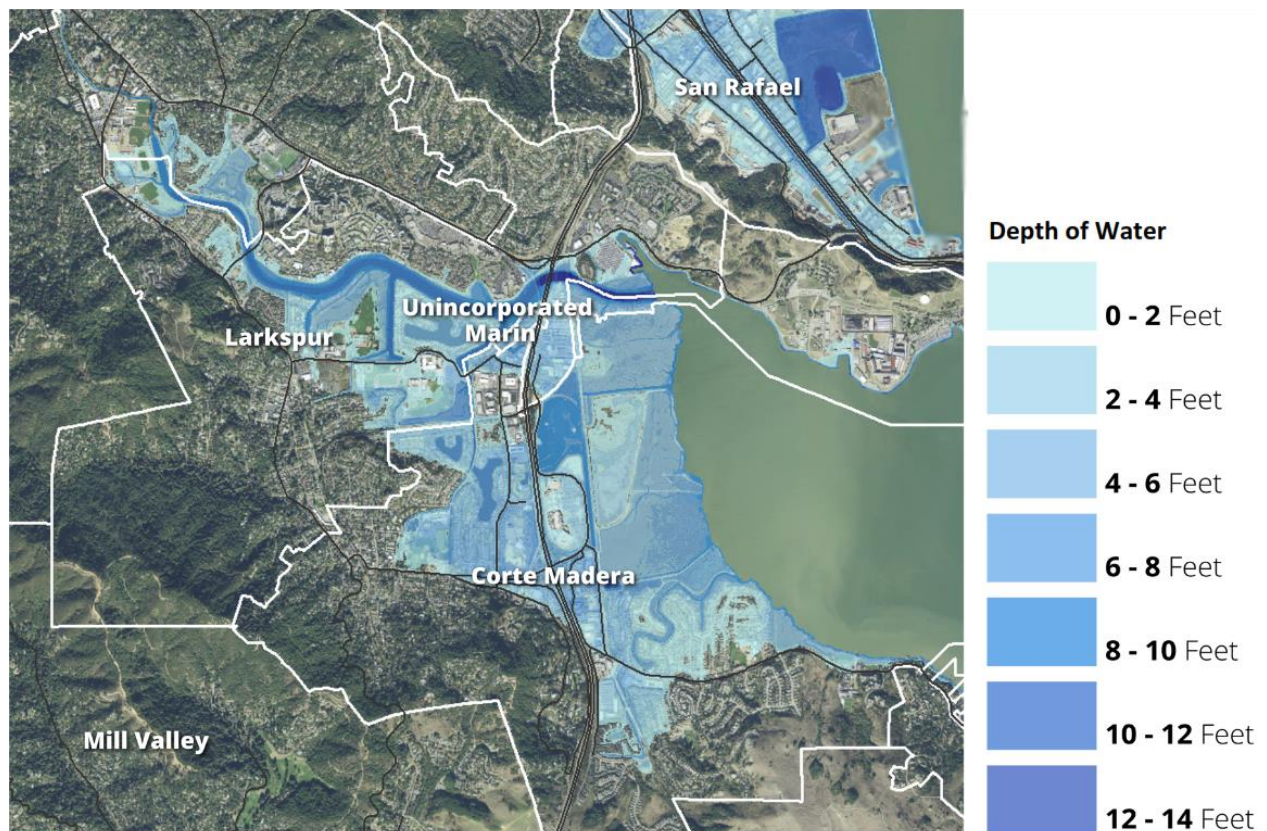
¹² G. Griggs, J. Árvai, D. Cayan, R. DeConto, J. Fox, H. A. Fricker, R. E. Kopp, C. Tebaldi, and E. A. Whiteman (California Ocean Protection Council Science Advisory Team Working Group), *Rising Seas in California: An Update on sea level Rise Science* (California Ocean Science Trust, April 2017), p. 17, <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>.

the sea level rise. For example, a modest 10-inch sea level rise alone could reach 5,000 acres, 700 buildings, and 8 miles of roads along the bay. But a 60-inch sea level rise, combined with a 100-year storm surge, could inundate 18,000 acres, 12,000 buildings, and 130 miles of roads.¹³ According to a recent study by Climate Central and Zillow, as many as 10,000 Marin homes would be subject to annual flooding by 2100 under a high emissions scenario. The study also found that almost 50 homes built in the county between 2010 and 2016 are at risk of flooding by 2050 under almost any plausible scenario.¹⁴

As Figure 2 shows, a 4-foot rise in sea level will cause a large portion of the Larkspur and Corte Madera area—including a lengthy stretch of U.S. Highway 101—to be permanently flooded. Some low-lying areas will be flooded to a depth of 10 feet or more.

Adapting to higher sea levels will be costly no matter what measures, such as managed retreat or shoreline protection, are taken. One estimate for Marin County anticipates spending \$1.1 billion

Figure 2. Sections in the Larkspur-Corte Madera Area Vulnerable to 4-Foot Sea Level Rise



Source: Reproduced with slight modifications from Marin County, *Adaptation Land Use Planning*, February 2020, p. 12, <https://www.marincounty.org/-/media/files/departments/cd/slr/alup0228.pdf?la=en>.

¹³ BVB Consulting LLC, *Marin Shoreline Sea Level Rise Vulnerability Assessment*, pp. 25, 43, 63.

¹⁴ Climate Central and Zillow, *Ocean at the Door*.

by 2040 to construct 133 miles of seawalls to protect communities from the effects of sea level rise.¹⁵ This estimate is only for seawalls, and does not include other costs, such as necessary changes to infrastructure, relocation or protection of utilities and sanitation facilities, or modification of roads or structures. A proposed seawall for Belvedere, including relocation of utilities and related work, carries an estimate as high as \$27.4 million.¹⁶

More than any of the other expected consequences of climate change on Marin, sea level rise may be the easiest to visualize and has received the most detailed attention by planners. That is why this report, in discussing the effects of climate change on the county and programs to address them, discusses sea level rise in greater depth. But other projected impacts of climate change are also concerning. For example:

- **Health Impacts.** Public health will be threatened by more extreme heat events and wildland fires; increased air pollution, vector-borne disease, indoor mold, and pollen; longer and more frequent droughts; flooding and landslides from sea level rise and more intense winter storms; and release of contaminants from flooded hazardous waste sites. Potential disruption of the transportation network could hamper people’s ability to move away from danger. It could also interfere with access to healthcare, as well as the ability of hospitals, clinics, and emergency responders to operate.
- **Ecosystem Impacts.** The quantity and quality of water in creeks will suffer from longer dry seasons, more frequent and severe droughts, and catastrophic wildfires, negatively affecting invertebrates, fish, amphibians, and other animals. The Bay Area environment will become less suitable for evergreen forests, including redwoods and Douglas fir, and more favorable for vegetation such as chamise chaparral, a shrub that is particularly flammable during hot, dry weather, further increasing the danger of wildland fires.
- **Socioeconomic Impacts.** Regional socioeconomic inequity will be exacerbated because lower-income and minority households, which disproportionately live in locations more vulnerable to climate and other environmental risks, will have greater difficulty preparing for and recovering from heat waves, floods, and wildfires.¹⁷

Although the timing and magnitude of climate change are uncertain, it is happening, and it will affect the quality of life of everyone who lives in, works in, or visits Marin. What are we doing as a community to meet this challenge, and what more should we be doing? These are the questions at the heart of this investigation.

DISCUSSION

Mitigation and Adaptation: Two Essential Pillars of a Climate Change Strategy

Actions to address climate change are generally divided into two categories:

Mitigation—These are actions to reduce greenhouse gases and other causes of climate change. They include reducing energy use, converting to low-carbon energy sources, and

¹⁵ Sverre LeRoy and Richard Wiles, *High Tide Tax: The Price to Protect Coastal Communities from Rising Seas*, Center for Climate Integrity, June 2019, www.climatecosts2040.org.

¹⁶ “Cost,” Belvedere Sea Wall, accessed April 18, 2020, <https://belvedereseawall.org/cost/>.

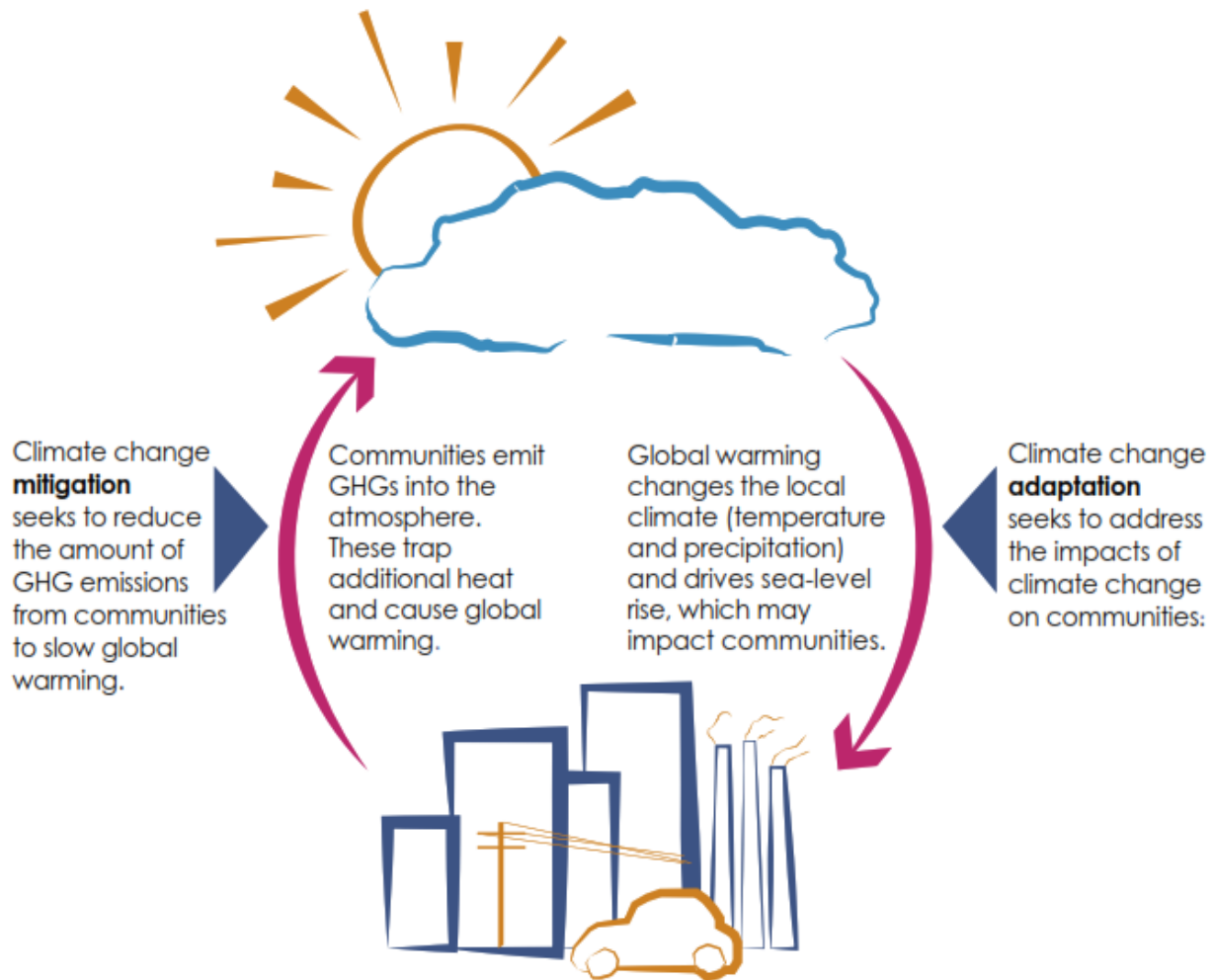
¹⁷ Ackerly et al., various pages.

expanding forests and other “sinks” that remove and sequester carbon dioxide from the atmosphere.

Adaptation—These are actions to protect people and places from the effects of climate change. They include building seawalls, restoring shoreline wetlands, relocating buildings and highways to higher ground, preparing for impacts on human health, preventing and preparing for wildfires, and diversifying crops.

Figure 3 depicts the relationship between mitigation and adaptation. In some cases, these approaches overlap. For example, the restoration of shoreland wetlands can both reduce tidal flooding and increase carbon sequestration.

Figure 3. Roles of Mitigation and Adaptation Efforts in Addressing Climate Change



Source: Reprinted with minor modifications from California Governor’s Office of Emergency Services, *California Adaptation Planning Guide*, final public review draft, March 2020, p. 16, <https://www.caloes.ca.gov/HazardMitigationSite/Documents/APG2-FINAL-PR-DRAFTAccessible.pdf>.

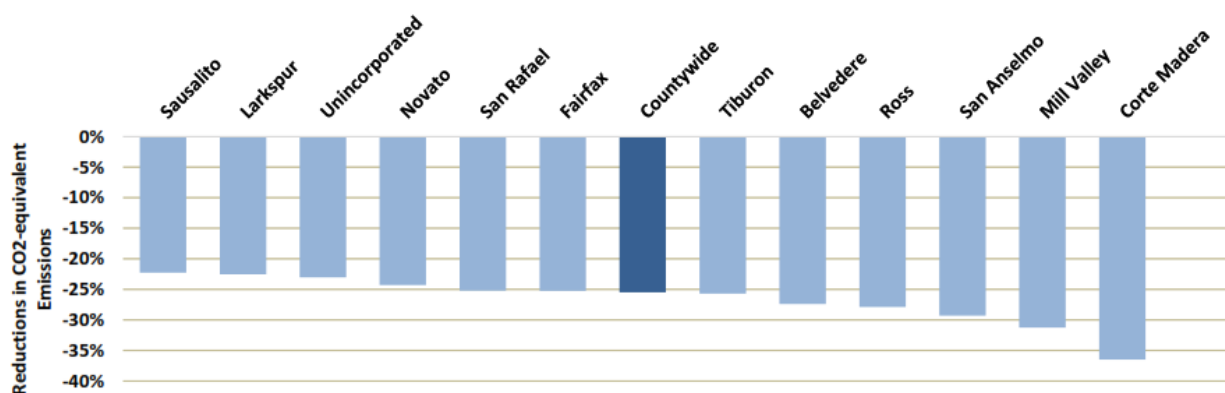
As the moderated emissions graph in Figure 1 shows, if net emissions of greenhouse gases can be reduced, future sea level rise (and, by implication, other negative effects of climate change) will be reduced. That is why mitigation efforts are so important.

Figure 1 also shows that reducing greenhouse gas emissions can only lessen, not eliminate, the effects of climate change. Even under the most optimistic scenarios, sea levels will continue to rise and our environment will be altered. As NASA states, “Carbon dioxide . . . lingers in the atmosphere for hundreds of years, and the planet (especially the oceans) takes a while to respond to warming. So even if we stopped emitting all greenhouse gases today, global warming and climate change will continue to affect future generations.”¹⁸ That is why adaptation efforts are just as crucial as mitigation efforts.

Mitigation Programs in Marin

Mitigation efforts started in Marin in 2002 when the county resolved to join the Cities for Climate Protection Campaign. Since then, Marin’s county, city, and town governments have all developed climate action plans focused on reducing greenhouse gas emissions. Innovative mitigation initiatives—such as Marin Clean Energy (now called MCE), Electrify Marin, the Marin Solar Project, the Marin Energy Watch Partnership, Resilient Neighborhoods, and Drawdown: Marin—all have had a positive impact or show promise for further progress. From 2005 to 2018, according to Marin Climate & Energy Partnership data, countywide greenhouse gas emissions decreased by 25 percent.¹⁹ Figure 4 provides a breakdown of the emissions reduction by jurisdiction.

Figure 4. Greenhouse Gas Emissions Reductions in Marin County, by Jurisdiction, 2005–2018



Source: Based on June 19, 2020, data from Marin Climate & Energy Partnership, “Marin Tracker,” accessed June 29, 2020, <http://www.marintracker.org/>. Note that this chart is based on the raw Marin Tracker data and differs slightly from a similar chart on the Marin Climate & Energy Partnership website.

¹⁸ NASA, “Responding to Climate Change,” no date, accessed November 27, 2019, <https://climate.nasa.gov/solutions/adaptation-mitigation/>.

¹⁹ Marin Climate & Energy Partnership, “Marin Tracker,” accessed June 29, 2020, <http://www.marintracker.org/>.

As a community, we must continue our resolve to shrink our carbon footprint. A more detailed overview of Marin's mitigation efforts is set forth in Appendix A, and a list of the primary governmental organizations and programs in Marin involved with climate change is included in Appendix B.

Adaptation Planning Efforts in Marin

Formal planning for how Marin will need to adapt to climate change did not begin until mid-2014 when the county government formed the Collaboration: Sea-level Marin Adaptation Response Team (C-SMART) to research the potential impacts of sea level rise on West Marin and to work with coastal communities to plan for those impacts. By 2018, C-SMART had completed both a vulnerability assessment²⁰ and a report presenting possible options for accommodating, protecting against, or retreating from the threats of sea level rise.²¹ As of March 2020, C-SMART's priorities included working with the California Coastal Commission to finalize an updated Local Coastal Program that will enable C-SMART to create a comprehensive adaptation plan for the coastal shore.

A similar but separate county project was started in September 2015 to assess the potential impacts of sea level rise on Marin's eastern shoreline. This project was dubbed the Bay Waterfront Adaptation and Vulnerability Evaluation (BayWAVE). In 2017, BayWAVE completed an assessment of the potential impacts of sea level rise on Marin's bayside communities through the end of this century.²² Based in part on that assessment, in early 2020 the county published a guide detailing the land-use planning tools available to adapt to rising sea levels.²³

With vulnerability assessments completed for both the ocean and bay sides of Marin, we have a good understanding about which portions of the county's critical infrastructure will be affected by sea level rise and the extent to which private property is at risk under various scenarios. So, at least with respect to sea level rise, important groundwork has been laid for the development of adaptation strategies.

Marin Should Take a Fresh Approach to Adaptation Planning

Public servants in Marin's county government and local communities have generally done outstanding work on climate change, but the county lacks a comprehensive approach to climate change adaptation planning. Most of Marin's municipalities do not yet know how to approach this difficult task. The adaptation planning process needs a reboot.

²⁰ C-SMART, Marin County Community Development Agency, *Marin Ocean Coast Sea Level Rise Vulnerability Assessment*, May 2016, https://www.marincounty.org/-/media/files/departments/cd/planning/sea_level_rise/c-smart/2018/01_draft_title_pages_toc_va_sea_level_rise_18_02_05.pdf?

²¹ C-SMART, Marin County Community Development Agency, *Marin Ocean Coast sea level rise Adaptation Report*, February 2018, https://www.marincounty.org/-/media/files/departments/cd/planning/sea_level_rise/c-smart/2019/181211_csmart_adaptation_report_final_small.pdf?

²² BVB Consulting LLC, *Marin Shoreline Sea Level Rise Vulnerability Assessment*.

²³ Marin County, *Adaptation Land Use Planning*, February 2020, <https://www.marincounty.org/-/media/files/departments/cd/slr/alup0228.pdf?la=en>.

A Mandate for Adaptation Planning

Developing adaptation strategies is not an option; it is the law. California state law has long required each municipality and county to adopt a comprehensive, long-term general plan for the jurisdiction’s physical development.²⁴ In October 2015, the governor signed into law Senate Bill 379, which added the requirement that jurisdictions update the so-called safety element of their general plans to “address climate adaptation and resiliency strategies.” This law states that these updates must include “a set of adaptation and resilience goals, policies, and objectives” and “a set of feasible implementation measures designed to carry out the goals, policies, and objectives.”²⁵ This requirement took effect January 1, 2017. If the required information is contained in another type of planning instrument—for example, a stand-alone adaptation plan, a climate action plan, a Local Coastal Program, land use codes, or zoning regulations—the other instrument may be incorporated into the general plan by reference.

In Marin, various planning instruments have been used, or are currently being developed, to address climate adaptation, but none of them yet meet this law’s requirements. All of the climate action plans developed by Marin’s municipalities and the county government focus on mitigation. Adaptation is addressed only in generalities. The county’s general plan was adopted in 2007 and last amended in 2014,²⁶ and most of the general plans of Marin’s 11 cities and towns are older. All of the general plans predate the C-SMART and BayWAVE assessments and do not present detailed adaptation measures. Several municipalities are in the process of updating their general plans, but in a survey regarding their updates, only San Rafael stated that it expects to comply with this law.²⁷ Under the most generous interpretation of the law, the county government must begin updating its general plan to incorporate climate adaptation strategies no later than January 1, 2022. These strategies need to cover more than just sea level rise, which means there is much more work to do.

A Commonsense Objective: A Multi-Jurisdictional Adaptation Plan

Marin’s jurisdictional puzzle, geographical layout, transportation infrastructure, and other interdependencies call for comprehensive adaptation solutions. Climate change is a countywide issue, not one limited to waterfront or hillside communities. We breathe the same air, drive the same roads, benefit from common watersheds, and share central sanitation facilities, all without regard to the boundaries of our city or town or our neighborhood geography. When Highway 101 floods due to storm surge, all residents are affected, not just those living near the water. Effective planning will require countywide collaboration and coordination.

To date, however, the few forays into adaptation planning have been initiated by individual jurisdictions. These jurisdictions are not working toward a common solution, and they are taking different approaches. For example, Corte Madera has taken the initiative to develop a stand-

²⁴ California Government Code § 65300, accessed March 10, 2020,

http://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65300.&lawCode=GOV.

²⁵ California Government Code § 65302(g)(4), accessed March 10, 2020,

http://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65302.&lawCode=GOV.

²⁶ Marin County Community Development Agency, *Marin Countywide Plan*, November 6, 2007 (reprinted October 2014), p. 2.6–12, https://www.marincounty.org/-/media/files/departments/cd/planning/currentplanning/publications/county-wide-plan/cwp_2015_update_r.pdf?la=en.

²⁷ Marin County, *Adaptation Land Use Planning*, February 2020, p. 33.

alone adaptation plan. It has included representatives from the county and other local agencies, including the public works departments of San Rafael and Larkspur, on the project's advisory committee, but the town does not anticipate that the final plan (scheduled for release February 2021) will make recommendations beyond the scope of its own jurisdiction. As shown in Figure 2, Corte Madera, Larkspur, and unincorporated Marin share a common flood zone; it would be nearly impossible for Corte Madera to resolve its sea level rise flooding problems without joint action with Larkspur and the county, not to mention the Ross Valley. Corte Madera is well aware of this fact and is in ongoing conversation with the county and surrounding jurisdictions regarding the project and how to collaborate on adaptation strategies. That is constructive, but successful outcomes will require a formal commitment to joint action.

In addition to adaptation efforts in Corte Madera, there are also programs underway in Belvedere and San Rafael. The box on the next page describes these efforts.

One explanation for these individual approaches is that the process for adaptation planning is not yet well settled. As climate change concerns have grown, separate jurisdictions have grafted varying adaptation plans onto their preexisting planning instruments. Just as there was a time when climate action plans did not yet exist, such is the case today for climate change adaptation plans.

Fortunately, California's state government has been refining guidance to assist local governments and regional collaboratives in developing an effective planning process. In 2012, the state government issued its *California Adaptation Planning Guide*,²⁸ and a revised version was made available for final public comment in March 2020.²⁹ The March 2020 draft is a comprehensive document of more than 250 pages. The draft 2020 guide notes that "regional governments may also conduct adaptation work for all jurisdictions in their area, and multiple jurisdictions may collaborate on regional adaptation work."³⁰ The Grand Jury recommends restarting Marin's climate change adaptation planning process and believes that it should follow the roadmap set forth in the *California Adaptation Planning Guide*. The goal would be to create a single, comprehensive, multi-jurisdictional adaptation strategy for all of Marin.

There is precedent in Marin for collaboration on similar planning efforts. The county updated its local hazard mitigation plan in December 2018 and, unlike previous plans, this one is "multi-jurisdictional" and covers all of Marin.³¹ It was developed with input from Marin's towns and cities, and all of the municipalities formally adopted it in 2019. This could serve as a model for collaborating on a countywide multi-jurisdictional adaptation plan, which could be incorporated along with the local hazard mitigation plan into the general plans of the county, cities, and towns. That would bring coherence and efficiency to this difficult, but badly needed, effort.

²⁸ California Emergency Management Agency and California Natural Resources Agency, *California Adaptation Planning Guide*, July 2012,

https://www.caloes.ca.gov/HazardMitigationSite/Documents/001APG_Planning_for_Adaptive_Communities.pdf.

²⁹ California Governor's Office of Emergency Services, *California Adaptation Planning Guide*, final public review draft, March 2020, <https://www.caloes.ca.gov/HazardMitigationSite/Documents/APG2-FINAL-PR-DRAFTAccessible.pdf>.

³⁰ California Governor's Office of Emergency Services, *California Adaptation Planning Guide*, final public review draft, March 2020, p. 42.

³¹ Marin County, *Multi-Jurisdiction Local Hazard Mitigation Plan*, 2018, https://www.marinwatersheds.org/sites/default/files/2019-10/2018-MCM-LHMP_web.pdf.

Cities and Towns Proceed Independently

In 2019, Corte Madera launched a project to develop an adaptation plan addressing both sea level rise and wildfire risk. The town engaged an outside consulting firm to lead the effort, created a dedicated website, and, as of February 2020, had held at least two community engagement events. To help guide the project, a 16-member Resilience Advisory Committee was formed, consisting of planners and other representatives from the county and other local agencies. Corte Madera anticipates completing its adaptation plan in February 2021.³²

In 2019, Belvedere formed the Committee to Protect Belvedere's Seawalls, Levees, and Utilities to address seismic and flooding concerns, primarily along Beach Road and San Rafael Avenue. The city created a dedicated

website to track the effort and has been working with outside engineers and architects on design solutions.³³ The plan would raise the height of existing seawalls by 3½ feet.³⁴

San Rafael is in the process of updating its general plan and, as part of that, announced in early 2020 that it intends to include an adaptation report with that plan and to subsequently develop a comprehensive adaptation plan for the city. The city also announced its intention to adopt land use regulations, zoning overlays, and real estate disclosure requirements to address the growing risks of sea level rise. San Rafael is also working on several projects in East San Rafael to restore marshlands and possibly raise some levees in anticipation of sea level rise.



Architectural rendering of one proposed concept for a continuous seawall along Beach Road in Belvedere. The total project cost is estimated to be between \$11 million and \$27.4 million. (Rendering by One Architecture)

³² “Corte Madera: Adapting to Climate Change,” accessed April 23, 2020, <https://cortemaderaadapts.org>.

³³ Belvedere Sea Wall Project, accessed April 18, 2020, <https://belvedereseawall.org>.

³⁴ Hannah Weikel, “City Unveils Refined Plans for Extensive Seawalls Work,” *The ARK*, December 25, 2019.

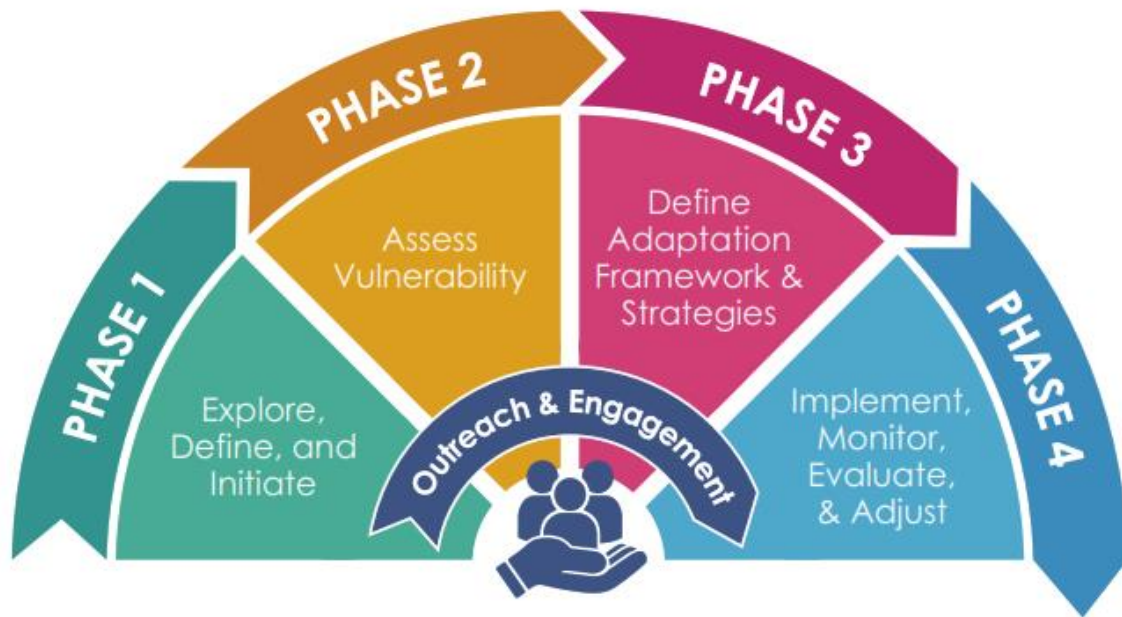
A Robust Framework for Moving Forward

As shown in Figure 5, the draft 2020 *California Adaptation Planning Guide* recommends a four-phase process for adaptation planning. Through the BayWAVE and C-SMART programs, Marin has tackled the second phase of the recommended planning process—assessing vulnerabilities—at least with respect to sea level rise. The third phase entails defining the adaptation framework and strategies.

But for any reboot of the planning process to be successful, it must start off on the right foot. The *first* phase outlined in the draft 2020 guide—explore, define, and initiate—has never been undertaken in Marin on a comprehensive countywide basis. Laying the groundwork in these areas will be critical to any planning effort.

As described in the guide, this first phase starts with the formation of an inclusive project task force responsible for the planning process. Consequently, the Grand Jury recommends the formation of the Marin Climate Adaptation Task Force which should be composed of representatives from county government, cities and towns, and other agencies affected by climate change. The task force should also include representatives of the public to ensure community support and representation of socioeconomically underserved areas. Ideally, the task force would have a combination of technical skills, planning skills, public engagement expertise, and financial know-how. As the initial stage of its work, the task force would define the vision for the planning project and the expected outcomes, with the primary objective being the creation of

Figure 5. Adaptation Planning Process Recommended in the Draft California Adaptation Planning Guide



Source: Reprinted from California Governor’s Office of Emergency Services, *California Adaptation Planning Guide*, final public review draft, March 2020, p. 2.

<https://www.caloes.ca.gov/HazardMitigationSite/Documents/APG2-FINAL-PR-DRAFTAccessible.pdf>.

a countywide adaptation strategy. It could be supported by one or more working groups or advisory teams representing key stakeholders. As stated in the *California Adaptation Planning Guide*, the task force should have a leader “empowered to make recommendations and/or have direct access to decision-makers.”³⁵

A planning process that is inclusive, deliberate, and goal-oriented will surely give Marin a greater chance of success. By committing to a more collaborative approach, Marin will be better prepared for the difficult climate change challenges that lie ahead. The cost of addressing climate change could be enormous. The cost of doing it haphazardly could be even greater.

The County Government’s Organization of Climate Change Efforts Is Too Decentralized

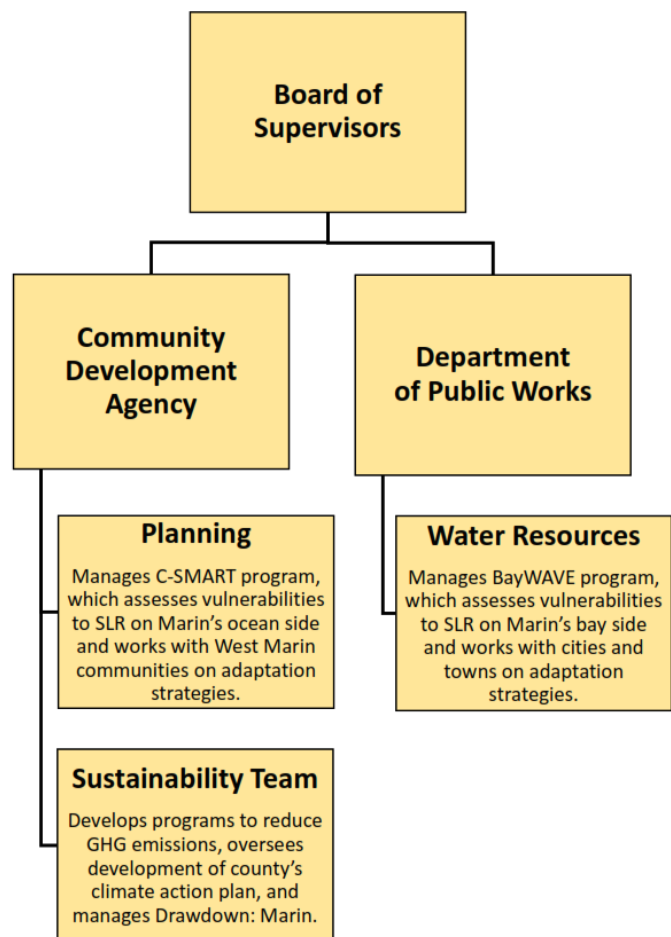
Whether or not Marin’s leaders agree on the benefits of a comprehensive, countywide plan and task force for addressing climate change, they should assess whether their current efforts could be made more efficient and effective.

The caliber of people throughout the county who are working on the climate problem is impressive, but their efforts may be hindered by organizational shortcomings. At the county level, the most active programs for addressing climate change reside in two departments: the Community Development Agency and the Department of Public Works, both of which report to the board of supervisors. As Figure 6 shows, the Community Development Agency’s Sustainability Team is responsible for mitigation planning, including development of the county’s climate action plan, but adaptation efforts are split between the two departments.

County Mitigation Programs

The Community Development Agency’s Sustainability Team works on the county’s climate action plan and programs to promote renewable energy, encourage green building, recognize green businesses, and implement energy efficiency projects. It also supports the Drawdown: Marin program, a

Figure 6. County Government Departments with Major Climate Change Roles



³⁵ California Governor’s Office of Emergency Services, *California Adaptation Planning Guide*, final public review draft, March 2020, p. 49.

collaborative effort in the county to develop policies and incentives that will help to further reduce, or “draw down,” countywide greenhouse gas emissions. (The county’s mitigation efforts are described in more detail in Appendix A.)

The Grand Jury identified several areas of concern in the current arrangement of the Sustainability Team:

- **Limited Authority.** Although the Sustainability Team coordinates with other county departments, it has no authority to direct their mitigation efforts.
- **Fragile Institutional Structure.** Members of the Sustainability Team have significant one-on-one contact with individual members of the board of supervisors, who may direct the team to address certain priorities over others. Climate change initiatives appear to have limited institutional durability.
- **Budgetary Uncertainty.** Of the seven people currently on the Sustainability Team, five are completely or partially dependent on grants for their paychecks; and four have limited-term employment, with their current terms expiring between September 2020 and August 2021. As a consequence of the COVID-19 pandemic, funding for these positions may have become even more precarious.

County Adaptation Efforts

The Community Development Agency’s planning division leads the C-SMART initiative, which is focused on the potential impacts of sea level rise on West Marin. Staff from the Department of Public Works’ water resources division, with support from Community Development Agency planners, lead BayWAVE, the project focused on Marin’s San Francisco Bay shoreline.

Although the C-SMART and BayWAVE projects reside in different departments and thus do not report to the same director, staff on both projects maintain that there is ongoing collaboration between the two groups. Indeed, they worked together to develop a guide that details the land-use planning tools available to adapt to rising sea levels. The county government published this guide in early 2020.³⁶ Nonetheless, the current arrangement has its drawbacks:

- **Reliance on Informal Collaboration.** Will C-SMART and BayWAVE complement each other or compete for resources? The collaboration that has occurred to date has been largely on an informal, peer-to-peer basis among staff members with common interests and goals. It is unclear how the adaptation efforts going forward will be coordinated or prioritized, if at all. For example, how will the relative priority of coastal and bayside needs be determined if these programs are not managed jointly? It is hard to see a benefit from keeping these efforts separate.
- **Different Analytical Approaches.** The scenarios of potential sea level rise and storm surges used in BayWAVE’s vulnerability assessment do not match the ones used in the C-SMART assessment. It is therefore quite difficult to determine the impact of any single

³⁶ Marin County, *Adaptation Land Use Planning*, February 2020.

Wetland Restoration Projects



The Marin County Parks project to restore subtidal and intertidal habitat at wetlands within McInnis Park aims to protect the park from sea level rise and maintain the San Francisco Bay Trail connection to Las Gallinas Valley Sanitary District. (Marin County Parks photo)

The county is currently exploring nature-based adaptation options, also called living shorelines, for protecting low-lying areas along the bay and ocean from sea level rise. These nature-based measures can not only reduce the vulnerability of communities to flood hazards but also provide fish and wildlife habitat, recreational opportunities, and carbon sequestration. In collaboration with the Golden Gate National Parks Conservancy, Marin

County Parks is developing conceptual plans for a nature-based sea level rise adaptation project at the Bothin Marsh Open Space Preserve in Mill Valley.³⁷ And in partnership with Las Gallinas Sanitary District and the Marin County Flood Control and Water Conservation District, the parks department is working on solutions to restore tidal wetlands in McInnis Park at the edge of San Pablo Bay in San Rafael.³⁸

scenario on the entire county. In the future, will the planning tools and frameworks adopted by C-SMART be compatible with those used by BayWAVE?

- **Limited Staffing.** The staff working on the C-SMART and BayWAVE adaptation programs—four or five employees—are not dedicated full time to keeping up with this dynamic field. They have many other responsibilities and limited time to get their jobs done.
- **Insufficient Attention to Health and Other Risks.** With the county’s focus being on sea level rise, other climate change risks, such as health risks caused by extreme weather events and rising temperatures, have received less attention in the county. The Health and Human Services department does not yet have a position focused full time on the health risks of climate change but the need for this will surely grow.

At least one other county department, Marin County Parks, is also involved with adaptation issues. Two of that department’s projects are described in the box above.

³⁷ Marin County Parks, “Creating a Shared Vision for Preservation and Recreation at Bothin Marsh,” accessed April 23, 2020, <https://www.marincountyparks.org/projectsplans/land-and-habitat-restoration/bothin-marsh-community-vision>.

³⁸ Marin County Parks, “Reclaiming Historic Tidelands and Protecting against Sea Level Rise at McInnis Park,” accessed April 23, 2020, <https://www.marincountyparks.org/projectsplans/land-and-habitat-restoration/marsh-restoration-mcinnis-park>.

A Model for Better Coordination

The Grand Jury is concerned that there is no single body in the county government, other than the board of supervisors, empowered to lead and coordinate the county's overall approach to climate change. In 2020, Marin's county administrator formed a climate change budget working group, but it is unclear how it might help climate change efforts to coalesce around a unified strategy.

What the Marin County government needs is an overarching leadership structure that would coordinate the climate-related efforts not only in the Department of Public Works and the Community Development Agency, but also in Health and Human Services, Parks, Agriculture, and all other departments affected by climate change.

This need could be met in various ways, but the Grand Jury urges the county government to take a close look at the approach taken by San Mateo County. In 2014, San Mateo formed an Office of Sustainability that focuses on climate change mitigation and adaptation, as well as energy and water, transportation and housing, and waste reduction. Reporting directly to the county manager, this office is well positioned to secure collaboration and cooperation from other county departments. San Mateo's effort started with a small full-time staff about the size of Marin's existing seven-person Sustainability Team and has since grown to more than 35. (San Mateo has about three times as many residents as Marin.)

Marin's county government should reorganize its climate change efforts to achieve greater focus by creating an office similar to San Mateo's. This new office should report either to the county administrator or directly to the board of supervisors. It should have a full-time senior leader and be staffed primarily, if not exclusively, by current county government personnel. The existing Sustainability Team, including Drawdown: Marin support, should be moved into (or be accountable to) the new office. Community development and public works employees engaged in climate change activities should either work full time in the new office or should have direct accountability to the new office's leadership for their climate change work. This new entity, which in this report will be referred to as the Office of Sustainability and Resilience, would be charged with the following responsibilities with respect to climate change:

- Managing and coordinating climate change mitigation and adaptation planning and programs across county departments
- Identifying and cultivating sources of funding for climate adaptation and mitigation efforts

This last point deserves elaboration. Funding is needed now for staffing, planning, policy development, and implementation of pilot projects. The county does not have a centralized grant application office, so grant applications are prepared by the department seeking the funding. The county should explore the creation of a dedicated resource within the new Office of Sustainability and Resilience where all grant applications related to climate change would be coordinated. Ideally, this position could be self-funded. Expertise in the grant application process, coupled with the expertise of the functional area requesting the grant, should result in more grants being obtained. In addition, this position could serve as a clearinghouse of grant-related information for Marin's municipalities and other agencies. Collaborative countywide climate proposals have a better chance of being funded.

It is critical to acknowledge that efforts to combat climate change—especially adaptation efforts—will require much more focus, investment, and coordination moving forward if we are to protect our communities and our standard of living. A dire need for funding has not confronted the county yet because Marin has yet to complete its adaptation planning or develop any timeline for implementation; but as it tackles the large public works projects that will be needed in the future, adequate staff resources and funding expertise will become critical.

Marin Needs Stronger Collaboration among the County, Cities, Towns, and Agencies

Collaboration does not come naturally to Marin’s 152 independent cities, towns, schools, special districts, and other governing entities. But the need to collaborate on climate change is recognized by many. For example, San Rafael’s *Climate Action Plan 2030* calls for the following action: “Work with local, county, state, regional, and federal agencies with bay and shoreline oversight and with owners of critical infrastructure and facilities in the preparation of a plan for responding to rising sea levels.”³⁹ The county’s 2015 climate action plan states that “effective adaptation requires coordination across many different stakeholders within a county”⁴⁰ and “cooperation with Marin County cities could help maximize efficiencies in implementing emissions reduction strategies.”⁴¹ San Anselmo’s plan states, “San Anselmo doesn’t exist in a vacuum. While we are leveraging or trying to combat regional, state-wide, national and even international actions and trends, we also have the ability and responsibility to collaborate with other efforts and campaigns.”⁴²

Planning and Policy Development

Although Marin’s municipalities often resist yielding local control, two countywide efforts could serve as building blocks for a more comprehensive approach to adaptation policy development and planning. The first is the working group of Marin’s county and municipal planners that helped develop the countywide, multi-jurisdictional local hazard mitigation plan recently adopted by the county’s board of supervisors and all the cities and towns.⁴³ The success of that effort is an encouraging sign that the planners could expand their collaboration to include a consistent, coordinated approach to adaptation planning for all of Marin.

The second model for collaboration, this one currently focused on mitigation, is the Marin Climate & Energy Partnership, which is funded by contributions by each of its members. Marin’s 11 municipalities and the county government formed this partnership in 2007 to help them work together on achieving their greenhouse gas emissions targets. The Transportation Authority of Marin, the Marin Municipal Water District, and MCE (formerly known as Marin Clean Energy) are also members. Almost all of the members are represented by staff-level planners, and a part-

³⁹ City of San Rafael, *Climate Action Plan 2030*, April 23, 2019, p. 31, <https://www.cityofsanrafael.org/documents/climate-change-action-plan-2030/>.

⁴⁰ ICF International, *Marin County Climate Action Plan (2015 Update)*, ICF 00464.13 (San Francisco, July 2015), p. ES-17, https://www.marincounty.org/-/media/files/departments/cd/planning/sustainability/climate-and-adaptation/execsummarymarincapupdate_final_20150731.pdf?la=en.

⁴¹ ICF International, *Marin County Climate Action Plan (2015 Update)*, pp. 7–9.

⁴² Town of San Anselmo, *Climate Action Plan 2030*, June 11, 2019, p. 47, <https://www.townofsananselmo.org/DocumentCenter/View/24823/San-Anselmo-Climate-Action-Plan-2030-pdf?bidId=>.

⁴³ Marin County, *Multi-Jurisdiction Local Hazard Mitigation Plan*, 2018.

time consultant coordinates their work. The partnership has developed greenhouse gas inventories for all of the cities, towns, and unincorporated areas in Marin, and it publishes this data on its website.⁴⁴ Because only two of Marin’s cities and towns have full-time employees devoted to climate change, the partnership fills a gap by assisting municipalities with their climate action plans.

Given the climate partnership’s success to date, the Grand Jury recommends that its mission be expanded to include comprehensive support for cities and towns on both mitigation and adaptation planning. It could also become the formal “home” for the less formal meetings currently held by the county and municipal planners. If the county forms the proposed Marin Climate Adaptation Task Force as recommended in this report, the partnership could play an important staff-level role supporting the work of the task force in developing a countywide adaptation plan. If the task force is not formed, the partnership could continue its role of supporting climate change policy efforts in the cities, towns, and other member agencies—but with an expanded scope that includes support for adaptation planning.

At this time, the climate partnership is staffed by just the one part-time consultant. The partnership should add the resources needed to support the cities, towns, and other members in developing their detailed adaptation measures, including formulating land use and zoning regulations. It is far more efficient to provide coordinated support for these efforts than having each city, town, or other agency find its own way. These expanded efforts could be funded through grants and a modest increase in the member contributions.

If formed, the new Office of Sustainability and Resilience recommended above should be the primary county liaison with the expanded climate partnership. The new office should work through the partnership to assist cities, towns, and other Marin agencies in building skills related to adaptation planning and in sourcing funding for planning and pilot projects.

Collective Action and Implementation

Beyond planning and policy development, there is currently no Marin organization on the horizon that will bring together the cities, towns, and other Marin agencies to collaborate on *implementing* climate change adaptation measures or, in the future, to finance and build the large multi-jurisdictional public works projects that will grow out of adaptation plans. There needs to be such an organization or forum.

Just as San Mateo County provides a model for coordinating climate-related functions within the county government, it also offers a possible model for countywide collaboration on implementation measures related to sea level rise. As described in the box on the next page, the new San Mateo County Flood and Sea Level Rise Resiliency District is a multi-jurisdictional agency designed to consolidate the work of the county’s Flood Control District and Flood Resilience Program and to initiate new countywide efforts to address and protect against the impacts of sea level rise.⁴⁵ With representation from all 20 San Mateo cities, it is a truly collaborative countywide body that will plan for and implement the public works projects

⁴⁴ Marin Climate & Energy Partnership, accessed April 21, 2020, <https://marinclimate.org/>.

⁴⁵ Flood and Sea Level Rise Resiliency District, accessed February 4, 2020, <https://resilientsanmateo.org/>.

The San Mateo Flood and Sea Level Rise Resiliency District: A Potential Model for Implementing Marin's Adaptation Program

Beginning in 1959, San Mateo County had a flood control district similar to Marin's Flood Control and Water Conservation District. The San Mateo district's board was the county's board of supervisors. The district had separate flood control zones for each flood-susceptible area, with residents in each zone paying extra property taxes to fund the flood control projects in that zone. San Mateo's cities had no representation on the district's board. This is how Marin's current flood control district is organized.

In 2018, San Mateo County completed a vulnerability assessment regarding sea level rise under a project similar to Marin's BayWAVE effort. It projected that in the event of a mid-level 2100 sea level rise scenario, property with an assessed value of \$34 billion would be flooded on the bay and coastal sides of the county.⁴⁶

Several cities in San Mateo had pursued independent planning efforts related to sea level rise. In addition, the San Mateo City/County Association of Governments (C/CAG) had a program to assist the cities with stormwater management. However, according to a 2019 City of Menlo Park staff report, "since 2013, San Mateo County and the 20 cities and towns have increasingly recognized their competitive disadvantage in pursuing grant funding to respond to flooding and sea level rise in comparison with neighboring counties that have countywide agencies working on those issues."⁴⁷

In 2017, C/CAG established a committee to study the best way to create a countywide effort to

address flooding, regional stormwater, and sea level rise issues in the county. The committee recommended reorganizing the county's existing flood control district, and that proposal was approved by the county in early 2019. The reorganization required the passage of special legislation at the state level, which was approved by the governor on September 12, 2019, and became effective on January 1, 2020.⁴⁸ There will be a three-year startup period, during which the district will seek permanent sources of funding for its sea level rise initiatives. The following are key attributes of the new organization:

- The old flood control zones and funding mechanism will continue.
- Countywide sea level rise and resiliency will be added to the organization's mission, including both the coastal and the bayside shoreline.
- The district will now represent the county and all 20 of its cities, with a representative governing board of seven, two of whom are county supervisors.
- Each city will contribute between \$25,000 and \$55,000 per year, depending on its size, to fund startup operations.
- The district will have a small staff of its own, including a chief executive officer, although it will continue to rely on services provided by the county's Department of Public Works for engineering and other project support.

⁴⁶ County of San Mateo, *Sea Level Rise Vulnerability Assessment*, March 2018, p. 181, https://seachangesmc.org/wp-content/uploads/2018/03/2018-03-12_sea_level_rise_VA_Report_2.2018_WEB_FINAL.pdf.

⁴⁷ City of Menlo Park Department of Public Works, staff report, May 7, 2019, p. 1, <https://www.menlopark.org/DocumentCenter/View/20709/I2---Flood-and-sea-level-Rise---SR?bidId=>.

⁴⁸ California Assembly Bill 825, https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB825.

needed to protect San Mateo from the effects of sea level rise. This new agency, which commenced operations January 1, 2020, has three primary objectives:

- To create a collaborative forum bringing all the cities in the county together in their efforts to adapt to sea level rise
- To build expertise, and help San Mateo’s cities build expertise, in planning for and executing public works projects for sea level rise adaptation
- To better position San Mateo to compete for funding by creating a cross-jurisdictional entity serving the entire county.

The Grand Jury’s investigation found that there is a strong consensus among Bay Area government leaders that funding sources for climate change adaptation favor regional or multi-jurisdictional efforts compared to projects by individual cities, towns, and agencies. Marin currently lacks a multi-jurisdictional climate change initiative like this, leaving it disadvantaged in funding efforts.

Marin’s current flood control district is similar to San Mateo’s old one. While Marin’s district covers the entire county, it operates only in eight designated “zones” where there are flooding risks. Each zone has funding from property taxes paid by homeowners in the zone, and those funds are used to pay for flood control projects in the zone.

Although Marin’s district is not charged explicitly with combating sea level rise or other climate change effects, increased flooding is certainly one result of extreme rainfall and weather events. In that sense, the district is already aligned with climate change adaptation.

Indeed, much of the infrastructure of the district—stormwater pump stations, detention basins, bypass drains, levees—is situated in the low-lying areas that constitute the front lines of sea level rise adaptation, so it makes sense for the district to play a key role in climate change adaptation.

The Grand Jury recommends that the county explore the feasibility of reorganizing the Marin County Flood Control and Water Conservation District in a manner similar to San Mateo’s, to achieve similar goals of creating a collaborative forum; building the expertise of Marin’s cities, towns, and agencies; and creating a multi-jurisdictional agency that will be highly competitive in the fundraising arena. The Grand Jury believes that the purview of the reorganized agency should be countywide and should include climate change adaptation efforts on both the coastal and bay side.

If the Marin Climate Adaptation Task Force is formed as recommended in this report, the task force could commission the feasibility study at the appropriate stage of its planning process. If the task force is not formed, the Grand Jury recommends that the board of supervisors commission the study as soon as it is financially able to do so.

Marin needs to create institutions enabling climate change collaboration among the jurisdictions within the county. With the reorganized flood control district as the collaborative agency responsible for planning and implementing public works projects across the county, Marin would be well positioned to lead on climate change adaptation efforts and compete for funding with other regions. This effort would be even stronger if supported by a newly created Office of Sustainability and Resilience in the county government and backed by a countywide climate change adaptation plan.

CONCLUSION

Over the lifetime of a child born in 2020, Marin County will be profoundly affected by climate change. Today's heavily populated shoreline areas will either be inundated by rising sea levels or be shielded by large sea walls. Highways will be rerouted or reengineered. The vegetation on Mt. Tamalpais will be altered. Health systems will be stressed. Socioeconomic inequities will worsen. We can lessen the severity of those impacts through concerted efforts to reduce greenhouse gas emissions and to sequester carbon. But we cannot reverse the trend.

Property owners and government officials will be facing hard choices. What losses are we willing to accept? How much are we willing to pay? What options do we really have? Nobody has all the answers, but we as a community need to aggressively, deliberately, and cooperatively organize and plan to meet the climate threat.

As first steps, this report calls for several related but independent changes in Marin's approach to climate change. Our elected officials should establish a Marin Climate Adaptation Task Force to develop a comprehensive adaptation strategy for all of Marin. The county government should consolidate its climate efforts under a new Office of Sustainability and Resilience. The existing Marin Climate & Energy Partnership should expand its mission to support countywide adaptation planning. The county government should explore the feasibility of reorganizing Marin's Flood Control and Water Conservation District board into a countywide body with representatives from the county and all municipalities and the added responsibility of executing public works projects required to defend against sea level rise.

Each of these recommended measures would be a step in the right direction. Taken together, they would take Marin much closer to more effective management of the adaptation challenges that lie ahead. It's the least we can do for our children.

FINDINGS

- F1. Climate change mitigation efforts by Marin governments have been notably effective in meeting their goals to reduce greenhouse gas emissions.
- F2. Adaptation planning is essential to protect local public utility and transportation infrastructure as well as private property interests, and to enable Marin's citizens to maintain their current standards of living.
- F3. With the BayWAVE and C-SMART initial vulnerability assessments completed, the county is now well-positioned to focus on adaptation planning and policies related to sea level rise.
- F4. The existing adaptation efforts across the county pay insufficient attention to the other potential effects of climate change, including impacts on public health, ecosystems, and social equity.
- F5. There are insufficient staff and financial resources devoted to climate change adaptation efforts across county government as well as in the cities, towns, and other agencies, and many of the existing efforts are highly dependent on grant funding.

- F6. Within the county government, there is no single coordinating body focused on climate change, which could impede the ability to unify county efforts around a common strategy and plan.
- F7. Cross-jurisdictional collaboration and coordination will be required for successful adaptation efforts, but Marin lacks any overarching organizational or governance structure to facilitate this.

RECOMMENDATIONS

- R1. The board of supervisors, in collaboration with the municipalities and other agencies affected by climate change, should convene a multi-jurisdictional task force (referred to in this report as the Marin Climate Adaptation Task Force) charged with developing a single, comprehensive, multi-jurisdictional adaptation strategy for all of Marin.
- R2. The board of supervisors should form a new office within county government (referred to in this report as the Office of Sustainability and Resilience) devoted to climate change mitigation and adaptation and reporting to the county administrator's office or the board of supervisors.
- R3. The board of supervisors should direct the formation and staffing, preferably in the new Office of Sustainability and Resilience, of a centralized grant-seeking function related to climate change mitigation and adaptation efforts for county government.
- R4. Each member of the Marin Climate & Energy Partnership, should declare its support for broadening the partnership's mission and increasing its funding as necessary to enable it to support overall climate change planning efforts, including both mitigation and adaptation in cities, towns, and other member agencies throughout the county.
- R5. The board of supervisors should commission a feasibility study concerning the reorganization of Marin's Flood Control and Water Conservation District. This multi-jurisdictional study should analyze broadening the district's mission to include coastal and bayside sea level rise adaptation across the county as well as revising its governing membership to include representatives of the county and all Marin cities and towns. If the board of supervisors supports the formation of the Marin Climate Adaptation Task Force as recommended in this report, the responsibility for this study could be referred to the task force for consideration at the appropriate time.
- R6. Each city and town, if it does not have a full-time sustainability coordinator (or similar position), should appoint a committee or commission charged with monitoring and reporting on its climate change mitigation and adaptation efforts.

REQUEST FOR RESPONSES

According to the California Penal Code, agencies required to respond to Grand Jury reports generally have no more than 90 days to issue a response. It is not within the Grand Jury's power to waive or extend these deadlines, and to the Grand Jury's knowledge, the Judicial Council of California has not done so. But we recognize that the deadlines may be burdensome given current conditions caused by the COVID-19 pandemic.

Whether the deadlines are extended or not, it is our expectation that Marin’s public agencies will eventually be able to return to normal operations and will respond to this report. In the meantime, however, public health and safety issues are of paramount importance and other matters might need to wait.

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as shown below. Where a recommendation is addressed to multiple respondents, each respondent should respond solely on its own behalf without regard to how other respondents may respond.

From the following governing bodies:

- County of Marin (F1–F7, R1–R5)
- City of Belvedere (F1–F5, F7, R1, R4, R6)
- City of Larkspur (F1–F5, F7, R1, R4, R6)
- City of Mill Valley (F1–F5, F7, R1, R4, R6)
- City of Novato (F1–F5, F7, R1, R4, R6)
- City of San Rafael (F1–F5, F7, R1, R4, R6)
- City of Sausalito (F1–F5, F7, R1, R4, R6)
- Town of Corte Madera (F1–F5, F7, R1, R4, R6)
- Town of Fairfax (F1–F5, F7, R1, R4, R6)
- Town of Ross (F1–F5, F7, R1, R4, R6)
- Town of San Anselmo (F1–F5, F7, R1, R4, R6)
- Town of Tiburon (F1–F5, F7, R1, R4, R6)
- Marin Clean Energy (MCE) (F1–F4, F7, F8, R1, R4)
- Marin General Services Authority (R4)
- Marin Municipal Water District (F1–F5, F7, R1, R4)
- Transportation Authority of Marin (F1–F5, F7, R1, R4)

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code Section 933 (c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

Note: At the time this report was prepared information was available at the websites listed.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

APPENDIX A. MITIGATION EFFORTS IN MARIN

Marin County’s institutional response to climate change began in 2002, and the focus for most of the years since then has been on mitigation measures—on actions to reduce greenhouse gases and other causes of climate change.

Targets and Plans

In April 2002, the Marin County Board of Supervisors adopted a resolution to join the Cities for Climate Protection Campaign. The resolution pledged the county to take a leadership role in promoting public awareness of climate change and to undertake efforts to reduce greenhouse gas and other air pollution emissions.⁴⁹ In June 2003, as part of that commitment, the county government completed its first analysis of greenhouse gas emissions levels.⁵⁰ Three years later, the board adopted the *Marin County Greenhouse Gas Reduction Plan*, setting a greenhouse gas reduction target of 15 percent below 1990 levels by 2020 for both community and municipal emissions in unincorporated Marin. Crediting government and private sector investments in energy efficiency, renewable energy, alternative fuel vehicles, water conservation, and waste minimization, the county reported that it met its community emissions target in 2012—eight years ahead of schedule.⁵¹

The *Marin County Climate Action Plan (2015 Update)* built on the 2006 plan, doubled the 2020 reduction target for community emissions, and listed actions the county would take to achieve the reductions.⁵² Another update is scheduled to be completed before the end of 2020 and is expected to include forecasts, targets, and strategies to 2030.

Starting in 2009, all of Marin’s incorporated cities and towns also developed their own climate action plans. Almost all of these local plans were developed with assistance from the Marin Climate & Energy Partnership (MCEP), a group that includes staff-level planners from Marin’s county and municipal governments. MCEP has been instrumental in creating the greenhouse gas inventories needed for the climate action plans. Like the county’s climate action plan, the municipal plans focus primarily on efforts the local governments and communities can take to reduce greenhouse gas emissions. Collectively, the patchwork of county and municipal plans covers all of Marin County. From 2005 to 2018, according to the MCEP, countywide greenhouse gas emissions dropped by 25 percent.⁵³

A collaborative effort in the county to confront the challenge of climate change began in October 2017 when the board of supervisors adopted a resolution stating that “the County of Marin will work with County staff and community leaders to develop and implement policies and create incentives that will achieve dramatic greenhouse gas reductions, align climate action policies

⁴⁹ Marin County Board of Supervisors, Meeting Minutes, April 23, 2002, <https://pav.marincounty.org/publicaccessbosarchive/>.

⁵⁰ Marin County Community Development Agency, *Greenhouse Gas Emissions Analysis Report*, County of Marin Cities for Climate Protection Campaign (June 2003), https://www.marincounty.org/depts/cd/divisions/planning/sustainability/~/_media/Files/Departments/CD/Planning/Sustainability/Initiatives/CCP_FinalReport.pdf.

⁵¹ ICF International, *Marin County Climate Action Plan (2015 Update)*, p. ES-1.

⁵² ICF International, *Marin County Climate Action Plan (2015 Update)*, pp. ES-1–ES-2.

⁵³ Marin Climate & Energy Partnership, “Marin Tracker,” accessed June 29, 2020, <http://www.marintracker.org/>.

with the California Climate Adaptation Strategy, and adopt integrated strategies to achieve one “carbon free” goal.”⁵⁴

The initiative that sprouted from this resolution was named Drawdown: Marin, and it is managed by the county government’s Community Development Agency. Its current goals are to reduce, or “draw down,” net countywide greenhouse gas emissions by 60 percent by 2030, relative to 2005 levels, and to achieve net-zero emissions by 2045. To help meet these goals, it has formed working groups to develop solutions in six focus areas: renewable energy, transportation, buildings and infrastructure, carbon sequestration, local food and food waste, and climate resilient communities. These groups, called stakeholder collaboratives, consist of technical experts, community members, county and city staff, and others, many of whom are unpaid volunteers.

The original aim was for Drawdown: Marin’s steering committee to endorse 12 to 18 solutions that, once approved by the board of supervisors, would be integrated into the 2020 update of the *Marin County Climate Action Plan*.⁵⁵ In July 2020, Drawdown: Marin issued a draft strategic plan that summarized 29 climate change solutions proposed by the stakeholder collaboratives, including 7 solutions that were endorsed by the steering committee for immediate implementation.⁵⁶ Drawdown: Marin also has a Community Partnership Council to engage people throughout the county in its efforts.

Implementation of Mitigation Programs

A major step in moving beyond planning and actually implementing mitigation measures was the 2010 launch of Marin Clean Energy, a joint powers authority that was California’s first community choice aggregation (CCA) program. Authorized by the California legislature in 2002 under Assembly Bill 117, CCA programs allow communities to choose their electricity sources. Marin Clean Energy’s initial participants were unincorporated Marin County and seven Marin cities and towns. It was explicitly created to help reduce greenhouse gas emissions:

The purposes for the Initial Participants . . . entering into this Agreement include addressing climate change by reducing energy related greenhouse gas emissions and securing energy supply and price stability, energy efficiencies and local economic benefits. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production.⁵⁷

The remaining four Marin municipalities joined in 2011. Now calling itself MCE, the program has since added 22 municipalities and unincorporated areas in Contra Costa, Napa, and Solano Counties. PG&E provides electric delivery services, and customers in MCE’s service areas are

⁵⁴ Marin County Board of Supervisors, Resolution No. 2017-104, October 3, 2017, https://marin.granicus.com/MetaViewer.php?view_id=36&clip_id=8757&meta_id=917217.

⁵⁵ “Drawdown: Marin Roadmap,” June 2019 update, https://www.marincounty.org/-/media/files/departments/cd/planning/sustainability/climate-and-adaptation/drawdown-marin/drawdown-roadmap_updated-june-2019.pdf?la=en.

⁵⁶ County of Marin Sustainability Team, *Drawdown: Marin Strategic Plan*, draft, July 2020, <https://www.marincounty.org/-/media/files/departments/cd/planning/sustainability/climate-and-adaptation/drawdown-marin/strategic-plan/draft-drawdown-marin-strategic-plan.pdf?la=en>.

⁵⁷ Marin Energy Authority, Joint Powers Agreement, as amended through April 21, 2016, https://www.mcecleanenergy.org/wp-content/uploads/2017/03/JPA-Agreement-24-Communities_Updated-3.21.17.pdf.

automatically enrolled in the CCA unless they opt out. According to MCE, 60 percent of the electricity obtained through its default “Light Green” option is generated from renewable sources including solar, wind, bioenergy, geothermal, and small hydro. It says that its “Deep Green” option, which costs residential customers about \$5 a month extra, provides “100 percent non-polluting wind and solar power produced in California.” Half of the Deep Green premium supports local renewable energy projects such as solar farms and electric vehicle charging installations.⁵⁸ Climate action plans frequently promote Deep Green as a greenhouse gas reduction strategy.

The county government has also implemented programs to encourage residents to reduce their carbon footprint. Among them: Electrify Marin, a countywide program that provides financial incentives for residents to replace fossil-fuel appliances with high-efficiency electric appliances; the Marin Solar Project, which helps homeowners and businesses evaluate options for solar systems; and the Marin Energy Watch Partnership, which provides resources and incentive funds to help residents, businesses, and public agencies become more energy efficient. County agencies and many cities and towns have partnered with Resilient Neighborhoods, which conducts workshops to educate and motivate community members to reduce their household greenhouse gas emissions. Other actions taken by the county government and municipalities include installation of charging stations for electric vehicles.

⁵⁸ “Residential,” MCE, accessed June 2, 2020, <https://www.mcecleanenergy.org/residential/#>.

APPENDIX B. CURRENT AND RECOMMENDED ENTITIES AND PROGRAMS REFERENCED IN THIS REPORT

The following is a brief description of the primary governmental organizations and programs in Marin involved in climate change mitigation and adaptation, or affected by climate change:

Name	Description
Marin County Community Development Agency	A department within county government responsible for planning, and land use and building regulation. The department also manages the C-SMART program.
Marin County Department of Public Works	A department within county government responsible for county roads and public works projects on county lands. The department also manages the BayWAVE program and provides all staff support to the Marin County Flood Control and Water Conservation District.
Marin County Department of Health and Human Services	A department within county government responsible for public health, behavioral health and recovery, and social services across the county.
Marin County Flood Control and Water Conservation District	The district manages flood control and water conservation efforts within eight geographical districts within the county funded by ad valorem taxes paid by property owners.
Marin County Parks Department	A department within county government responsible for managing public parks on county lands. The department also provides all staff support to the Marin Open Space District.
Drawdown: Marin	A program approved by the county in 2017 to work with community members to develop innovative climate change mitigation programs that can be implemented by Marin's governments.
BayWAVE	A program launched by the county in 2015 to assess the vulnerability of the county's eastern shore to sea level rise. The program is managed by the Marin County Department of Public Works.

Name	Description
C-SMART	A program launched by the county in 2014 to assess the vulnerability of the county's ocean shoreline to sea level rise. The program is managed by the Marin County Community Development Agency.
Marin Climate & Energy Partnership	A collaboration among Marin's cities and towns, MCE, Transportation Authority of Marin, and Marin Municipal Water District to assist members with their climate action plans and associated greenhouse gas inventories. The partnership was also involved in the formation of MCE and the development of associated energy efficiency programs. It is a program managed by the Marin General Services Authority.
Sustainability Team	A seven-person team within the Marin County Community Development Agency to manage climate change mitigation efforts within county government. It also provides support to Drawdown: Marin.

The following are new organizations to be formed as recommended by this report:

Name	Description
Marin Climate Adaptation Task Force	A task force to create a countywide adaptation plan that can be adopted by cities, towns and other agencies throughout the county.
Marin County Office of Sustainability and Resilience	An office reporting either to the County Administrator or the board of supervisors to unify mitigation and adaptation efforts within county government.

FINAL, REVISED RESPONSE TO GRAND JURY REPORT FORM

Report Title: Climate Change: How Will Marin Adapt?
Report Date: September 11, 2020

Response By: San Rafael City Council
Title: Mayor and City Council

FINDINGS:

- We agree with the findings numbered F1, F2, F3, F5
- We disagree wholly or partially with the findings numbered F4, F7
(See Attachment A)

RECOMMENDATIONS:

- Recommendations numbered R6 have been implemented.
- Recommendations numbered _____ have not yet been implemented but will be implemented in the future.
- Recommendations numbered _____ require further analysis. (See Attachment A)
- Recommendations numbered R1 & R4 will not be implemented because they are not warranted or are not reasonable.

DATED: _____

Signed: _____
KATE COLIN, Mayor

ATTEST: _____
Lindsay Lara, City Clerk

Number of pages attached: 4

**ATTACHMENT A: RESPONSE OF THE CITY OF SAN RAFAEL TO GRAND JURY
REPORT “CLIMATE CHANGE: HOW WILL MARIN RESPOND?” REVISED SEPTEMBER 20, 2021**

FINDINGS AND RESPONSES

The responses below have been made from the perspective of the City of San Rafael’s experience with planning for the effects of climate change. Although we work cross-jurisdictionally and are members of the Marin Climate and Energy Partnership, we do not have full insight or influence on the planning practices of other local government agencies in Marin County.

F1. Climate change mitigation efforts by Marin governments have been notably effective in meeting their goals to reduce greenhouse gas emissions.

Response: Agree

The City of San Rafael has worked with the County, other Marin cities and towns, as well as other local partners and community members to collaborate on mitigation efforts. We’ve been successful in reducing greenhouse gas (GHG) emissions in San Rafael thus far to 27% below 2005 baseline levels. However, GHG emission reductions will be more challenging as deeper reductions are required, and we will need to redouble our efforts to get to a 40% reduction below 1990 levels by 2030.

F4. The existing adaptation efforts across the county pay insufficient attention to the other potential effects of climate change, including impacts on public health, ecosystems, and social equity.

Response: Partially Disagree

In 2017, the City of San Rafael prepared and adopted a Local Hazard Mitigation Plan that addresses all hazards, as well as hazards associated with climate change. In 2018, the City participated in the working group of Marin’s county and municipal planners that helped develop a countywide, multi-jurisdictional Local Hazard Mitigation Plan that was subsequently adopted by the San Rafael City Council and the Board of Supervisors (referenced on p. 18 of the Grand Jury Report). The City continues to participate in this working group, which is collaborating to help integrate climate adaptation planning in all the planning efforts of the local jurisdictions.

Subsequently, the City of San Rafael has integrated much of this work into General Plan 2040, which was recently adopted by the City Council and includes a State-mandated Equity, Diversity and Inclusion Element and a Safety and Resilience Element addressing climate impacts. General Plan 2040 also includes two supportive documents to begin San Rafael’s adaptation efforts: a Flood Risk and Sea Level Rise Adaptation Report and Sea Level Rise Adaptation Technical Guidance Study, conducted by ESA. In addition, there are two ecosystem related climate adaptation projects in San Rafael: the San Francisco Estuary Institute’s eel grass and oyster bed restoration project in the Bay off Shoreline Path, and the Tiscornia Marsh Restoration Project, proposed outboard of Pickleweed Park. The City is the lead agency for this restoration project.

Although public health has not been addressed explicitly in San Rafael, the City has supported a student project assessing extreme heat effects and solutions, and the City supports a number of programs related to food security such as ExtraFood.org and COVID-19 related food pantries. In addition, the City

is currently working with the County of Marin on a Prop 68 grant to develop an equitably-driven climate resilience project in the greater Canal area of San Rafael, which centers the work in social equity and collaborative decision-making.

F7. Cross-jurisdictional collaboration and coordination will be required for successful adaptation efforts, but Marin lacks any overarching organizational or governance structure to facilitate this.

Response: Partially Disagree

Although no one overarching organizational or governance structure currently exists to address all aspects of climate change impacts, it is unclear if this is the best approach moving forward. There are numerous types of climate impacts, some which overlap with other natural or human-made disasters or threats, each requiring different sets of solutions across a multitude of stakeholders and regulatory structures.

And as noted in the report, there are several other major collaboration and coordination efforts already happening in the County that address some of the most pressing impacts related to climate change. First is the Marin Wildfire Protection Authority, a county-wide Joint Powers Authority approach to fire prevention which is a model worth exploring for adaptation approaches to other hazards. The issues and solutions are clear and discernable, and the coordination effort has dedicated funding. Second, there is a County-led Sea Level Rise program based on the BayWAVE vulnerability assessment. The issues and solutions are less clear and discernable at this point, but the coalescing around flood risk and sea level rise is significant. In addition, the DRAWDOWN: Marin effort addresses both climate change mitigation and adaptation and resilience. This program is being developed and finalized and could be an overarching organizational structure to work from. There is also a county-wide Community Development Directors group meeting to synchronize planning efforts around the county specific to general plan policies and adaptation efforts, and a County-wide Local Hazard Mitigation Plan that provides and organizational structure to work from.

RECOMMENDATIONS AND RESPONSES

R1. The board of supervisors, in collaboration with the municipalities and other agencies affected by climate change, should convene a multi-jurisdictional task force (referred to in this report as the Marin Climate Adaptation Task Force) charged with developing a single, comprehensive, multi-jurisdictional adaptation strategy for all of Marin.

Revised Response: This recommendation will not be implemented

As noted above, much coordination has already been done around the county with regard to climate change. Upon further analysis, we have determined that at this time there is no agreement countywide that a single, comprehensive, multi-jurisdictional adaptation strategy for all of Marin is the best way to approach the various impacts of climate change. There is already a countywide Local Hazard Mitigation Plan, which all Marin jurisdictions are party to, which includes climate impacts as well as threats from other non-climate specific hazards. This is the forum that local jurisdictions and the County are exploring for coordination amongst the various agencies and other stakeholders. Other sector or threat-specific coordination efforts such as the Marin Wildfire Prevention Authority and the BayWAVE sea level

rise program are continuing as well and include local jurisdictions.

In addition, DRAWDOWN: Marin is in the process of formalization and may be a venue for further coordination or exploration around climate adaptation planning. This is a broad-based and inclusive effort that the City applauds and has been part of. Importantly, this effort includes community leaders, nonprofits, business leaders and others. It will be essential to conduct robust community engagement from all sectors to put in place any countywide effort to address adaptation.

Finally, there is a significant amount of work being done around the Bay Area region through the San Francisco Bay Conservation and Development Commission's (BCDC) Bay Adapt program and the Bay Area Climate Adaptation Network, which both City and County staff participate in. These two efforts are looking at the challenges and solutions to county-wide and regional adaptation planning, specifically with regard to decision-making, permitting, and governance. There is widespread agreement that there is no clear best way to address cross-jurisdictional organization or governance at this time, but the two are conducting research and analyses to help local governments understand and make good choices in these regards.

The City of San Rafael looks forward to working with the County and Board of Supervisors to explore the best approaches to coordinate around the myriad of threats and vulnerabilities due to climate change and other potential natural and human-caused disasters. In addition, the City's newly adopted General Plan 2040 includes Policy S-3.6: Resilience to Tidal Flooding containing a program specific to countywide coordination regarding sea level rise and flooding. Program S-3.6C: Countywide Agency/Joint Powers Authority states "*Work with the County of Marin to facilitate the formation of a centralized countywide agency or joint powers authority to oversee adaptation planning, financing, and implementation.*" The City will continue to explore this and will pursue it in the future provided there is sufficient agreement countywide on such a program.

R4. Each member of the Marin Climate & Energy Partnership, should declare its support for broadening the partnership's mission and increasing its funding as necessary to enable it to support overall climate change planning efforts, including both mitigation and adaptation in cities, towns, and other member agencies throughout the county.

Revised Response: This recommendation will not be implemented.

The Marin Climate and Energy Partnership (MCEP) has been a very successful collaboration specific to its current purview and activities. Through MCEP, all of the cities and the County have benefitted from consistent and coordinated climate action plans, annual greenhouse gas inventories, and implementation of priority mitigation projects from the climate action plans. These include actions and projects such as electric vehicle charging, permit streamlining, and Resilient Neighborhoods funding and promotion. Each local jurisdiction contributes a small annual financial amount, which results in significant benefits. Additional contributions could translate into additional coordinated mitigation projects. MCEP does include adaptation planning in its mission statement and has conducted some minimal efforts around adaptation planning. However, no major work projects or endeavors have been proposed for MCEP priorities by member jurisdictions.

Expansion of MCEP's purview would also require expansion of staff involved and there is also the risk of duplication with efforts already in the works such as the Marin Planning Directors Working Group,

BayWAVE, DRAWDOWN: Marin, and the countywide Local Hazard Mitigation Plan. Upon further analysis, we have determined that there is no agreed-upon desire to broaden the partnership's mission any further and increase funding specific to adaptation planning.

R6. Each city and town, if it does not have a full-time sustainability coordinator (or similar position), should appoint a committee or commission charged with monitoring and reporting on its climate change mitigation and adaptation efforts.

Response: This recommendation has been implemented.

The City of San Rafael has a full time Sustainability Program Manager and conducts quarterly community forums which provide updates on implementation of our Climate Change Action Plan. The Sustainability Program Manager reports to the City Council on mitigation and adaptation efforts formally on an annual basis as well as informally through the City Council Sustainability Liaison.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF SAN RAFAEL'S FINAL RESPONSE TO THE 2019-2020 MARIN COUNTY CIVIL GRAND JURY REPORT ENTITLED, "CLIMATE CHANGE: HOW WILL MARIN ADAPT?"

WHEREAS, pursuant to Penal Code section 933, a public agency which receives a Grand Jury Report addressing aspects of the public agency's operations must, within ninety (90) days, provide a written response to the Presiding Judge of the Superior Court, with a copy to the Foreperson of the Grand Jury, responding to the Report's findings and recommendations; and

WHEREAS, Penal Code section 933 specifically requires that the "governing body" of the public agency provide said response and, in order to lawfully comply, the governing body must consider and adopt the response at a noticed public meeting pursuant to the Brown Act; and

WHEREAS, the City Council of the City of San Rafael has received and reviewed the Marin County Civil Grand Jury Report, dated September 11, 2020, entitled "Climate Change: How Will Marin Adapt?", and adopted an initial response at the November 16, 2020 City Council meeting; and

WHEREAS, the City has conducted further analysis on the two Recommendations in the Marin County Civil Grand Jury Report, dated September 11, 2020, entitled "Climate Change: How Will Marin Adapt?" that were determined to require further analysis; and

WHEREAS, the City Council of the City of San Rafael has added the discussion of this report to the September 20, 2021 City Council meeting agenda to consider the City's revised response.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Rafael hereby:

1. Approves and authorizes the Mayor to execute the City's revised response to the Marin County Civil Grand Jury's September 11, 2020 report, entitled "Climate Change: How Will Marin Adapt?", a copy of which is attached hereto and incorporated herein by reference.
2. Directs the City Clerk to forward the City's response forthwith to the Presiding Judge of the Marin County Superior Court and to the Foreperson of the Marin County Civil Grand Jury.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on the 20th day of September 2021, by the following vote to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Finance

Prepared by: Nadine Atieh Hade,
Finance Director

City Manager Approval: _____

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

TOPIC: FISCAL YEAR 2020-2021 CITY-WIDE BUDGET AMENDMENTS AND FISCAL YEAR 2021-2022 UPDATE

SUBJECT: RESOLUTION ADOPTING AMENDMENTS TO THE CITY OF SAN RAFAEL BUDGET FOR FISCAL YEAR 2020-2021 FOR THE PURPOSE OF CONFIRMING AUTHORIZED APPROPRIATIONS AND TRANSFERS

RESOLUTION ADOPTING AMENDMENTS FOR FISCAL YEAR 2021-2022 FOR THE PURPOSES OF PERSONNEL CHANGES

RECOMMENDATION: Adopt resolutions as presented.

BACKGROUND: During the process of developing and recommending the fiscal year 2020-21 budget, staff provided updates on the fiscal performance of the General Fund and projections through fiscal year-end.

The fiscal year 2020-21 City-wide budget was last presented to the City Council on [June 21, 2021](#), during the budget approval process for the fiscal year 2021-22. At that point, staff shared updated projections and noted adjustments would be formally requested as part of the year-end update. Since the close of the fiscal year on June 30, 2021, staff has reviewed the revenues and expenditures in the General Fund, special revenue funds and other special purpose funds. This review has yielded adjustments that are specific to year-end and clean up in nature to special revenue funds and other special purpose funds. Aside from the adjustments recommended during the June 21, 2021 meeting, staff is recommending a few year-end adjustments to align the budget with actuals. These budget adjustments are recommended by the City's outside auditors as the approval by the City Council provides for complete budget accountability.

The purpose of these amendments is to formally authorize the expenditures and transfers required in certain funds to fulfill their respective purposes and functions through June 30, 2021.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

ANALYSIS:

General Fund

Revenues and Other Sources:

Revenues: The original FY 2020-21 budget, adopted on [June 15, 2020](#), projected \$75,483,680 in revenues. This was based on the soundest information available at the time as economists and revenue experts forecasted reductions in revenue based on the pandemic. The City worked with two revenue consulting companies (HdL and Management Partners) and other local agencies to project losses for FY 2020-21. Fortunately, federal aid (stimulus measures and extra unemployment dollars) played a significant role and revenues were not impacted as was originally projected.

In the mid-year budget review (updated budget) presented on [March 1, 2021](#), revenues were increased by \$5,500,000 for a projected balance of \$80,983,680 based on higher than anticipated sales and use tax receipts as well as the passage of Measure R and receipt of CARES Act funds.

On [June 21, 2021](#), revenues were projected to be \$83,429,224, which is \$2,445,544, or 3% above the updated budget, based on activity through April. The projected increase was in property transfer tax of approximately \$366,000, higher than anticipated Educational Revenue Augmentation Fund (ERAF) payments received from the County of \$367,970 and continuing increases in sales tax revenues estimated at approximately \$1,711,574. At that time, staff recommended waiting until closing out the year to ask the City Council to formally approve these adjustments to the budget.

As it closed out the remainder of the fiscal year, the City continued to experience a favorable increase in revenues, predominately resulting from higher than anticipated sales tax and use tax receipts. Staff recommends an increase to budgeted revenues in the amount of \$3,672,393 to account for the increase in sales and use tax received for May and June. The City's sales and use tax consultant, HdL calls the large increases in sales and use tax a "surge" in which this recent period is likely going to be the high point of a 3-year window. The City's three industry groups that have seen large increases in FY 2020-21 are autos and transportation, building and construction, and the County pool allocations. HdL believes this is due to an inflated economy and this one-time money will not continue into FY 2021-22. While staff do not disagree, it is difficult to predict what portion of the overall sales and use tax increases are one-time in nature.

Revised revenues of \$87,101,617 are 15% above the originally adopted budget.

Other sources: In the original budget, the gas tax fund was scheduled to transfer to the general fund \$1 million more than it would normally have in previous years. The purpose of this was to help offset losses. Since the City fared better than expected, staff recommends returning the excess \$1 million to the gas tax fund so it can be allocated towards capital improvement projects (CIP). Other sources (transfers in) to the general fund were transferred as a result of the review of old debt services funds that had served their purpose and were closed out.

Expenditures and Other Uses:

Expenditures: As part of the approved FY 2020-21 budget, expenses were reduced by \$6,686,000 as the City was preparing for projected revenue losses associated with the COVID-19 pandemic and acted immediately to reduce expenses. During the fiscal year, an effort by all departments was made to keep to the original budget except for one request to increase appropriations during the mid-year budget

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 3

update for the Public Safety Center total utility and janitorial service costs in the amount of \$275,000. Staff has no other recommended increases to expenditures.

Other uses: Due to starting the year with no available fund balance and with having to endure the year with significantly reduced program activity while still utilizing staff for other activities such as disaster service workers, staff recommends an additional transfer of \$500,000 from the general fund to the Recreation fund. The Recreation fund receives an annual subsidy of approximately \$2 million each year from the general fund as approved in the original budget.

Staff recommends the transfer from the general fund to the essential facilities fund in the amount of \$1,537,629. When Measure E, the use tax of 0.75% was voted into place in November 2013, it was approved by Council that 1/3 of the tax would be transferred to the essential facilities fund at year-end to assist in construction costs and debt servicing. This year, the amount was approximately \$4.5 million but the general fund made principal and interest payments towards the debt on the facilities in the amount of \$3 million. This leaves a balance of \$1.5 million to transfer to the essential facilities fund to support capital projects.

Staff is requesting the approval of \$2,037,629 to transfers out. Proposed changes to the general fund revenues, expenditures and transfers are detailed in the table below.

Resources	
Proposed revenue changes	
Increase to revenues based on actuals	\$6,117,937
Proposed transfers in changes	
Transfer funds back to the Gas Tax Fund as losses did not materialize (206)	(1,000,000)
Transfer from inactive debt service funds (302,304,306)	171,143
Transfer from Loch Lomond Assessment District Fund to match to Engineer's report (236)	3,755
Total proposed changes to resources	\$5,292,835
Uses	
Proposed expenditure changes	\$0
Proposed transfers out changes	500,000
Transfer to Recreation fund to support operations (222)	
Measure E use tax transfer to Essential Facilities Fund (420)	1,537,629
Total proposed changes to uses	\$2,037,629
Net proposed changes (Resources less Uses)	\$3,255,206
Expenditures and Transfers out as adopted fiscal year 2020-2021	\$81,581,228
Expenditures and Transfers out as approved through June 30, 2021	\$81,856,228
Expenditures and Transfers out with proposed changes	\$83,893,857

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 4

The net impact of all proposed changes on the general fund is \$3,255,206 of additional revenues and transfers.

Other Funds

Staff is requesting the approval of \$2,116,235 of increased resources of which \$78,606 pertains to a transfer from the paramedic tax fund to the essential facilities fund adhering to policy which states the paramedic tax fund must maintain a 10% operations reserve and the remainder is to be transferred to the essential facilities fund to support capital improvements for the paramedic program, \$500,000 pertains to the general fund subsidy to assist the recreation fund, and the remainder pertains to the \$1,537,629 use tax transfer from the general fund to the essential facilities fund.

Staff is requesting the approval of \$746,496 of decreases in uses of which the bulk is to reduce the transfer of \$1 million from the gas tax fund and into the general fund, \$171,143 is being transferred to the general fund from debt service funds where debt has been fully repaid, \$78,606 the amount transferred out of the paramedic tax fund and into the essential facilities fund, and \$3,755 is being transferred from the Loch Lomond assessment district to the general fund to match the Engineer’s report.

Staff is requesting the approval of a decrease of \$746,496 to transfers out. Proposed changes to the other funds revenues, expenditures and transfers are detailed in the table below.

Resources	
Proposed revenue changes	\$0
Proposed transfers in changes	
Paramedic tax capital transfer to the Essential Facilities Fund (420)	\$78,606
To support operations in the Recreation Fund (222)	500,000
Measure E use tax transfer to the Essential Facilities Fund (420)	1,537,629
Total proposed changes to resources	\$2,116,235
Uses	
Proposed expenditure changes	\$0
Proposed transfers out changes	
To decrease transfers from the Gas Tax Fund to the General Fund since losses did not transpire (206)	(1,000,000)
Transfer from inactive debt service funds (302,304,306)	171,143
Transfer from the Paramedic Tax Fund to the Essential Facilities Fund (210)	78,606
Transfer from the Loch Lomond Assessment District to the General Fund per Engineer’s report (236)	3,755
Total proposed changes to uses	\$(746,496)
Net proposed changes to Other Funds (Resources less Uses)	\$2,862,731

Expenditures and Transfers out as adopted fiscal year 2020-2021	\$66,169,462
Expenditures and Transfers out as approved through June 30, 2021	\$84,025,366
Expenditures and Transfers out with proposed changes	\$83,278,870

The net impact of all proposed changes on other funds is \$2,862,731 of additional revenues and transfers.

Other year-end communications:

The accounting treatment and presentation of American Rescue Plan Act (ARPA) proceeds on the financial statements is still to be determined. Staff intends to discuss treatment of the proceeds with its auditors and will report on the determination when the audited financial statements are brought forth to City Council in November/December.

As staff completes its preparation of the government wide financial statements for the year-end audit, net unassigned funds are estimated at \$6-\$7 million, with the vast majority already allocated to planned expenses in the coming year(s). Staff will not have a finalized amount until the audit is completed as there could be other revenues pertaining to FY 2020-21 that trickle in through the end of September and the auditors could have proposed adjustments based on their review. Staff is recommending that the bulk of the net unassigned funds be assigned as following:

- \$520,357 to the emergency and cash flow reserve to adhere to the City Council approved policy which requires minimum target reserve levels at 10% of general fund operating expenditures.
- \$533,374 earmarked for furlough repayments which were approved as a part of the labor negotiation process during the fiscal year but not paid out until after year-end.
- \$4.5 million earmarked in the recently approved 3-year compensation contracts with City labor unions. The net unassigned funds had been projected in earlier months and used as part of determining compensation increases to adjust employee compensation in consideration of comparable agencies.

FISCAL YEAR 2021-2022 UPDATE

General Fund

It is too early in the year to predict the status of revenues and expenses. The City is focused on achieving its [Goals and Objectives](#) established for the fiscal year and is in the process of filling vacancies essential to meeting our goals, contracting for service for capital improvement projects and other city initiatives.

Use of ARPA funds continues to be focused towards the City's policy focus areas of economic recovery, housing & homelessness, racial equity, and sustainability, climate change & disasters. Expenditures are separately tracked and accounted for to ensure detailed accounting and transparency of eligible uses. Staff has submitted its first compliance report to the Federal government and will be doing so as scheduled.

Personnel Update

The Community Development Department (CDD) is proposing to replace a fixed term position with a regular city position - a Housing Program Manager. This position would support the City Council Goals and Objectives Housing and Homelessness policy focus area, respond to housing related mandates by

the State and would be the primary staff managing the Housing Element update. The role was previously held by a Fixed Term Management Analyst and given the need for ongoing work in housing related matters, CDD is proposing to make this position a full-time permanent position. This position would be covered in part by the general plan implementation fund (50%) and in part by the general fund (50%). The total fiscal impact of this proposed change to the general fund is \$3,213 as it is being offset by eliminating the Fixed Term Management Analyst position and 50% funding from the general plan implementation fund.

FISCAL IMPACT: This action authorizes the formal appropriation of resources in the 2020-21 fiscal year to support the actual expenditure and transfer activity through June 30, 2021 as described in this report. No spending authority beyond what was spent or committed as of June 30, 2021 is created through this action.

This action also authorizes the aforementioned personnel changes for fiscal year 2021-22.

RECOMMENDATION: Staff recommends that the City Council adopt the Resolutions as presented.

ATTACHMENT:

1. Resolution approving fiscal year 2020-21 amendments with Exhibit I
2. Resolution approving fiscal year 2021-22 personnel amendments for the Unrepresented Mid-Management Group

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ADOPTING AMENDMENTS TO THE CITY OF SAN RAFAEL BUDGET FOR FISCAL YEAR 2020-2021 FOR THE PURPOSE OF CONFIRMING AUTHORIZED APPROPRIATIONS AND TRANSFERS

WHEREAS, the City Council approved Resolution No. 14830 adopting the fiscal year 2020-2021 budget; and

WHEREAS, the City Council approved Resolution No. 14893 amending the fiscal year 2010-2021 budget, and took other actions during the year to authorize spending; and

WHEREAS, as part of the fiscal year-end closing process, staff has reviewed and analyzed actual revenues, expenditures and transfers through June 30, 2021, has identified a need for additional budget adjustments, and has submitted its analysis and recommendations in a report to the City Council; and

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

NOW, THEREFORE, BE IT RESOLVED, by the San Rafael City Council that Resolution No. 14830 for fiscal year 2020-2021 is further amended to authorize the following adjustments to resources and appropriations, which are reflected in the Consolidated Funds Schedule (Exhibit I attached hereto and incorporated herein by reference):

Fund	Amount
General Fund – 001 resources	\$ 5,292,835
General Fund – 001 appropriations	\$ 2,037,629
Essential Facilities Fund - 420	\$ 1,616,235
Recreation Fund - 222	\$ 500,000
Total Other Funds resources	\$ 2,116,235
Gas Tax Fund – 206	\$ (1,000,000)
Fin Auth (97) Rev Bonds - Debt Svs. - 302	\$ 151,695
Paramedic Fund - 210	\$ 78,606
Mariposa Debt Service Fund - 306	\$ 16,573
Loch Lomond A.D. Fund - 236	\$ 3,755
Peacock Gap Refunding Debt Svs. - 304	\$ 2,875
Total Other Funds appropriations	\$ 746,496

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 Monday, the 20th day of September 2021 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

TABLE I
CHANGES TO GENERAL FUND REVENUES AND OTHER SOURCES

General Fund	Adopted Budget FY 2020-21	Approved Changes	Current Budget	Proposed Changes	Revised Budget
Revenues	75,483,680	5,500,000	80,983,680	6,117,937	87,101,617
Transfers in	3,914,620		3,914,620	(825,102)	3,089,518
FY20-21 Resources	79,398,300	5,500,000	84,898,300	5,292,835	90,191,135
FY19-20 Rollover		-	-		-
Total Resources	79,398,300	5,500,000	84,898,300	5,292,835	90,191,135

TABLE II
CHANGES TO GENERAL FUND EXPENDITURES AND OTHER USES

General Fund	Adopted Budget FY 2020-21	Approved Changes	Current Budget	Proposed Changes	Revised Budget
Expenditures	79,581,228	266,557	79,847,785	-	79,847,785
Transfer out	2,000,000	8,443	2,008,443	2,037,629	4,046,072
Transfer out-CIP			-	-	-
Total Appropriations	81,581,228	275,000	81,856,228	2,037,629	83,893,857

TABLE III
CHANGES TO OTHER FUND EXPENDITURES AND OTHER USES

Other Funds	Adopted Budget FY 2020-21	Approved Changes	Current Budget	Proposed Changes	Revised Budget
Revenues	48,332,616	-	48,332,616	-	48,332,616
Transfers in	2,305,394	38,443	2,343,837	2,116,235	4,460,072
FY20-21 Resources	50,638,010	38,443	50,676,453	2,116,235	52,792,688
FY19-20 Rollover		13,742,461	13,742,461		13,742,461
Total Resources	50,638,010	13,780,904	64,418,914	2,116,235	66,535,149
Expenditures	61,949,447	17,825,904	79,775,351	-	79,775,351
Transfer out	4,220,015	30,000	4,250,015	(746,496)	3,503,519
Total Appropriations	66,169,462	17,855,904	84,025,366	(746,496)	83,278,870
Net Results	(15,531,452)	(4,075,000)	(19,606,452)	2,862,731	(16,743,721)

TABLE IV
CITY-WIDE APPROPRIATION SUMMARY

All Funds	Adopted Budget FY 2020-21	Approved Changes	Current Budget	Proposed Changes	Revised Budget
General Fund	81,581,228	275,000	81,856,228	2,037,629	83,893,857
Other Funds	66,169,462	17,855,904	84,025,366	(746,496)	83,278,870
Total Expenditures	147,750,690	18,100,904	165,851,594	1,291,133	167,142,727

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN
RAFAEL ADOPTING AMENDMENTS FOR FISCAL YEAR 2021-2022
FOR THE PURPOSES OF PERSONNEL CHANGES**

WHEREAS, the City Council approved Resolution No. 14938 adopting the fiscal year 2021-2022 budget; and

WHEREAS, the changes in available funding sources and operational needs require adjustments to some City budgets; and

WHEREAS, the Community Development Department has approved the recommended staffing changes; and

WHEREAS, after examination, deliberation and due consideration, the City Council has approved the staff report and recommendations and directs the City Manager to proceed with the implementation of these recommendations;

NOW, THEREFORE, BE IT RESOLVED, by the San Rafael City Council that Resolution No. 14938 for fiscal year 2021-2022 is amended to increase total general fund expenditures to account for the personnel actions presented in the staff report of September 20, 2021.

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 on Monday, the 20th day of September 2021, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

SAN RAFAEL UNREPRESENTED MID-MANAGEMENT

SALARY SCHEDULE

Effective September 2021

Grade	Position	A	B	C	D	E
7315	Accounting Manager	\$ 9,319	\$ 9,785	\$ 10,274	\$ 10,788	\$ 11,327
2400	Assistant Library and Recreation Director	\$ 10,600	\$ 11,130	\$ 11,686	\$ 12,271	\$ 12,884
2202	Assistant Public Works Director / City Engineer	\$ 12,029	\$ 12,631	\$ 13,262	\$ 13,925	\$ 14,621
2302	Chief Building Official	\$ 11,179	\$ 11,738	\$ 12,325	\$ 12,941	\$ 13,588
4203	Civic Design Manager	\$ 9,910	\$ 10,405	\$ 10,926	\$ 11,472	\$ 12,045
2122	Code Enforcement Supervisor	\$ 7,553	\$ 7,930	\$ 8,327	\$ 8,743	\$ 9,180
4204	Data & Infrastructure Manager	\$ 10,974	\$ 11,522	\$ 12,098	\$ 12,703	\$ 13,338
1105	Deputy City Attorney I	\$ 10,131	\$ 10,637	\$ 11,169	\$ 11,728	\$ 12,314
1109	Deputy City Attorney II	\$ 11,170	\$ 11,728	\$ 12,315	\$ 12,931	\$ 13,577
2120	Deputy Fire Marshall	\$ 9,515	\$ 9,991	\$ 10,490	\$ 11,015	\$ 11,566
2135	Deputy Public Works Director	\$ 10,929	\$ 11,475	\$ 12,049	\$ 12,651	\$ 13,284
7313	Economic Development Coordinator	\$ 9,181	\$ 9,640	\$ 10,122	\$ 10,628	\$ 11,159
2128	Economic Development Manager	\$ 10,095	\$ 10,600	\$ 11,130	\$ 11,686	\$ 12,271
7117	Emergency Services Manager	\$ 8,957	\$ 9,405	\$ 9,875	\$ 10,369	\$ 10,888
TBD	Housing Manager	\$ 10,330	\$ 10,847	\$ 11,389	\$ 11,959	\$ 12,557
2107	Human Resources Operations Manager	\$ 9,041	\$ 9,493	\$ 9,968	\$ 10,466	\$ 10,989
2208	Operations and Maintenance Manager	\$ 9,856	\$ 10,349	\$ 10,867	\$ 11,410	\$ 11,981
2208	Operations and Maintenance Manager (SRSD)	\$ 9,856	\$ 10,349	\$ 10,867	\$ 11,410	\$ 11,981
2703	Parking Services Manager	\$ 9,181	\$ 9,640	\$ 10,122	\$ 10,628	\$ 11,159
7312	Parks Superintendent	\$ 9,000	\$ 9,450	\$ 9,923	\$ 10,419	\$ 10,940
2116	Planning Manager	\$ 10,330	\$ 10,847	\$ 11,389	\$ 11,959	\$ 12,557
4206	Product Manager	\$ 9,910	\$ 10,405	\$ 10,926	\$ 11,472	\$ 12,045
8103	Recreation Supervisor	\$ 7,694	\$ 8,079	\$ 8,483	\$ 8,907	\$ 9,352
2206	Senior Civil Engineer (SRSD)	\$ 10,639	\$ 11,171	\$ 11,729	\$ 12,316	\$ 12,932
7317	Senior Code Enforcement Supervisor	\$ 8,337	\$ 8,753	\$ 9,191	\$ 9,651	\$ 10,133
2105	Senior Management Analyst	\$ 8,789	\$ 9,229	\$ 9,690	\$ 10,175	\$ 10,683
2203	Senior Project Manager	\$ 9,171	\$ 9,629	\$ 10,111	\$ 10,616	\$ 11,147
8102	Senior Recreation Supervisor	\$ 8,492	\$ 8,917	\$ 9,363	\$ 9,831	\$ 10,322
7310	Sewer Maintenance Superintendent	\$ 9,000	\$ 9,450	\$ 9,923	\$ 10,419	\$ 10,940
7311	Street Maintenance Superintendent	\$ 9,000	\$ 9,450	\$ 9,923	\$ 10,419	\$ 10,940
2150	Sustainability Program Manager	\$ 7,408	\$ 7,778	\$ 8,167	\$ 8,576	\$ 9,005

**City of San Rafael
Job Class Specification**

Job Title: Housing Program Manager

SUMMARY:

This position plays a vital role in addressing housing issues in the City and moves forward the City's overall goal to end chronic homelessness. The Housing Program Manager will effectively manage the City's housing policies and programs related to rent stabilization, affordable housing, project financing and homeless housing strategies.

This is an exempt, mid-management level position in the Community Development Department.

SUPERVISION RECEIVED AND EXERCISED:

This position reports to the Community Development Department is responsible for managing staff, volunteers, operations, and activities of the housing division related to rent stabilization, affordable housing, project financing and homeless housing strategies.

ESSENTIAL DUTIES AND RESPONSIBILITIES:

This list is meant to be representative, not exhaustive. Some incumbents may not perform all the duties listed while in other cases related duties may also be assigned.

- Manage the collection of in-lieu fees and partner with the Marin Housing Authority to oversee administration of the City's BMR inclusionary housing program and contracts.
- Research and secure new sources of public, nonprofit and private funding.
- Develop and present reports to various groups and stakeholders regarding projects.
- Oversee public outreach and communications.
- Work with consultants and vendors and oversee related timelines and outcomes.
- Partner with Marin County to administer financing under the CDBG, HOME and like programs.
- Measure the efficiency and effectiveness of programs.
- Assist in the development of the City's Housing Element and other planning reports, including potential Specific and Precise Plan preparation for two priority development areas.
- Initiate and oversee database and file management strategies and systems.
- Identify creative approaches to maintaining and expanding the supply of affordable housing in the City, which includes evaluating community service needs, and assessing and developing related housing policy and programs.
- Bring new ideas to remove barriers to affordable housing, create metrics to measure success, and regularly present to City Council.
- Administer the Affordable Housing Trust Fund and actively obtains grants to fund housing programs.

KNOWLEDGE OF:

- Affordable housing programs and policies.
- Grant writing and administration.

ABILITY TO:

- Find innovative approaches to managing housing programs, which may include programs related to affordable housing, renter protection ordinance amendments, etc.
- Develop and present ideas to Council that are data driven and supported by measurable improvements.
- Analyze the cost to benefit ratio of policies and programs, determine affordability, and ensure viability.

EDUCATION and/or EXPERIENCE:

Any combination of education and experience equivalent to a bachelor's degree in Public Policy, Social Sciences, Public Health, Public Administration, or a related field **AND**

- Possession of or ability to obtain a valid California Driver's License.
- Four (4) years of progressively responsible experience in the development, delivery, monitoring, or evaluation of community programs with at least two (2) years of experience working with the homeless and at least two (2) years supervision, leadership, or management of complex programs/projects.

Bilingual Spanish and public agency experience desirable.

PHYSICAL DEMANDS:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential function of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is regularly required to sit and talk or hear. The employee frequently is required to use hands to finger, handle, or feel and reach with hands and arms. The employee is occasionally required to stand and walk. The employee must regularly lift and/or move up to 10 pounds and occasionally lift and/or move up to 25 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and ability to adjust focus.

WORK ENVIRONMENT:

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is regularly exposed to video displays. The employee frequently works in evenings or weekends; typically, in inside environmental conditions. The employee occasionally may travel between worksites. The noise level in the work environment is usually moderate.

Date: July 2021
FLSA status: Exempt