



AGENDA

SAN RAFAEL CITY COUNCIL – MONDAY, DECEMBER 20, 2021

REGULAR MEETING AT 7:00 P.M.

Watch on Webinar: <https://tinyurl.com/cc-2021-12-20>

Watch on YouTube: www.youtube.com/cityofsanrafael

Listen by phone: (669) 900-9128

ID: 899-2635-9885#

One Tap Mobile: US: +16699009128,,89926359885#

CORONAVIRUS (COVID-19) ADVISORY NOTICE

In response to Assembly Bill 361, the City of San Rafael is offering teleconference without complying with the procedural requirements of Government Code section 54953(b)(3). 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

1. None.

CLOSED SESSION

2. Closed Session: - None.

OPEN TIME FOR PUBLIC EXPRESSION

The public is welcome to address the City Council at this time on matters not on the agenda that are within its jurisdiction. Please be advised that pursuant to Government Code Section 54954.2, the City Council is not permitted to discuss or take action on any matter not on the agenda unless it determines that an emergency exists, or that there is a need to take immediate action which arose following posting of the agenda. Comments may be no longer than two minutes and should be respectful to the community.

CITY MANAGER'S REPORT:

3. City Manager's Report:

COUNCILMEMBER REPORTS:

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

4. Councilmember Reports:

CONSENT CALENDAR:

The opportunity for public comment on consent calendar items will occur prior to the City Council's

vote on the Consent Calendar. The City Council may approve the entire consent calendar with one action. In the alternative, items on the Consent Calendar may be removed by any City Council or staff member, for separate discussion and vote.

5. Consent Calendar Items:

a. **Approval of Minutes**

Approve Minutes of City Council / Successor Agency Special and Regular Meetings of Monday, November 15, 2021 and Regular Meeting of Monday, December 6, 2021 (CC)

Recommended Action - Approve minutes as submitted

b. **Use of Teleconferencing for Public Meetings During State of Emergency**

Resolution Pursuant to Assembly Bill 361 Making Findings and Confirming the Need for Continued Use of Teleconferencing to Hold Public Meetings of the San Rafael City Council and City Boards and Commissions During the Continuing State of Emergency Relating to the COVID-19 Pandemic (CA)

Recommended Action - Adopt Resolution

c. **Vacancies on San Rafael Boards and Commissions**

Announcement of Vacancies on the Planning Commission and the Bicycle and Pedestrian Advisory Committee (Youth Member) (CC)

Recommended Action - Receive and file

d. **Cannabis Industry Tax Oversight Committee Appointment**

Approve Appointment of Charles Friede to the Cannabis Industry Tax Oversight Committee to the End of February 2024 Due to the Resignation of Drew Bulfer (CC)

Recommended Action - Approve appointment

e. **Revised City Manager Employment Agreement**

Resolution Approving and Authorizing the Mayor to Execute a Revised Employment Agreement Between the City and City Manager James M. Schutz (CM)

Recommended Action - Adopt Resolution

f. **Annual Measure E TUT Oversight Committee Report**

Measure E Transactions and Use Tax Oversight Committee Report for Fiscal Year 2020-2021 (Fin)

Recommended Action - Accept report

g. **Library Parcel Tax Annual Report**

Special Library Parcel Tax Oversight Committee's Annual Measure D Report (L/R)

Recommended Action - Accept report

h. **Fire Station 54 & 55 - Materials Testing and Special Inspection, and Geotechnical Testing and Inspection Services**

Resolution Authorizing the City Manager to Execute a Professional Services Agreement with BSK Associates for Materials Testing and Special Inspection Services and Geotechnical Testing and Inspection Related to Phase 2 Essential Facilities Projects - Fire Station 54 and 55 In the Amount of \$145,744 (PW)

Recommended Action - Adopt Resolution

OTHER AGENDA ITEMS

6. Other Agenda Items:

a. **Homelessness Update**

Informational Report on Status of Homelessness in San Rafael (CM)
Recommended Action - Accept Report

b. **Ministerial Review of Two-Unit Residential Developments and Urban Lot Splits Pursuant to Senate Bill 9 (SB 9)**

Resolution Directing Staff to Prepare an Interim Guidance Document Establishing Standards and Review Procedures for Ministerial Review of Two-Unit Residential Developments and Urban Lot Splits to Implement SB 9 - The California Home Act; And Directing the Preparation of an SB 9 Implementing Ordinance (CD)
Recommended Action - Adopt Resolution

c. **Emergency Vehicle Preemption of Traffic Signals - Public Safety Initiative**

Resolution Approving and Authorizing the City Manager to Execute a Master Sale of Goods and Services Agreement with Global Traffic Technologies to Provide Preemption Services for Police and Fire Vehicles at Signalized Intersections (PW)
Recommended Action - Adopt Resolution

d. **2022 Vice-Mayor**

Select Vice-Mayor for the City of San Rafael 2022 (CC)
Recommended Action - Select Vice-Mayor for 2022

e. **City Council Appointments to Committees**

Approve City Council Appointments to Committees 2022 (CC)
Recommended Action - Approve Appointments

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None.

ADJOURNMENT:

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

MINUTES



SAN RAFAEL CITY COUNCIL SPECIAL STUDY SESSION MONDAY, NOVEMBER 15, 2021 AT 5:00 P.M.

Watch Webinar: <https://tinyurl.com/CCSS-2021-11-15>

Listen by phone: (669) 900-9128,
ID: 825-2876-8952#

One Tap Mobile: US: +13462487799,,82528768952#

Members of the public may speak on Agenda Items.

STUDY SESSION

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

Absent: None

Also Present: City Manager Jim Schutz
City Clerk Lindsay Lara

Mayor Kate called the meeting to order at 5:00 p.m. and invited City Clerk Lindsay Lara to call the roll. All members of the City Council were present.

Mayor Kate provided opening remarks regarding tonight's Study Session.

City Clerk Lindsay Lara announced the process for Spanish interpretation tonight. She informed the community that the meeting would be streamed through Zoom and members of the public would provide public comment either on the telephone or through Zoom. She explained the process for community participation on the telephone or through Zoom.

- 1. Highway 101 to Interstate 580 Connector Project**
Presentation of the Transportation Authority of Marin's (TAM) Study of Alternative Alignments for the 101 to 580 Connector Project (PW)
Recommended Action - Provide feedback to staff

Bill Guerin, Public Works Director introduced Anne Richman, Transportation Authority of Marin (TAM) who presented the Staff Report. Dan Cherrier and Connie Fremier from TAM were also present.

Staff responded to questions from Councilmembers and Councilmembers provided comments.

Mayor Kate invited public comment.

Speakers: Lori Shifrin, Jeff Rhoads, Resilient Shore, Carrie Hughes, Amy Likover, Grace Geraghty, Corey S., Alice, Dave

Staff provided comments.

ADJOURNMENT:

Mayor Kate adjourned the meeting at 6:36 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2021

KATE COLIN, Mayor

DRAFT



MINUTES

SAN RAFAEL CITY COUNCIL – MONDAY, NOVEMBER 15, 2021

REGULAR MEETING AT 7:00 P.M.

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

Absent: None

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

OPEN SESSION

1. None.

CLOSED SESSION

2. Closed Session: - None.

Mayor Kate called the meeting to order at 7:00 p.m. and invited City Clerk Lindsay Lara to call the roll. All members of the City Council were present.

City Attorney Robert Epstein announced that no reportable action was taken in the Closed Session held on November 9, 2021.

Mayor Kate provided opening remarks, which included an announcement of United Against Hate Week and Native American Heritage Month, the Redistricting item to be heard tonight and a land acknowledgment.

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

OPEN TIME FOR PUBLIC EXPRESSION

Correspondence in real-time through Zoom or on telephone

- Jason Sarris, addressed the City Council regarding a gas BBQ, donations and fire exits at the Service Support Area.
- Eva Chrysanthe, addressed the City Council regarding services at the Service Support Area.

CITY MANAGER’S REPORT:

3. City Manager’s Report:

City Manager Jim Schutz announced:

- “Clothes and Cards” Donation Drive for Service Support Area, November 15 through December 31
- Lighted Boat Parade on December 12

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

COUNCILMEMBER REPORTS:

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

4. Councilmember Reports:

- Councilmember Bushey reported on Central Marin Sanitation Agency, Loch Lomond Development Oversight Committee and MCCMC Water Committee meetings.
- Councilmember Hill reported on a Priority Setting Committee meeting and the Opening of the Marin History Museum at the Boyd House.
- Councilmember Llorens Gulati reported on a Canal Policy Working Group meeting, a visit to a new Kaiser Permanente Medical Center and a Día de los Muertos celebration.
- Councilmember Kertz reported on Not In Our Town and United Against Hate, a Marin Wildfire Prevention Authority meeting and a First 5 “Race Counts” forum. She announced two openings on the Citizen’s Oversight Committee.
- Mayor Kate reported on the City Council Retreat.

Mayor Kate invited public comment.

Speaker: Eva Chrysanthe

CONSENT CALENDAR:

Councilmember Hill held item 5.d from the Consent Calendar.

Mayor Kate invited public comment.

Speaker: Eda Lochte, San Rafael Business Improvement District

Councilmember Kertz moved and Councilmember Llorens Gulati seconded to approve the Consent Calendar, excluding item 5.d.

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

5. Consent Calendar Items:

a. **Approval of Minutes**

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

Approved minutes as submitted

b. **Use of Teleconferencing for Public Meetings During State of Emergency**

Resolution Pursuant to Assembly Bill 361 Making Findings and Confirming the Need for Continued Use of Teleconferencing to Hold Public Meetings of the San Rafael City Council and City Boards and Commissions During the Continuing State of Emergency Relating to the COVID-19 Pandemic (CA)

Resolution 14996 - Resolution Pursuant to Assembly Bill 361 Making Findings and Confirming the Need for Continued Use of Teleconferencing to Hold Public Meetings of the San Rafael City Council and City Boards and Commissions During the Continuing State of Emergency Relating to the COVID-19 Pandemic

c. **Downtown Business Improvement District (BID) Business Assessment Annual Renewal Resolution Declaring the City Council's Intention to Levy an Annual Assessment for the Downtown San Rafael Business Improvement District (ED)**

Resolution 14997 - Resolution Declaring the City Council's Intention to Levy an Annual Assessment for the Downtown San Rafael Business Improvement District

d. **[Parks and Recreation Master Plan](#)**

Resolution Authorizing the City Manager to Execute a Professional Services Agreement with Royston, Hanamoto, Alley and Abey (RHAA) to Assist with Development of San Rafael's Parks and Recreation Master Plan, in the Amount of \$259,238, and Authorizing Contingency Funds in the Amount of \$25,762 for a Total Amount of \$285,000 (PW)

This item was held from the Consent Calendar.

Councilmember Hill provided comments.

Susan Andrade-Wax, Library & Recreation Director and Bill Guerin, Public Works Director provided comments.

Councilmember Hill moved and Councilmember Bushey seconded to adopt the resolution.

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

Resolution 15001 - Resolution Authorizing the City Manager to Execute a Professional Services Agreement with Royston, Hanamoto, Alley and Abey (RHAA) to Assist with Development of San

Rafael's Parks and Recreation Master Plan, in the Amount of \$259,238, and Authorizing Contingency Funds in the Amount of \$25,762 for a Total Amount of \$285,000

- e. **Francisco Boulevard East Sidewalk Improvements Project**
Resolution Approving and Authorizing the City Manager to Execute a First Amendment to the Agreement with Park Engineering, Inc. for Additional Construction Inspection and Materials Testing Services, in an Additional Contract Amount Not to Exceed \$35,000 (PW)
Resolution 14998 - Resolution Approving and Authorizing the City Manager to Execute a First Amendment to the Agreement with Park Engineering, Inc. for Additional Construction Inspection and Materials Testing Services, in an Additional Contract Amount Not to Exceed \$35,000

- f. **Southern Heights Bridge Replacement**
Resolution Approving and Authorizing the City Manager to Execute a Second Amendment to the Agreement with Substrate, Inc. for Additional Construction Management, Inspection, and Materials Testing Services, in an Additional Contract Amount Not to Exceed \$59,000 (PW)
Resolution 14999 - Resolution Approving and Authorizing the City Manager to Execute a Second Amendment to the Agreement with Substrate, Inc. for Additional Construction Management, Inspection, and Materials Testing Services, in an Additional Contract Amount Not to Exceed \$59,000

- g. **Vehicle Purchases**
Resolution Authorizing the City Manager to Purchase Two (2) Ambulances for the Fire Department in a Total Amount Not to Exceed \$630,000 (PW)
Resolution 15000 - Resolution Authorizing the City Manager to Purchase Two (2) Ambulances for the Fire Department in a Total Amount Not to Exceed \$630,000

SPECIAL PRESENTATIONS

6. Special Presentations:

- a. **Presentation Regarding Native American Heritage Month (HR)**

Carmen Valdez, Interim HR Director gave a presentation.

Susan Andrade-Wax, Library & Recreation Director provided comments.

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

PUBLIC HEARINGS – 7:30 PM

7. Public Hearings:

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

Update on Final, Adjusted Demographics of Existing Districts; First Public Hearing on Existing Lines and Possible Changes (CA)

City Attorney Robert Epstein introduced Chris Skinnell, Legal Counsel from Nielsen Merksamer. He and Robert McEntire, National Demographics Corporation presented the Staff Report.

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment.

Speaker: Eva Chrysanthe

Staff responded to public comment.

Councilmembers provided comments.

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

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

Accepted report

b. [Accessory Dwelling Unit Regulations](#)

Consideration of An Ordinance Amending Title 1 (General Provisions), Title 4 (Fire), Title 12 (Building Regulations), and Title 14 (Zoning Ordinance) of the San Rafael Municipal Code Related to Regulations for Accessory Dwelling Units, and Report Issued Pursuant to Government Code § 65858(d) (CD)

Alicia Giudice, Community Development Director introduced Jacob Noonan, Housing Program Manager and Leslie Mendez, Planning Manager who presented the staff report.

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment.

Speakers: Victoria DeWitt, Susan Bradford, Joanne Webster, San Rafael Chamber of Commerce

Staff responded to public comment.

Councilmembers provided comments.

Councilmember Bushey moved and Councilmember Kertz seconded to pass Ordinance No. 2002 to print

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

Passed to print Ordinance No. 2002 Amending Title 1 (General Provisions), Title 4 (Fire), Title 12 (Building Regulations), and Title 14 (Zoning Ordinance) of the San Rafael Municipal Code Related to Regulations for Accessory Dwelling Units, and Report Issued Pursuant to Government Code § 65858(d)

OTHER AGENDA ITEMS

8. Other Agenda Items:

a. **Year-End Financial Statements and Related Audit Reports**

Fiscal Year 2020-2021 Annual Financial Report; Gann Appropriations Limit; Memorandum on Internal Control; Report of Required Communications; Child Development Program Financial Report; and the Transportation Development Act Financial Report (Fin)

Nadine Hade, Finance Director and Amy Meyer, Maze & Associates presented the Staff Report.

Councilmembers provided comments and staff responded to questions from Councilmembers.

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

Councilmember Kertz moved and Councilmember Hill seconded to accept the report.

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

Accepted report

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None.

ADJOURNMENT:

Mayor Kate adjourned the meeting at 9:26 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2021

KATE COLIN, Mayor



MINUTES

SAN RAFAEL CITY COUNCIL – MONDAY, DECEMBER 6, 2021

REGULAR MEETING AT 7:00 P.M.

Watch on Webinar: <https://tinyurl.com/cc-2021-12-06>

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ID: 817-3692-0337#

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

Absent: None

Also Present: City Manager Jim Schutz
City Attorney Robert Epstein
Deputy City Clerk Brenna Nurmi

OPEN SESSION

1. Mayor Kate announced Closed Session item.

CLOSED SESSION – (669) 900-9128 ID: 815-5125-5972#- 5:30 PM

2. Closed Session:
 - a. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Significant exposure to litigation pursuant Government Code Section 54956.9(d)(2)
(One potential case)
 - b. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
Government Code Section 54956.6(d)(1)

Mayor Kate called the meeting to order at 7:00 p.m. and invited Deputy City Clerk Brenna Nurmi to call the roll. All members of the City Council were present.

City Attorney Robert Epstein announced that during the Closed Session tonight the City Council unanimously voted to opt in as members of the Class of Public Entities impending litigation entitled In Re National Prescription Opiate litigation, a case that's pending in the United States District Court for the Northern District of Ohio, Eastern Division. It is national litigation that many public entities are participating in.

Mayor Kate provided opening remarks, which included United Against Hate Week, a virtual Hannukah candle lighting and a land acknowledgment.

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

OPEN TIME FOR PUBLIC EXPRESSION

- Eva Chrysanthe addressed the council regarding her visits to the Service Support Area.

CITY MANAGER'S REPORT:

3. City Manager's Report:

City Manager Jim Schutz announced:

- Introduction of Marc Sabin, Homeless Program Manager
- Notice of Funding Availability (NOFA) – Affordable Housing update

Bill Guerin, Public Works Director provided an update on the Bungalow Avenue project and a recent gas leak. He responded to questions from Councilmembers.

Mayor Kate invited public comment.

Speakers: Albert, Name withheld, Eva Chrysanthe

COUNCILMEMBER REPORTS:

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

4. Councilmember Reports:

- Councilmember Bushey reported on a Loch Lomond Development Oversight Committee meeting and an interview with the Community Media Center.
- Councilmember Llorens Gulati reported on Climate Action Committee and Marin Clean Energy (MCE) Board of Directors meetings.
- Councilmember Kertz reported on a Marin Wildfire Prevention Authority meeting, a Cal Cities update, a MCCMC Legislative meeting and a Homeless Policy Steering Committee meeting.
- Councilmember Hill reported on a Bungalow Avenue tour.

- Mayor Kate reported on Marin Transit, SMART, MCCMC Economic Recovery, and Showing Up for Racial Justice (SURJ) meetings.

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

CONSENT CALENDAR:

Mayor Kate invited public comment.

Speakers: Bill Carney, Johnson Reynolds

Mayor Kate held items 5.a and 5.d from the Consent Calendar.

Councilmember Llorens Gulati moved and Councilmember Kertz seconded to approve the Consent Calendar, excluding items 5.a and 5.d.

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

5. Consent Calendar Items:

- a. **Use of Teleconferencing for Public Meetings During State of Emergency**
Resolution Pursuant to Assembly Bill 361 Making Findings and Confirming the Need for Continued Use of Teleconferencing to Hold Public Meetings of the San Rafael City Council and City Boards and Commissions During the Continuing State of Emergency Relating to the COVID-19 Pandemic (CA)

This item was held from the Consent Calendar.

City Manager Jim Schutz provided comments.

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

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

Resolution 15008 - Resolution Pursuant to Assembly Bill 361 Making Findings and Confirming the Need for Continued Use of Teleconferencing to Hold Public Meetings of the San Rafael City Council and City Boards and Commissions During the Continuing State of Emergency Relating to the COVID-19 Pandemic

- b. **Agency Report of Public Officials 2021**
Adoption of Agency Report of Public Official Appointments (FPPC Form 806) (CA)
Adopted Form 806
- c. **Job Classification and Compensation Adjustments in the Human Resources Department**
Resolution Approving the New Classification and Compensation of Administrative Services Director (HR)

Resolution 15002 - Resolution Approving the New Classification and Compensation of Administrative Services Director

d. **Accessory Dwelling Unit Regulations Ordinance Adoption**

Final Approval of Ordinance 2002: An Ordinance Amending Title 1 (General Provisions), Title 4 (Fire), Title 12 (Building Regulations), and Title 14 (Zoning Ordinance) of the San Rafael Municipal Code Related to Regulations for Accessory Dwelling Units, and Report Issued Pursuant to Government Code § 65858(d) (CD)

This item was held from the Consent Calendar.

City Manager Jim Schutz provided comments.

Councilmember Llorens Gulati moved and Councilmember Kertz seconded to approve final adoption of Ordinance 2002.

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

Approved final adoption of Ordinance 2002

e. **Citizens Advisory Committee on Economic Development and Affordable Housing Dissolution**

Resolution Dissolving the Citizen Advisory Committee (CAC) on Economic Development and Affordable Housing (ED)

Resolution 15003 - Resolution Dissolving the Citizen Advisory Committee (CAC) on Economic Development and Affordable Housing

f. **Traffic Mitigation Fees**

Annual Traffic Mitigation Fee Report - FY 2021-22 (PW)

Accepted report

g. **Annual CalRecycle Grant**

Resolution Authorizing Submittal of An Application for All CalRecycle Grants for Which the City of San Rafael is Eligible (PW)

Resolution 15004 - Resolution Authorizing Submittal of An Application for All CalRecycle Grants for Which the City of San Rafael is Eligible

h. **Memorandum of Agreement with the County of Marin to Maintain Bayside Park**

Resolution Approving and Authorizing the Mayor to Sign a Memorandum of Agreement with Marin County Defining Maintenance Responsibilities for Bayside Park (PW)

Resolution 15005 - Resolution Approving and Authorizing the Mayor to Sign a Memorandum of Agreement with Marin County Defining Maintenance Responsibilities for Bayside Park

i. **Umbrella Dredging Permit in San Rafael Consulting Services Agreement**

Resolution Approving and Authorizing the City Manager to Sign a First Amendment to the Professional Services Agreement with Haley & Aldrich, Inc. for Additional Services in Coordinating the Development of an Umbrella Permit for Private Dock Dredging in the San Rafael Canal, in an Amount Not to Exceed \$16,200 (PW)

Resolution 15006 - Resolution Approving and Authorizing the City Manager to Sign a First Amendment to the Professional Services Agreement with Haley & Aldrich, Inc. for Additional Services in Coordinating the Development of an Umbrella Permit for Private Dock Dredging in the San Rafael Canal, in an Amount Not to Exceed \$16,200

- j. **Southern Heights Bridge Replacement**
Resolution Approving and Authorizing the City Manager to Execute a Fourth Amendment to the Agreement with Mark Thomas & Company, Inc. for Slope Stability Analysis, in an Additional Contract Amount Not to Exceed \$51,789 (PW)
Resolution 15007 - Resolution Approving and Authorizing the City Manager to Execute a Fourth Amendment to the Agreement with Mark Thomas & Company, Inc. for Slope Stability Analysis, in an Additional Contract Amount Not to Exceed \$51,789

RECESS 7:47 – 7:52 p.m.

Mayor Kate announced that public comments would still be received for the remaining items tonight, by email only. The Deputy City Clerk would then read these comments aloud into the record during the public comment portion of the remaining items.

PUBLIC HEARINGS

6. Public Hearings:

- a. **Marin Sanitary Service Rates and Contract for 2022**
Resolutions of the City Council of the City of San Rafael:

Cory Bytof, Sustainability Program Manager and Garth Schultz, R3 Consulting Group presented the Staff Report.

Staff responded to questions from Councilmembers.

Mayor Kate asked the Deputy City Clerk to read public comments that she received via email.

Comments via email: Bill Carney, Sustainable San Rafael, Belle Cole, Organizing for Action (OFA) Marin, Justin Wilcock, Marin Sanitary Service

Councilmembers provided comments.

- i. **Resolution Establishing Maximum Rates Collected by Marin Sanitary Service for Refuse and Recyclable Material Collection and Disposal Services, to be Effective January 1, 2022**

Councilmember Bushey moved and Councilmember Kertz seconded to adopt the resolution.

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

Resolution 15009 - Resolution Establishing Maximum Rates Collected by Marin Sanitary Service for Refuse and Recyclable Material Collection and Disposal Services, to be Effective January 1, 2022

ii. **Resolution Approving a Fourth Amendment to the Amendment and Restatement of Collection Agreement of the City of San Rafael with Marin Sanitary Service (CM)**

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

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

Resolution 15010 - Resolution Approving a Fourth Amendment to the Amendment and Restatement of Collection Agreement of the City of San Rafael with Marin Sanitary Service

b. **Downtown Business Improvement District (BID) Assessment Annual Renewal**
Resolution Approving the Downtown San Rafael Business Improvement District Assessment for Calendar Year 2022 (ED)

Danielle O'Leary, Director of Economic Development and Innovation presented the Staff Report.

Eda Lochte and Jed Greene, Downtown Business Improvement District (BID) provided comments.

Staff responded to questions from Councilmembers.

Mayor Kate asked the Deputy City Clerk to read public comments that she received via email.

Brenna Nurmi, Deputy City clerk announced that she did not receive any emails tonight for this item.

Councilmembers provided comments.

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

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

Resolution 15011 - Resolution Approving the Downtown San Rafael Business Improvement District Assessment for Calendar Year 2022

OTHER AGENDA ITEMS

7. Other Agenda Items:

a. **Resident Appeal of an AT&T Encroachment Permit**
Consideration of a Resident Appeal from the Issuance of an Encroachment Permit to AT&T to Install a Utility Cabinet in the Public Right-of-way Alongside Property Located at 109 Bayview Street, San Rafael (PW)

Bill Guerin, Public Works Director introduced Rafat Raie, Deputy Public Works Director who presented the Staff Report.

Staff responded to questions from Councilmembers.

Rich Petovello, Appellant presented his report.

Lisa Marano, AT&T presented her report.

Staff provided comments.

Staff responded to questions from Councilmembers.

Discussion regarding utility cabinet and different alternatives.

Mayor Kate asked the Deputy City Clerk to read public comments that she received via email.

Brenna Nurmi, Deputy City clerk announced that she did not receive any emails tonight for this item.

Staff responded to questions from Councilmembers.

Rich Petovello, Appellant and Lisa Marano, AT&T provided comments.

Councilmember Bushey moved and Councilmember Hill seconded to continue this item to the next regularly scheduled meeting on December 20, 2021.

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

Item continued to December 20, 2021

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None.

ADJOURNMENT:

Mayor Kate adjourned the meeting at 9:49 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2021

KATE COLIN, Mayor



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Attorney

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

City Manager Approval: _____

TOPIC: USE OF TELECONFERENCING FOR PUBLIC MEETINGS DURING STATE OF EMERGENCY

SUBJECT: RESOLUTION PURSUANT TO ASSEMBLY BILL 361 MAKING FINDINGS AND CONFIRMING THE NEED FOR CONTINUED USE OF TELECONFERENCING TO HOLD PUBLIC MEETINGS OF THE SAN RAFAEL CITY COUNCIL AND CITY BOARDS AND COMMISSIONS DURING THE CONTINUING STATE OF EMERGENCY RELATING TO THE COVID-19 PANDEMIC

RECOMMENDATION:

Adopt the resolution pursuant to Assembly Bill 361 making findings and confirming the need for continued use of teleconferencing to hold public meetings of the San Rafael City Council and City boards and commissions during the continuing state of emergency relating to the COVID-19 pandemic

BACKGROUND:

The Ralph M. Brown Act (“Brown Act”) requires that except as specifically provided, “meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body”. (Gov. Code §54953(a).) For many years, the Brown Act has authorized members of a local agency’s legislative body to attend a public meeting by teleconference in compliance with strict procedural requirements. Under Government Code section 54953(b)(3), to use teleconferencing, at least a quorum of the legislative body must participate from locations within agency’s boundaries, and the agency must give notice of each teleconference location, post an agenda at each teleconference location, provide for public access to each teleconference location, and allow members of the public to address the Council at each teleconference location.

On March 4, 2020, Governor Newsom declared a statewide state of emergency in connection with the COVID-19 pandemic. Subsequently, on March 18, 2020, the Governor issued Executive Order [No. N-29-20](#) suspending the Brown Act’s requirements for in-person meetings and facilitating the use of teleconferencing for public meetings during the state of emergency. The Executive Order authorized public meetings to be held by teleconference only, provided that notice and accessibility requirements are met, members of the public are allowed to observe and address the legislative body at the meeting, and there is a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities. This order has allowed the City Council and the City’s other formal boards

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

and commissions to hold their public meetings using teleconferencing technologies, with the requisite notice and public participation; however, the order was due to expire on September 30, 2021, and without legislative action, in-person meetings and the strict teleconferencing procedures of the Brown Act would again be required.

Because the statewide state of emergency continues and the COVID-19 pandemic still poses a health risk for public meetings, on September 16, 2021, Governor Newsom signed into law as an urgency measure Assembly Bill (AB) 361. [AB 361](#) amends the Brown Act provisions governing the use of teleconferencing for public meetings of a local agency's legislative bodies, allowing more liberal teleconferencing requirements to continue during the current and future state-declared emergencies.

ANALYSIS:

Executive Order N-29-20 has now expired, but AB 361 is now in effect, and its amendments to the Brown Act will allow the City to continue to hold its meetings using teleconferencing technology after September 30. Government Code section 54953, as amended by AB 361, now provides in new subsection (e)(1), that during the current and any future state-declared state of emergency, the legislative body of a local agency may use teleconferencing without complying with the procedural requirements of Government Code section 54953(b)(3) in any of three circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

Certain additional requirements would apply under the new law, however, including specific requirements as to how public comment must be allowed and heard, with which the City already complies. In addition:

- In the event of a disruption which prevents the City from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the City's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.
- If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:
 - The legislative body has reconsidered the circumstances of the state of emergency.
 - Any of the following circumstances exist:

- (i) The state of emergency continues to directly impact the ability of the members to meet safely in person.
- (ii) State or local officials continue to impose or recommend measures to promote social distancing.

The resolution before the City Council is intended to comply with the requirement to make specified findings every 30 days. The resolution finds that the state of emergency continues in effect, that measures to promote social distancing are still being imposed by the state and county, and that the state of emergency directly impacts the ability of the public and the members of the City's Council, boards, and commissions to meet safely in person. The proposed resolution confirms the City Council's determination that all public meetings of the City's legislative bodies (the Council and all formal boards and commissions) should continue to be held using only teleconferencing technology.

Staff plans to agendize the same type of resolution at each regular City Council meeting during the pendency of the statewide state of emergency, so that the Council may continue to reconsider these findings at least every 30 days.

The Brown Act amendments adopted by AB 361 will be operative until January 1, 2024, and will then expire unless extended by new legislation.

FISCAL IMPACT:

There is no fiscal impact associated with the adoption of the attached resolution.

OPTIONS:

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

1. Adopt the resolution as proposed.
2. Adopt a modified resolution.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt the resolution pursuant to Assembly Bill 361 making findings and confirming the need for continued use of teleconferencing to hold public meetings of the San Rafael City Council and City boards and commissions during the continuing state of emergency relating to the COVID-19 pandemic.

ATTACHMENTS:

1. Resolution

RESOLUTION NO.

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL PURSUANT TO ASSEMBLY BILL 361
MAKING FINDINGS AND CONFIRMING THE NEED FOR CONTINUED USE OF
TELECONFERENCING TO HOLD PUBLIC MEETINGS OF THE SAN RAFAEL CITY COUNCIL
AND CITY BOARDS AND COMMISSIONS DURING THE CONTINUING STATE OF
EMERGENCY RELATING TO THE COVID-19 PANDEMIC**

WHEREAS, on March 4, 2020 Governor Newsom issued a proclamation pursuant to Government Code Section 8625 declaring a state of emergency in California due to the COVID-19 pandemic; and

WHEREAS, the Ralph M. Brown Act (Gov. Code §§ 54950 et seq.) (hereafter, the “Brown Act”) provides in Government Code section 54953 that “all meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided by this chapter”; and

WHEREAS, Government Code section 54953(b)(3) permits the legislative body of a local agency to use teleconferencing for the benefit of the public and the legislative body in connection with any meeting or proceeding authorized by law, subject to specified procedural requirements including, but not limited to, the posting of agendas at all teleconference locations, the opportunity for members of the public to address the legislative body directly at each teleconference location, and that at least a quorum of the members of the legislative body participate from locations within the boundaries of the territory over which the legislative body exercises jurisdiction; and

WHEREAS, Government Code section 54953(e), added by Assembly Bill 361 effective September 16, 2021, provides, in section 54953(e)(1), that during a state of emergency proclaimed pursuant to Government Code section 8625, the legislative body of a local agency may hold a meeting using teleconferencing without complying with the procedural requirements of section 54953(b)(3), provided that the legislative body complies with the requirements of section 54953(e)(2); and

WHEREAS, pursuant to Government Code section 54953(e)(3), if a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, then in order to continue to teleconference without compliance with the requirements of section 54953(b)(3), the legislative body shall make specified findings at least every 30 days; and

WHEREAS, the City Council has reconsidered the circumstances of the proclaimed COVID-19-related state of emergency and finds that it remains active; and

WHEREAS, the City Council finds that state and/or local officials continue to impose or recommend measures to promote social distancing, as follows:

- a. The July 28, 2021 California Department of Public Health Guidance for the Use of Face Coverings recommending universal masking indoors statewide to promote social distancing is still in effect; and

- b. The August 2, 2021 Marin County Department of Public Health order requiring all people to wear masks in public indoor settings to promote social distancing is still in effect; and

WHEREAS, the City Council finds that the state of emergency continues to directly impact the ability of the members of the City Council and other City boards and commissions to meet safely in person;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Rafael that in order to protect the safety of the members of the public, the City Council and all City boards and commissions, for the 30 days following adoption of this resolution, public meetings of the City's legislative bodies shall continue to be held using teleconferencing technology in compliance with the requirements of Government Code section 54953(e)(2) and all other applicable laws.

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 December 2021, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Lindsay Lara, City Clerk

Meeting Schedule: First Wednesday, every other month, even months at 6:00 p.m.

Eligibility Requirements: Must live in San Rafael city limits.
Must be a Youth Member who shall be a minimum age of a high school 9th grade student.

Application Deadline (subject to extension): January 7, 2022

COMMUNITY OUTREACH:

The recruitment for applications is being advertised through mass email notification, Canal Alliance, the City's website, Nextdoor and the City's social media platforms.

FISCAL IMPACT:

There is no fiscal impact associated with this report.

RECOMMENDED ACTION:

Receive and file the announcement of upcoming vacancies on San Rafael's Boards and Commissions.



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Clerk

Prepared by: Lindsay Lara, City Clerk

City Manager Approval: 

TOPIC: CANNABIS INDUSTRY TAX OVERSIGHT COMMITTEE APPOINTMENT

SUBJECT: APPROVE APPOINTMENT OF CHARLES FRIEDE TO THE CANNABIS INDUSTRY TAX OVERSIGHT COMMITTEE TO THE END OF FEBRUARY 2024 DUE TO THE RESIGNATION OF DREW BULFER

RECOMMENDED ACTION:

Approve appointment of Charles Friede to the Cannabis Industry Tax Oversight Committee to the end of February 2024 due to the resignation of Drew Bulfer.

BACKGROUND:

In September 2021, the San Rafael City Clerk’s Office called for applications to fill one unexpired four-year term to the end of February 2024 due to the resignation of Drew Bulfer. The deadline for applications was October 15, 2021, and the City Clerk’s office received eight applications; however, two of the applicants lived outside of city limits and were ineligible. Due to the volume of applications received, a subcommittee of the City Council carried out an initial review of the applications and selected three to be interviewed by a subcommittee of the City Council.

The Cannabis Industry Tax Oversight Committee’s mission is to monitor Measure G revenues and expenditures and conduct an annual report process. Measure G provides locally-controlled funding to support the administration of a cannabis oversight program, enhancement of police and fire services, reparation of potholes, City streets, and sidewalks, and the enhancement of community centers and facilities. Note that the Committee does not have budgetary decision authority or have authority to direct City staff or officials.

ANALYSIS:

On December 9, 2021, Mayor Kate, Vice Mayor Bushey and the Cannabis Industry Tax Oversight Committee Staff Liaison conducted interviews of three applicants (Charles Friede, Ross Elkins and Susan Clark) and recommended the appointment of Charles Friede be approved by the City Council. During the interviews, staff indicated an inability to reach all of the Committee Members and if staff continues to be unsuccessful in their efforts, there will be upcoming vacancies. The subcommittee agreed that Susan Clark would be a good addition to the Committee should there be additional vacancies in the future.

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

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

RECOMMENDATION:

Approve appointment to the Cannabis Industry Tax Oversight Committee

ATTACHMENT:

1. Application

#9

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, October 14, 2021 11:53:41 AM
Last Modified: Thursday, October 14, 2021 12:01:56 PM
Time Spent: 00:08:15
IP Address: 98.37.28.71

Page 1

Q1

Contact Information

First and Last Name	Charles Friede
Address	[REDACTED]
City/Town	San Rafael
State/Province	CA
ZIP/Postal Code	94901
Email Address	[REDACTED]
Phone Number	[REDACTED]

Q2

Cannabis Industry Tax Oversight Committee

What Board would you like to apply to?

Page 3

Q6

How long have you lived in San Rafael?

6+ years

Q7

Business Information

Company	retired
---------	---------

Q8

Social Media

How did you hear about this vacant position?

Q9

Do you participate in any civic activities? If so, what are they?

not at this time

Q10

List any civic organizations of which you are a member:

NA

Q11

Education:

College: BA, Econ, Univ of North Carolina

Grad School: MBA, University of Virginia

Q12

Why are you interested in serving on a board or commission?

I want to learn more about about local government operates, and I would like to put my 30+ years of private sector experience to use.

Q13

Describe possible areas in which you may have a conflict of interest with the City:

none

Q14

Upload your resume.

C Friede Resume Aug 2020 v1.pdf (157.4KB)

Page 4: Demographics

Q15

Ethnicity



Q16

To which gender do you most identify?



Q17



How old are you?

CHARLES R. FRIEDE, MBA

San Rafael, CA 94901 • Cell: ()

• linkedin.com/in/charlesfriede

— EXPERIENCED FINANCE LEADER —

Results oriented, hands-on Financial Manager with extensive experience in budgeting, financial analysis, and management reporting in both large and small company environments. Strong analytical and communications skills, coupled with an ability to work closely with senior management on strategic and operational issues. Sees the big picture, able to translate the numbers into clear recommendations for executive action.

— CORE COMPETENCIES —

- Strategic/Long Range Planning
- Advanced Excel Modeling
- Acquisition Modeling and Analysis
- Executive Presentations
- Team Development
- Hyperion Essbase
- Management Reporting
- Business Support

— PROFESSIONAL EXPERIENCE —

BIOMARIN PHARMACEUTICAL • San Rafael, CA

2014 – Present

Director, Finance

Provide budgeting, analysis, and decision support for multiple groups within \$1.5 billion+ biotech firm

Technical Operations Finance:

Leads Business Support for Quality, Supply Chain, Process Science, and worldwide Capital groups

- Developed generic expense models for use in long-range planning of R&D costs.
- Revamped planning/analytical processes for \$140m+ worldwide capital budget
- Designed an enhanced monthly/quarterly reporting package
- Coordinated planning activities in two manufacturing locations (Novato, CA; Shanbally, Ireland)

R&D Finance:

Financial support for Research, Clinical, Regulatory and Medical Affairs functions

- Responsible for financial leadership of cross functional project teams in oncology and gene therapy
- Hired, developed highly functional team of four (seen as role model of financial support team)
- Implemented streamlined clinical accruals methodology
- Improved sophistication and accuracy of budgets and quarterly forecasts.
- Support for M&A activity including product acquisitions and divestitures.

TEVA, INC. • Frazer, PA

2011 – 2013

Director, Commercial Financial Planning & Analysis

Oversaw budgeting, analysis, management reporting, and financial support for largest branded products group of major pharmaceutical company.

- Spearheaded quarterly forecasting and annual budgeting process for \$3.7 billion revenue group.
- Provided financial modeling and support for sales and marketing of five promoted products.
- Led team of four through challenging systems changes and business unit integrations at two locations.

CEPHALON, INC. • Frazer, PA 1999 – 2011 (Merged with Teva, October 2011)***Director, Corporate Financial Planning & Analysis***

Directed corporate level budgeting, analysis, and reporting in support of rapid company growth.

- Created and managed quarterly forecasting and annual budgeting process as company expanded from under \$100 million to over \$2.8 billion in revenue, and from one US marketed product to 8.
- Established and led Long Range Planning process, including development of P&L, Balance Sheet, and cash flow models.
- Expanded forecasting and reporting models to integrate four major corporate acquisitions.
- Partnered effectively with senior management to provide presentations and analytical support for monthly Executive Committee meetings and quarterly Board of Directors meetings.
- Developed quarterly sales and earnings guidance for analysts and investors.
- Provided critical financial modeling and support for senior management and investment bankers during successful defense against hostile takeover.
- Key player during due diligence and integration phase of merger with Teva Pharmaceuticals.
- Supported Business Development group in analysis and modeling for potential acquisitions.
- Provided Financial Analysis and support for R&D and Commercial collaborations.

NOVACARE, INC. • King of Prussia, PA**1995 – 1999*****Manager of Financial Analysis***

Managed budgeting, analysis, and management reporting for largest division of \$1 billion + health care firm.

- Implemented new budgeting/reporting system using Comshare (GEAC) multidimensional database.
- Led redesign of reporting, analytical tools triggered by change in Medicare reimbursement process.
- Designed sophisticated staffing models showing impact of productivity and turnover on revenue, expense, and profitability.

THE FRANKLIN MINT • Franklin Center, PA***Manager, Planning and Analysis***

Financial, Systems, and Operations work for a privately held \$700 million direct marketing company.

- Developed revenue and profitability models by product line and marketing channel, including analysis of promotion cost, attrition, and bad debt.
- Managed annual budget process for US and Canada, including development of departmental budgets, P&L's, and capital budget for \$400 million division.

CONTAINER CORPORATION OF AMERICA • Wilmington, DE***Plant Controller, Plastics Division***

Managed financial operations of small manufacturing business (division of a \$2 billion international firm), including responsibility for financial accounting, cost accounting, fixed asset management, A/P, and A/R.

— EDUCATION —

MBA, Management • University of Virginia • Charlottesville, VA
 Colgate Darden Graduate School of Business Administration

B.A., Economics • University of North Carolina • Chapel Hill, NC



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Manager

**Prepared by: Robert Epstein City Attorney,
Lisa Goldfien, Asst. City Attorney**

City Manager Approval: _____

TOPIC: REVISED CITY MANAGER EMPLOYMENT AGREEMENT

**SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A
REVISED EMPLOYMENT AGREEMENT BETWEEN THE CITY AND CITY MANAGER
JAMES M. SCHUTZ**

RECOMMENDATION:

Adopt the resolution as presented.

BACKGROUND:

James M. Schutz was appointed to the position of San Rafael City Manager on August 1, 2015. At the time of appointment an employment agreement (“Employment Agreement”) defining the terms of his employment as City Manager was also adopted by City Council. The Employment Agreement provides in section 8 that “This Agreement may be amended at any time by mutual written agreement of the City and the City Manager.”

The Employment Agreement was amended in December 2017 and again in January 2021 to clarify and/or revise certain provisions, but with no change in compensation.

ANALYSIS:

The City Council met with the City Manager on October 28, 2021 for the purpose of conducting his annual performance review. The City Manager did not request a salary increase but is requesting that the City Council consider some amendments to his Employment Contract, the most significant of which is an addition to the existing performance measurement and bonus language that would add a new provision granting a Council subcommittee consisting of the Mayor and Vice-Mayor the discretionary authority, annually after each performance review, to award the City Manager a performance bonus of up to and including 5% of his salary without further City Council action. Any bonus exceeding 5% would require an affirmative vote of the majority of the City Council. This provision would mirror the authority currently

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

given to the City Manager to award a performance bonus of up to 5% of salary to members of the unrepresented City's management employees.

A revised Employment Agreement with the requested changes is attached as Attachment 2 to this report. The specific substantive changes would be as follows:

1. Section 4(C)(1)(c) would be amended as follows:

To assure that the City Manager receives this information, the City Council shall conduct an evaluation of the City Manager's performance at least once each year and during the first year the City Council shall evaluate Schutz after six months. The City Council and the City Manager agree that performance evaluations, for the purpose of mid-course corrections, may occur quarterly or several times during each calendar year. In addition, the City Council may choose to establish a sub-committee to meet with the City Manager periodically over the course of each year to measure progress on stated goals and priorities. The annual evaluation shall occur between June and July as soon as feasible after the City Manager's anniversary date of each year August 1, such as during the City Council's typical fall retreat or City Council meeting in that general timeframe.

2. Section 4(C)(1)(d) would be amended to add a new subsection (ii) as follows:

- i. . . .

- ii. The City Council authorizes the Mayor and Vice-Mayor to meet with the City Manager following a successful, annual performance evaluation, and administratively execute a performance bonus of up to and including 5% of then current salary, at their discretion. Any bonus exceeding 5% would require an affirmative vote of the majority of the City Council.

3. Section 6(B)(2) would be amended to delete the provision for a Management Allowance, since that benefit is no longer offered to unrepresented Executive Management employees:

~~2. Management Allowance~~

- a. ~~The City will make available and contribute amounts each pay period to a Management Allowance, consistent with the contributions made for employees in the Unrepresented Executive Management Group.~~

The City Council's evaluation of the City Manager was very positive. Staff recommends approval of the requested amendments. A resolution approving the proposed Revised Employment Agreement is attached as Attachment 1 to this report.

FISCAL IMPACT:

There is no immediate fiscal impact associated with this report. The long term fiscal impact would vary from between no impact and no more than 5% of the City Manager's current salary in any given year.

OPTIONS:

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

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

RECOMMENDED ACTION:

Adopt the resolution.

ATTACHMENTS:

1. Resolution Approving and Authorizing the Mayor to Execute a Revised Employment Agreement Between the City and City Manager James M. Schutz
2. Exhibit A to Resolution: Proposed revised Employment Agreement with James M. Schutz

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE
A REVISED EMPLOYMENT AGREEMENT BETWEEN THE CITY
AND CITY MANAGER JAMES M. SCHUTZ**

WHEREAS, James M. Schutz has been employed by the City of San Rafael for approximately fifteen years, first as Assistant City Manager and then as City Manager during the past six years; and

WHEREAS, at its regular meeting on March 16, 2015, the City Council appointed James M. Schutz as City Manager and approved his employment agreement, effective August 1, 2015 (the "Employment Agreement"); and

WHEREAS, the City Council subsequently approved amendments to the Employment Agreement on December 18, 2017, and January 21, 2020 with no increase in compensation; and

WHEREAS, James M. Schutz has provided exemplary service to the City and continues to be qualified and willing to perform the duties and services of the position of City Manager in San Rafael; and

WHEREAS, the City Council desires to amend the employment agreement between the City and James M. Schutz as the City Manager for the City of San Rafael as set forth in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the revised terms in Exhibit A include a grant to a Council subcommittee consisting of the Mayor and Vice-Mayor the discretionary authority, annually after each performance review, to award the City Manager a performance bonus of up to and including 5% of his salary without further City Council action. This provision would mirror the authority currently given to the City Manager to award a performance bonus of up to and including 5% of salary to members of the City's unrepresented management employees;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of San Rafael hereby approves and directs the Mayor to execute a revised Employment Agreement between the City and James M. Schutz in the form attached hereto as Exhibit A and incorporated herein by reference, to take effect immediately upon execution.

I, LINDSAY LARA, City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on the 20th day of December 2021, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Lindsay Lara, City Clerk

CITY MANAGER EMPLOYMENT AGREEMENT
Between the City of San Rafael and
James M. Schutz

March 16, 2015 (Effective August 1, 2015)
(Revised as of December 18, 2017)
(Revised January 21, 2020)
(Revised December 20, 2021)

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CITY MANAGER EMPLOYMENT AGREEMENT

Between the City of San Rafael and James M. Schutz

- 1) Parties, Date, and Other Recitals - This Agreement is entered into as of March 16, 2015, and will take effect beginning August 1, 2015, by and between the City of San Rafael a municipal corporation ("the City"), and James M. Schutz ("Schutz" or "City Manager"). The City and the City Manager are sometimes individually referred to as a "Party" and collectively as "Parties."
 - A) The City requires the services of a City Manager.
 - B) The City Manager has the necessary education, experience, skills, and expertise to serve as the City's City Manager.
 - C) The City Council of the City desires to employ the City Manager to serve as the City Manager of City.
 - D) The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code Section 53260 et seq.
 - E) In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree to the terms set forth in this Agreement.
- 2) Employment - The City hereby employs Schutz as its City Manager, and Schutz hereby accepts such employment on the terms and conditions that are recited herein.
- 3) Term-

The Term of the agreement shall be for a period of three years commencing on August 1, 2017 and continuing July 31, 2020 This agreement shall be effective for a rolling three (3) year term, automatically extending for one (1) additional year effective July 31 of each year, unless either party provides notice to the other of its intent to terminate this agreement on or before May 31 of any year. If such notice is provided, the term of this Agreement shall expire at the end of the then-current three (3) year term without any additional extensions and without the need for any additional notice, unless it is subsequently terminated at an earlier date in accordance with Section 7 of this Agreement.
- 4) Commitments and Understandings
 - A) City Manager's Commitments
 - (1) Duties & Authority
 - (a) The City Manager shall be the chief executive officer of the City and be responsible to the City Council for the proper administration of all affairs of the City.
 - (b) The City Manager shall perform all of the duties of the City Manager as set forth in Section 2.08 of the San Rafael Municipal Code, applicable provisions of the California Government Code, and City policies and procedures

approved by the City Council, as may be provided from time to time. The City Council has designated and may also designate the City Manager as the chief executive of other City-related legal entities. Such other legal entities include financing authorities and joint powers authorities.

- (c) The City Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement such policies. To accomplish this, the City Manager shall be required to:
- (i) Attend all meetings of the City Council, unless excused by the Mayor.
 - (ii) Review all agenda documents before preparing the agenda for all regular or special meetings of the City Council.
 - (iii) Direct the work of all appointive City officers and departments.
 - (iv) Endeavor to implement changes that the City Manager believes will result in greater efficiency, economy, or improved public service in the administration of City affairs. This includes modernizing City services and employing a community-centered approach to service design.
 - (v) From time to time, recommend to the City Council adoption of such measures as the City Manager may deem necessary or expedient for the health, safety, or welfare of the community, or for the improvement of administrative services. The City Manager shall conduct research in administrative practices in order to bring about greater efficiency and economy in City government, and develop and recommend to the City Council long-range plans to improve City operations and prepare for future City growth and development.
 - (vi) From time to time, and based on the City Manager's best judgment, propose to the City Council the consolidation or combination of offices, positions, departments, or units under the City Manager's jurisdiction. The City Manager may be the head of one or more City departments.
 - (vii) Provide management training and develop leadership qualities among department heads and staff as necessary to build a City management team that can plan for and meet future challenges.
 - (viii) Exercise control of City government in emergencies as authorized by the Municipal code and California law.

(2) Hours of Work

- (a) The City Manager is an exempt employee. The City Manager is expected to engage in those hours of work that are necessary to fulfill the obligations of the position. The position does not have set hours of work and the City Manager is expected to be available, as necessary, at all times.
- (b) It is recognized that the City Manager must devote substantial time to the business of the City, outside of the City's customary business hours, and to that end the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed. The City Manager shall spend sufficient hours on site to perform his duties; however, the City

Manager has discretion over the City Manager's work schedule and work location.

- (c) The City Manager shall not spend more than 12 hours per month in teaching, consulting, speaking, or other non-City connected business for which compensation is paid without the express prior written consent of the City Council.

(3) Disability or Inability to Perform

- (a) In the event the City Manager becomes mentally or physically incapable of performing the City Manager's functions and duties taking into account reasonable accommodation, and it reasonably appears such incapacity will last for more than six months, the City Council may terminate the City Manager. If the City Council does elect to terminate the City Manager due to incapacity, the City Manager shall receive all severance benefits provided in Section 7.C below.

B) City Commitments

- (1) The City shall provide the City Manager with the compensation, incentives, and benefits specified in this Agreement, as from time to time may be amended with written consent of both parties.
- (2) The City shall provide the City Manager with a private office, administrative support, staff, office equipment, supplies, automobile allowance, and all other facilities and services reasonably necessary for the performance of his duties.
- (3) The City shall pay for (or provide the City Manager reimbursement for) all actual business expenses. The City shall provide the City Manager a City credit card to charge appropriate and lawful City business expenses.
- (4) The City agrees to pay the professional dues, subscriptions, travel, and subsistence expenses on behalf of the City Manager which are necessary for the City Manager's continuation and full participation in national, regional, state, or local associations and organizations necessary and desirable for the City Manager's continued professional growth and advancement. Said reimbursement includes governmental groups and committees upon which the City Manager serves or may serve as a member. Said expenses may also be reimbursed or paid for on behalf of the City Manager for short courses, institutes and seminars that are necessary for the professional development of the City Manager.
- (5) Given the importance of technological tools to the effective and efficient conduct of the City's business, the City shall provide computer, laptop computer, printer, high-speed internet access, cellular phone, iPad or subsequent type devices, electronic calendar, fax, copy machine and similar devices to the City Manager at the City's expense, both at the City Manager's office and at the City Manager's residence as needed to carry out the duties of the position. All such equipment shall remain the property of the City.
- (6) The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.

- (7) The City Council recognizes that to meet the challenges facing the City it must exercise decisive policy leadership. As one step in carrying out this leadership responsibility, the City Council commits to spending time each year outside of regular City Council meetings to work with the City Manager and staff on setting goals and priorities for the City government, and to work on issues that may be inhibiting the maximal achievement of City goals.
- (8) Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the City Manager or the City Manager's designee, and neither the City Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.
- (9) The City Council agrees none of its individual members will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager. Notwithstanding, the City Council will work with the City Manager to assess, interview, and select the positions of Police Chief and Fire Chief.
- (10) The City Council agrees that any criticism of a City staff member shall be done privately through the City Manager.
- (11) Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the City Manager. The City Manager shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.

C) Mutual Commitments

(1) Performance Evaluation

- (a) Annual performance evaluations are an important way for the City Council and City Manager to ensure effective communications about expectations and performance.
- (b) The City Council recognizes that for the City Manager to respond to its needs and to grow in the performance of the City Manager's job, the City Manager needs to be advised how the City Council members evaluate the City Manager's performance.
- (c) To assure that the City Manager receives this information, the City Council shall conduct an evaluation of the City Manager's performance at least once each year and during the first year the City Council shall evaluate Schutz after six months. The City Council and the City Manager agree that performance evaluations, for the purpose of mid-course corrections, may occur quarterly or several times during each calendar year. In addition, the City Council may choose to establish a sub-committee to meet with the City Manager periodically over the course of each year to measure progress on stated goals and priorities. The annual evaluation shall occur as soon as feasible after the City Manager's anniversary date of August 1, such as during the City Council's typical fall retreat or City Council meeting in that general timeframe.

(d) The annual review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the City Manager. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with the City Manager.

(i) The City Council and the City Manager shall define such goals and performance objectives as they mutually determine are necessary for the proper operation of the City for the attainment of the City Council's policy objectives, and the City Council and the City Manager shall further establish a relative priority among those goals and performance objectives.

(ii) The City Council authorizes the Mayor and Vice-Mayor to meet with the City Manager following a successful, annual performance evaluation, and administratively execute a performance bonus of up to and including 5% of then current salary, at their discretion. Any bonus exceeding 5% would require an affirmative vote of the majority of the City Council.

5) COMPENSATION - The City agrees to provide the following compensation to the City Manager during the term of the agreement:

A) Compensation & Required Employer Costs

(1) Base Salary

(a) The annual salary for the position of City Manager shall remain unchanged from the predecessor's annual salary at the time of her separation.

(b) The City Council shall review the manager's salary and benefits annually and may consider performance bonuses or salary adjustments at the sole discretion of the City Council. Based upon the Manager's performance and availability of funds, it is the intent of the City Council to compensate the Manager in a manner consistent with the nature and scope of the assigned duties and responsibilities and in light thereof to endeavor to make the Manager the highest paid City Manager in the County of Marin.

(2) Required Employer Costs

(a) Federal Insurance Contributions Act (FICA) (if applicable).

(b) Medicare.

(c) Unemployment Compensation.

(d) The cost of any fidelity or other bonds required by law for the City Manager.

(e) The cost to defend and indemnify the City Manager as provided in Section 8.C below.

(f) Workers Compensation.

B) Benefits

- (1) Holidays - The City Manager is entitled to paid holidays in accordance with the provisions of the salary and benefit plan for the Unrepresented Executive Management Group.
- (2) Leave Allowance
 - (a) The City Manager shall receive the same vacation accrual and benefits as provided to the Unrepresented Executive Management class of City employees.
 - (b) The City Manager shall receive the same sick leave accrual and benefits as provided to the Unrepresented Executive Management class of City employees. Sick Leave accrual is based upon tenured employment with the City.
 - (c) City Manager shall be entitled to administrative leave per year in accordance with the provisions of the Salary and Benefit Plan for the Unrepresented Executive Management Group.
 - (d) All vacation, administrative and sick leave hours already accumulated by the City Manager during the time of his previous positions of employment with the City of San Rafael are carried forward and made applicable in the new position as City Manager.
- (3) Automobile - The City Manager shall be provided a monthly automobile allowance of \$400.00 in exchange for making his vehicle available for the City Manager's own use and for City-related business and/or functions during, before, and after normal work hours. Said allowance is intended to defray costs that the City Manager incurs in utilizing his personal vehicle for City business. The automobile allowance shall appear on the City Manager's payroll stub as ordinary income and part of his salary, but shall not be considered part of the City Manager's base salary for purposes of this Agreement.
- (4) Benefits that Accrue to Other Employees - The City Manager shall be entitled to all benefits, rights, and privileges accorded to non-public safety City Department Directors, including, but not limited to, group health and dental insurance, except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for non-public safety City Department Directors or other unclassified employees, this Agreement shall control. As is past practice, this paragraph is intended to include salary and salary-related compensation. City Manager shall receive at least the same salary and salary-related adjustments as provided to the Unrepresented Executive Management class of City employees.

6) SECURITY

A) Pensions - Marin County Employee Retirement Association (MCERA)

- (1) City will pay only the City's Share for participation in the Marin County Employee Retirement Association. The City Manager shall pay the employee share.
- (2) Unless required by changes in State or Federal law, should City Manager retire from City, his future MCERA pension and retiree health insurance benefits ("retirement rights and benefits") shall be guaranteed and vested at the same

benefit level as they were at his original date of hire which was January 2, 2007. For purposes of retiree health insurance, the benefit at that time covered full retiree medical premiums including all Medicare premiums without limitations. The parties expressly agree and confirm that the retirement rights and benefits in place at the City Manager's date of hire have been and continue to be a material part of the consideration given for City Manager's acceptance of employment with the City.

- (3) Should current pension vesting rules change, such as through the California voter Initiative process, City Manager may be treated like any other City employee at the sole discretion of the City Council.

B) Deferred compensation

(1) Section 457 Plan.

(a) The City will make, in January of each year, an annual contribution equal to \$15,000 a year and as allowed by the Internal Revenue Code and its related regulations (excluding any age-related and catch-up provisions that are now or may in the future become applicable) into a qualified Section 457 Plan from one of the City approved plans as selected by the City Manager.

- (2) Internal Revenue Code Compliance - All provisions of Sections 5.A and 5.B are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of Sections 5.A and 5.B shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of the City to effectuate such requirements shall not constitute a breach of this Agreement.

C) Insurance

(1) Disability Insurance. Long Term Disability insurance is to be provided as stipulated in the Unrepresented Management Resolution.

(2) Life Insurance. Term life insurance in the amount of \$250,000, with the premium to be paid by the City, payable to a beneficiary the City Manager designates.

7) SEPARATION

A) Resignation Retirement - The City Manager may resign at any time and agrees to give the City at least 45 days advance written notice of the effective date of his resignation, unless the Parties otherwise agree in writing. If the City Manager retires from full time public service with the City, the City Manager may provide six months' advance notice. The City Manager's actual retirement date will be mutually established.

B) Termination & Removal –

(1) While this Agreement contains reference to a rolling three (3) year term in Section 3 above, it is expressly understood that the Manager is an at-will employee of the City, servicing at the pleasure of the City Council as provided in Government Code Section 36506.

(2) The City Council may remove the City Manager at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. Termination as used in this Section shall also include a

request that the City Manager resign, a reduction in salary or other financial benefits of the City Manager, a material reduction in the powers and authority of the City Manager, or the elimination of the City Manager's position. Given the at-will nature of the position of City Manager, an important element of the employment agreement pertains to termination. It is in both the City's interest and that of the City Manager that any separation of the City Manager is done in a businesslike manner.

C) Severance Pay

- (1) In the event that the City Manager is terminated by the City Council during such time that the City Manager is willing and able to perform his duties under this Agreement, then the City agrees to pay the City Manager a lump sum cash payment equal to six months' base salary and benefits. It is the intention of the parties that this paragraph complies with the requirements of Government Code Section 53260 et. seq. In the event of any conflict between this provision and those code sections, the terms of those code sections shall govern the contractual relationship between the employer and employee.
- (2) In addition, the City shall extend to the City Manager the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act Of 1986 (COBRA).
- (3) All payments required under Section 7.C (1), and (2), are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260.
- (4) In no event may City Manager be terminated within ninety (90) days before or after any municipal election for the selection or recall of one or more members of the City Council.

D) Involuntary Resignation

- (1) In the event that the City Council formally or a majority of the City Council informally asks that the City Manager resign, then the City Manager shall be entitled to resign and still receive the severance benefits provided in Section 7.C above.

E) Separation for Cause

- (1) Notwithstanding the provisions of Section 7.C, the City Manager may be terminated for cause. As used in this Section, "cause" shall mean only one or more the following:
 - (a) Conviction of a felony;
 - (b) Conviction of any illegal act involving moral turpitude or personal gain;
 - (c) A plea of nolo contendere to any felony or illegal act involving moral turpitude or personal gain;
 - (d) Any act constituting a knowing and intentional violation of City's conflict of interest code;
 - (e) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the Manager's duties; or

- (f) Repeated and protracted unexcused absences from the City Manager's office and duties.
- (2) In the event that the City terminates the City Manager for cause, then the City may terminate this Agreement immediately, and the City Manager shall be entitled to only the compensation accrued up to the date of termination, payments required by Section 7.F below, and such other termination benefits and payments as may be required by law. The City Manager shall not be entitled to any severance benefits provided by Section 7.C. The City reserves the right to suspend City Manager with pay at any time during the pendency of any of the foregoing events under item (1) above.

F) Payment for Unused Leave Balance

- (1) On separation from City employment, the City Manager shall be paid for all unused accrued leave allowances provided in Section 5.B(2) above. Accumulated leave balances shall be paid at the City Manager's monthly salary rate at the effective date of separation.

8) MISCELLANEOUS PROVISIONS

A) Amendments - This Agreement may be amended at any time by mutual written agreement of the City and the City Manager.

B) Conflict of interest

- (1) The City Manager shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of his official duties or which would tend to impair independence in the performance of his official duties.
- (2) The City Manager shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the City Manager's City employment.
- (3) The City Manager is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

C) Indemnification

- (1) To the full extent of the law as provided by the California Torts Claims Act (Government Code Section 810 et seq.) and the indemnity provisions of this Agreement, whichever shall provide the greatest protection to the City Manager, the City shall defend and indemnify the City Manager against and for all losses sustained by the City Manager in direct consequences of the discharge of the City Manager's duties on the City's behalf for the period of the City Manager's employment.
- (2) The City shall defend, save harmless, and indemnify the City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the City Manager's duties as City Manager. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon in the City's sole discretion.

- (3) Whenever the City Manager shall be sued for damages arising out of the performance of his duties, the City shall provide legal defense for the City Manager in such suit and indemnify the City Manager from any judgment rendered against the City Manager; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in the City Manager's capacity as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the City Manager may have under the law.
- (4) The City and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the City Manager, for all matters while acting within the scope of the City Manager's duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the City or any party affiliated with or otherwise claiming under or through it, regardless of any prior, concurrent, or subsequent active or passive negligence by the City Manager.
- (5) In the event that the City Manager shall serve as the chief executive of other City-related legal entities as provided in Section 4.A (l)(b) above, then each provision of this Section 7.C shall be equally applicable to each City-related legal entity as though set forth in an indemnity agreement between the City Manager and that legal entity. The City hereby guarantees the performance of this indemnity obligation by the City-related legal entity, and shall indemnify and hold the City Manager harmless against any failure or refusal by City related legal entity to perform its obligations under this Section 7.C.
- D) Severability - If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.
- E) Laws Affecting Title - In addition to those laws affecting a City Manager, the City Manager shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and/or City Administrator as those terms are used in local, state, or federal laws.
- F) Jurisdiction and Venue - This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Marin County, California.
- G) Entire Agreement - This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by a written, fully executed agreement of the Parties.
- H) Notice - Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the City Manager

or the City shall be required, or may desire, to make, shall be in writing and shall be sent by prepaid first class mail or hand delivered to the respective Parties as follows:

(a) If to the City:
Mayor
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

(b) If to the City Manager:
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

EXECUTION:

IN WITNESS WHEREOF, the City of San Rafael has caused this amended and restated Agreement to be duly executed by its Mayor and the City Manager, and duly attested by its City Clerk, the ___th day of December 2021.

EMPLOYER - CITY OF SAN RAFAEL

CITY MANAGER

By: _____
Kate Colin, Mayor

James M. Schutz

APPROVED AS TO FORM:

ATTEST:

Robert F. Epstein, City Attorney

Lindsay Lara, City Clerk



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Finance

Prepared by: Nadine Atieh Hade,
Finance Director

City Manager Approval: _____

TOPIC: ANNUAL MEASURE E TUT OVERSIGHT COMMITTEE REPORT

SUBJECT: MEASURE E TRANSACTIONS AND USE TAX OVERSIGHT COMMITTEE REPORT FOR FISCAL YEAR 2020-2021

RECOMMENDATION: ACCEPT REPORT

BACKGROUND: On August 5, 2013, the San Rafael City Council passed [Ordinance No. 1913](#), establishing a new Transactions and Use Tax (TUT) subject to voter approval. On November 5, 2013, San Rafael voters approved Measure E. This twenty-year San Rafael three-quarter percent TUT became effective April 1, 2014, and supplanted the former Measure S one-half percent TUT, which had been in effect since April 1, 2006, and was originally scheduled to terminate on March 31, 2016.

Similar to the previous (Measure S) TUT, the enabling TUT ordinance for Measure E called for the creation of an independent oversight committee to review the collection and expenditure of this tax revenue. This committee was established on April 7, 2014 by City Council [Resolution No. 13704](#) which also set forth the roles, responsibilities and duties of the committee. On [October 6, 2014](#), the City Council appointed five members of the public to the committee. The current members are:

- Jacqueline Schmidt - December 1, 2018 to November 30, 2022
- Larry Luckham - December 1, 2018 to November 30, 2022
- John Erdmann - April 1, 2021 to November 30, 2024
- Camille Harris - April 1, 2021 to November 30, 2024
- Braydan Young - April 1, 2021 to November 30, 2024

The purpose of this report is to present and recommend acceptance of the Measure E TUT Oversight Committee report of December 7, 2021 (Exhibit A).

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

ANALYSIS: The Measure E Oversight Committee met virtually on December 7, 2021, to review the actual Measure E TUT revenues and expenditures for fiscal year 2020-2021.

Staff reported that during the fiscal year 2020-2021, \$2,223,021 of Measure E TUT proceeds were expended. Per direction from City Council given to Staff in early 2014 which was to set aside one-quarter percent provided by Measure E to begin to address the aging essential facilities, \$4,564,854 was assigned to the Public Safety Facilities Fund this fiscal year. These funds were added to \$12,474,928 of prior year proceeds. Interest income of \$8,854 supplemented the City's funds dedicated to the active public safety facilities projects.

The Measure E TUT Oversight Committee's report provides the Committee's conclusions that Measure E TUT revenues received during fiscal year 2020-2021, the eighth year that TUT was in effect, were "properly allocated in accordance with Measure E and approved guidelines."

FISCAL IMPACT: There is no fiscal impact associated with the acceptance of the Measure E TUT Oversight Committee report.

RECOMMENDED ACTION: Accept the Measure E Transactions and Use Tax Oversight Committee Report for Fiscal Year 2020-2021.

ATTACHMENT:

Exhibit A: Measure E Oversight Committee Report

City of San Rafael
Measure E Oversight Committee Report
December 13, 2021

The City of San Rafael Measure E Oversight Committee met on December 7, 2021, and received a detailed report from the City of San Rafael Finance Director, Nadine Atieh Hade on the receipt and expenditure of funds during the fiscal year July 1, 2020 to June 30, 2021 pursuant to voter approved Measure E (San Rafael Ordinance 1913).

The Measure E Oversight Committee is required to review the collection, expenditure, and prioritization of the use of these funds, and report to the City Council and the community annually on the expenditures under Guidelines and Policy adopted by the San Rafael City Council.

After review, the Measure E Oversight Committee finds that these funds were properly allocated in accordance with the Measure and approved guidelines.

The Committee would like to commend the City Council and the Finance and Public Works Departments for their excellent fiscal and project management during the on-going COVID emergency, as well as all City staff who have cooperated and worked so hard under difficult circumstances.

Respectfully Submitted:

Jacqueline Schmidt

Jacqueline Schmidt

Jacqueline Schmidt

For: Larry Luckham

Jacqueline Schmidt

For: John Erdmann

Jacqueline Schmidt

For: Camille Harris

Braydan Young



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Library & Recreation

Prepared by:
Henry Bankhead, Asst. Library & Rec. Director
Nadine Atieh Hade, Finance Director

City Manager Approval: _____

TOPIC: LIBRARY PARCEL TAX ANNUAL REPORT

SUBJECT: SPECIAL LIBRARY PARCEL TAX OVERSIGHT COMMITTEE'S ANNUAL MEASURE D REPORT

RECOMMENDATION:

Staff recommends that the City Council accept the 2021 Special Library Parcel Tax Committee's annual report on the expenditures of the Special Library Parcel Tax funds.

BACKGROUND:

The Committee was appointed on [May 15, 2017](#) after Measure D, the Special Library Services Parcel Tax was approved by the voters at the June 7, 2016 special municipal election. The Committee's sole purpose is to ensure the monies have been expended in accordance with the authorized purposes of Measure D. This is the second report on Measure D expenditures as it is the second year of the tax levied by Measure D, following the conclusion of seven years of Measure C, which was succeeded by Measure D.

The Measure D Committee consists of five members, three appointed July 17, 2017 and two appointed October, 18, 2021 and is tasked with reviewing current and upcoming years' spending. The committee members are:

- Phyllis Brinckerhoff - Oct 18, 2021 to Jul 31, 2025
- Gail Grasso - Nov 2, 2020 to Jul 31, 2022
- Gregg Kellogg - Jul 17, 2018 to Jul 31, 2022
- Gil Pruitt - Sep 30, 2018 to Jul 31, 2022
- Braydan Young - Oct 18, 2021 to Jul 31, 2025

ANALYSIS:

The Committee's 2021 report states Measure D funds were expended appropriately for Fiscal Year 2020-21. The final audited fund balance was \$730,581. This accumulation of fund balance is a result of two primary factors over the life of the tax: vacant staff positions funded by the Parcel Tax, and the growth of small amounts being underspent in various line items over the life of the tax.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

The final audited capital set-aside fund balance was \$281,382. This capital set-aside was earmarked for new and improved library facilities as directed by the City Council as part of the previous Measure C and was capped at \$500,000. During FY 2020-21 the capital set balance was depleted by \$71,953 to fund the Albert Park Library and Community Center Conceptual Design Project.

In 2019, the Committee and Staff engaged in discussions about the appropriate percentage of the City's general fund allocated annually for Library Services in addition to funds received through Measure D. Some committee members continue to feel that this general fund percentage for Library Services should be a fixed 4.41 percent annually regardless of changes in Measure D funds received¹. However, Staff felt this percentage could fluctuate annually based on other components contributing to the general fund and instead of the percentage, the focus should be on level of services.

The Committee and Staff continue to agree that the 4.41 percent general fund allocation is a target rather than a fixed requirement. Rather, the goal of the general fund allocation should be sufficient funding in addition to Measure D to maintain service levels and focus on building efficiencies with regards to work flows. Due to the ongoing pandemic, the shift to curbside services for 11 out of 12 months and the budget effects of six vacant positions in the library general fund budget, the general fund allocation target of 4.41 percent was not achieved for FY 2020-21.

COMMUNITY OUTREACH:

To date the Library has received input on expenditures from the Special Library Parcel Tax Committee through their annual report. The committee typically meets five times per year, with all meetings open to the public. This report was discussed and approved at the November 18, 2021 meeting (Attachment 1).

FISCAL IMPACT:

There is no fiscal impact from the acceptance of this report.

RECOMMENDED ACTION:

Accept the 2021 Special Library Parcel Tax Committee's annual report.

ATTACHMENTS:

2021 Special Library Parcel Tax Committee's annual report

¹ 4.41 percent reflects the proportion of the City's General Fund allocated to Library Services at the time Measure C was passed in 2010.

City of San Rafael Special Library Parcel Tax Committee Report FY 2020-2021

The Committee's sole function shall be to review the expenditures of the revenues from the Special Library Services Parcel Tax, adopted by Measure D on June 7, 2016 to ensure the monies have been expended in accordance with the authorized purposes of Measure D. Measure D replaced Measure C which expired on June 30, 2017.

In previous reports of Measures C and D, the committee listed as a task: "to ensure that the Library maintains its share of the general fund." This was listed because the text of Measure D states that the parcel tax would "provide a critical, consistent, locally-controlled source, augmenting current general fund allocations..."

When Measure D passed, the committee used the same method the City Attorney indicated upon passage of Measure C: the proportion of the Library of the General Fund Budget. In both cases, it was 4.4%. However, during the term of Measure C, the percentage was not and could not be maintained each year due to mandated expenses for specific departments. These were noted in the Measure C Committee's reports as acceptable variances.

At the July 2, 2019 Library Parcel Tax Committee Meeting, the committee agreed to the following:

"General agreement that the proportionality would remain at 4.4% but that it is a shared goal that is non-binding. It is the goal of the committee to be in alignment with the ongoing proportionality that has been established."

With the pandemic, it has not been possible for the Library to maintain 4.4% of the General Fund. The City has had to maintain Police, Fire, and city maintenance at higher levels while total revenue is down.

The proportion of the Library General Fund compared to the total General Fund Budget was 3.48% for Fiscal Year 2020-2021 which is less than the shared goal. This is due to lower than General Fund expenditures similar to FY 2019-2020 due to reduced staffing expenditures, lower utilities, no spending on Periodicals, lower Digital Branch Resources spending, lower expenditures for staff development, and directives for a "Bottom Line Budget".

ATTACHMENT 1

Total expenditures budgeted for Measure D funds for FY 2020-2021 were \$1,097,531, which represents 30% of the total library budget of \$3,718,866. The amount actually spent was \$795,265.

With the recent establishment of the Library and Recreation department, which merges the previously independent Library and Community Services departments, the Committee continues to closely monitor the Measure D revenue and expenditures. The Finance Department has assured the Committee that Measure D funds will continue to be used only for the specific Library services for which it is authorized. The Committee, therefore, expects that there will be a way to identify and break out the Library's share of the General Fund.

The unaudited parcel tax fund balance for FY 2020-2021 is reported as \$730,531. The remaining balance of the Capital Set Aside (which was created from Measure C funds) as of June 30, 2021 was \$281,382.

Measure D funds are restricted from being used for facility improvement or replacement. The Committee will be monitoring the ongoing planning for the new and improved Library facilities to ensure that Measure D funds are used appropriately.

Phyllis Brinckerhoff

Phyllis Brinckerhoff, Committee Member

Gail Grasso

Gail Grasso, Committee Member

Gregg Kellogg

Gregg Kellogg, Committee Member

Gil Pruitt

Gil Pruitt, Committee Member

DocuSigned by:
Braydan Young
F9C782E1AB2449A...
Braydan Young, Committee Member



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

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

City Manager Approval: 

File No.: 06.01.245

TOPIC: FIRE STATION 54 & 55 – MATERIALS TESTING AND SPECIAL INSPECTION, AND GEOTECHNICAL TESTING AND INPSECTION SERVICES

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESIONAL SERVICES AGREEMENT WITH BSK ASSOCIATES FOR MATERIALS TESTING AND SPECIAL INSPECTION SERVICES AND GEOTECHNICAL TESTING AND INSPECTION RELATED TO PHASE 2 ESSENTIAL FACILITIES PROJECTS - FIRE STATION 54 AND 55 IN THE AMOUNT OF \$145,744.

RECOMMENDATION: Adopt a resolution approving and authorizing the City Manager to execute the professional services agreement with BSK Associates (“BSK”) related to Materials Testing and Special Inspection and Geotechnical Testing and Inspection Services fees concerning Fire Station 54 and 55 Project, in an amount not to exceed \$145,744.

BACKGROUND:

On November 5, 2013, Measure E passed extending the existing one-half percent local sales tax and increasing the rate by one-quarter percent to provide funding that cannot be taken by the State and can be used to preserve essential city services. The City has since used those resources to plan, design, construct and manage two new stand-alone fire stations, 52 and 57, and a new Public Safety Center (PSC) that incorporates Fire Station 51. These three projects are collectively referred to as “Phase 1” of the City’s Essential Facilities Program. They have all been successfully completed, occupied and operational. The Essential Facilities program also includes the design, construction, and management of Fire Stations 54 and 55 referred to as “Phase 2”.

On October 18, 2021, the City Council adopted Resolution No. [14988](#) awarding the construction contract for the Fire Station 54 and 55 Project to Wickman Development and Construction. Construction of the Fire Stations is intended to start in early 2022.

ANALYSIS:

Essential Facilities require that various inspection tasks be performed to ensure that the buildings are in compliance with Code and that they remain available during and after seismic and other destructive events occur.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

Materials Testing and Special Inspections as well as Geotechnical Testing and Inspection Services will be required during construction of the Fire Station 54 and 55 Project. The testing firm will provide detailed testing and monitoring of specific specialty items such as weld inspections (including x-rays), concrete strength testing, and rebar placement to ensure that the rebar is placed properly. The testing firm will also sample the soils and tests for compaction and overall suitability to receive the building. The testing firm utilizes specialty equipment and laboratory analysis to perform the testing of materials placed.

An Inspector of Record will also be required to ensure overall quality of the work and to ensure that the project is being constructed according to plans and specifications.

A separate professional services contract will be developed for Inspection of Record services and will be presented to the City Council at a future Council meeting.

On November 1, 2021, Public Works solicited statements of qualifications for Testing and Special Inspections as well as Geotechnical Testing and Inspection services. Statements from six qualified firms were received on November 12, 2021. All were evaluated by City staff based on criteria specified in the request for qualifications. These criteria included expertise in the work to be performed, prior experience with similar projects, qualified personnel, and references.

BSK Associates has been selected as the most qualified firm to provide the necessary services for the project.

Upon City staff request, BSK has submitted a proposal to perform these services for a not to exceed amount of \$145,744 (Attachment 3). Staff recommends authorizing the City Manager to execute the agreement BSK Associates for materials testing and special inspection services and geotechnical testing and inspection services in the form attached as Attachment 2 to this report, subject to final approval as to form by the City Attorney.

FISCAL IMPACT: These funds will be appropriated from the portion of Measure E revenues allocated to public safety facilities construction and improvements.

OPTIONS:

1. Adopt a resolution authorizing the City Manager to execute a professional services agreement with BSK related to the provision of materials testing and special inspection services and geotechnical testing and inspection services concerning Fire Stations 54 and 55, in the amount not to exceed \$145,744.
2. Do not adopt the resolution and provide direction to staff. If this option is chosen, project bid delays will delay renovation of the buildings.

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute the professional services agreement with BSK Associates.

ATTACHMENTS:

1. Resolution Authorizing the City Manager to Execute a Professional Services Agreement with BSK Associates for Materials Testing and Special Inspection Services and Geotechnical Testing and Inspection Related to Phase 2 Essential Facilities Projects - Fire Station 54 and 55, in the Amount of \$145,744.

2. Professional Services Agreement with BSK Associates for materials testing and special inspection services as well as geotechnical testing and inspection services for the Fire Stations 54 and 55 Renovation Project
3. Proposal – Exhibit “A” to Professional Services Agreement.

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH BSK ASSOCIATES FOR MATERIALS TESTING AND SPECIAL INSPECTION SERVICES AND GEOTECHNICAL TESTING AND INSPECTION RELATED TO PHASE 2 ESSENTIAL FACILITIES PROJECTS - FIRE STATION 54 AND 55 IN THE AMOUNT OF \$145,744

WHEREAS, in November 2013, the local voters passed Measure E extending the existing one-half percent local sales tax and increasing the rate by one-quarter percent to provide funding to preserve essential city services. This tax supplanted the former, one-half cent transactions and use tax (Measure S), effective April 1, 2014; and

WHEREAS, the City has since used those resources to plan, design, construct and manage two new stand-alone fire stations, 52 and 57, and a new Public Safety Center (PSC) that incorporates Fire Station 51. These three projects, collectively referred to as "Phase 1" of the City's Essential Facilities Program, have successfully been completed and occupied; and

WHEREAS, the Essential Facilities program also includes the design, construction and management of Fire Stations 54 and 55 referred to as "Phase 2"; and

WHEREAS, the City successfully bid the Fire Station 54 and 55 Project and has awarded the construction contract to the lowest responsible bidder; and

WHEREAS, Essential Facilities require that various inspection tasks be performed to ensure that the buildings are in compliance with Code and that they remain available during and after seismic and other destructive events occur; and

WHEREAS, on November 1, 2021, Public Works solicited statements of qualifications for Testing and Special Inspections as well as Geotechnical Testing and Inspection services; and

WHEREAS, on November 12, 2021 statements from six qualified firms were received and evaluated by City staff based on the criteria specified in the request for qualifications; and these criteria included expertise in the work to be performed, prior experience with similar projects, qualified personnel, and references; and

WHEREAS, BSK Associates has been selected as the most qualified firm to provide the necessary services for the Project;

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

1. The City Manager is hereby authorized to execute a Professional Services Agreement with BSK Associates, in the form included with the staff report for this resolution, subject to final approval by the City Attorney, for necessary materials testing and special inspection and geotechnical testing and inspection services in the amount of \$145,744.
2. Funds totaling \$145,744 will be appropriated for City Project No. 11394 and 11395 from the Essential Facilities Capital Projects Fund (#420).

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 December 2021 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

Lindsay Lara, City Clerk

AGREEMENT
FOR PROFESSIONAL TESTING AND INSPECTION SERVICES
WITH BSK ASSOCIATES

This Agreement is made and entered into this ____ day of _____, 20 __, by and between the CITY OF SAN RAFAEL (hereinafter "CITY"), and BSK ASSOCIATES, a Corporation authorized to do business in California (hereinafter "CONSULTANT").

RECITALS

WHEREAS, the **CITY** requires professional services for materials testing and special inspection services AND geotechnical testing and inspection services related to phase 2 essential facilities projects; and

WHEREAS, the **CONSULTANT** has agreed to render such services.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. **CITY'S Project Manager.** Fabiola Guillen-Urfer is hereby designated the PROJECT MANAGER for the CITY and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement.

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

2. **DUTIES OF CONSULTANT.**

CONSULTANT shall perform the duties and/or provide services as outlined in CONSULTANT's proposal dated December 9, 2021, marked as Exhibit A, attached hereto and incorporated herein, summarized on page 5, in the second full paragraph therein as the "basic scope of services" for Fire Station 54 and Fire Station 55 and the "optional scope of services" for GEOR Services-Alternative.

3. DUTIES OF CITY.

CITY shall pay the compensation as provided in Paragraph 4, and perform the duties as follows outlined in Exhibit A.

4. COMPENSATION.

For the full performance of the services described herein by **CONSULTANT**, **CITY** shall pay **CONSULTANT** on a time and materials and on-call basis for services rendered in accordance with the rates shown in Exhibit A, summarized as \$84,170 for Fire Station 54; \$55,854 for Fire Station 55; and \$5,720 for the “optional scope of services” for GEOR Services-Alternative in the amount of \$5,720, for a total not-to-exceed amount of \$145,744.

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

5. TERM OF AGREEMENT.

The term of this Agreement shall be for 18 months commencing upon date of execution of this agreement. Upon mutual agreement of the parties, and subject to the approval of the City Manager the term of this Agreement may be extended for an additional period of up to 18 months.

6. TERMINATION.

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

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

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

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

7. OWNERSHIP OF DOCUMENTS.

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

8. INSPECTION AND AUDIT.

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

9. ASSIGNABILITY.

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

10. INSURANCE.

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

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

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

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

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

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

1. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers,

agents, employees, and volunteers, as additional insureds (for both ongoing and completed operations) under the policies.

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

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

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

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

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

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

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

C. **Deductibles and SIR's.** Any deductibles or self-insured retentions in **CONSULTANT's** insurance policies must be declared to and approved by the **PROJECT MANAGER** and City Attorney and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or **CITY** or other additional insured party. At **CITY's** option,

the deductibles or self-insured retentions with respect to **CITY** shall be reduced or eliminated to **CITY's** satisfaction, or **CONSULTANT** shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

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

11. INDEMNIFICATION.

A. Except as otherwise provided in Paragraph B., **CONSULTANT** shall, to the fullest extent permitted by law, indemnify, release, defend with counsel approved by **CITY**, and hold harmless **CITY**, its officers, agents, employees and volunteers (collectively, the "**City Indemnitees**"), from and against any claim, demand, suit, judgment, loss, liability or expense of any kind, including but not limited to attorney's fees, expert fees and all other costs and fees of litigation, (collectively "**CLAIMS**"), arising out of **CONSULTANT'S** performance of its obligations or conduct of its operations under this Agreement. The **CONSULTANT's** obligations apply regardless of whether or not a liability is caused or contributed to by the active or passive negligence of the **City Indemnitees**. However, to the extent that liability is caused by the active negligence or willful misconduct of the **City Indemnitees**, the **CONSULTANT's** indemnification obligation shall be reduced in proportion to the **City Indemnitees'** share of liability for the active negligence or willful misconduct. In addition, the acceptance or approval of the **CONSULTANT's** work or work product by the **CITY** or any of its directors, officers or employees shall not relieve or reduce the **CONSULTANT's** indemnification obligations. In the event the **City Indemnitees** are made a party to any action, lawsuit, or other adversarial proceeding arising from **CONSULTANT'S** performance of or operations under this Agreement, **CONSULTANT** shall provide a defense to the **City Indemnitees** or at **CITY'S** option reimburse the **City Indemnitees** their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

B. Where the services to be provided by **CONSULTANT** under this Agreement are design professional services to be performed by a design professional as that term is defined under Civil Code Section 2782.8, then, to the extent permitted by law including without limitation, Civil Code sections 2782, 2782.6 and 2782.8, **CONSULTANT** shall indemnify and hold harmless the **CITY** and its officers, officials, and employees (collectively **City Indemnitees**) from and against damages, liabilities or costs (including incidental damages. Court costs, reasonable attorney's fees as may be determined by the Court, litigation expenses and fees of expert witnesses incurred in connection therewith and costs of investigation) to the extent they are caused by the negligence, recklessness, or willful misconduct of **CONSULTANT**, or any subconsultants, or subcontractor or anyone directly or indirectly employed by them, or anyone for whom they are legally liable

(collectively Liabilities). Such obligation to hold harmless and indemnify any indemnity shall not apply to the extent that such Liabilities are caused in part by the negligence or willful misconduct of such City Indemnitee.

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

12. NONDISCRIMINATION.

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

13. COMPLIANCE WITH ALL LAWS.

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

14. NO THIRD PARTY BENEFICIARIES.

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

15. NOTICES.

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

TO **CITY**'s Project Manager:

Fabiola Guillen-Urfer
City of San Rafael
111 Morphew Street
San Rafael, CA 94901

TO **CONSULTANT**'s Project Director:

Timothy Rodriguez, Northern Regional
Manager

BSK Associates
399 Lindbergh Avenue
Livermore, CA 94551

16. INDEPENDENT CONTRACTOR.

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

17. ENTIRE AGREEMENT -- AMENDMENTS.

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

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

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

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

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

18. SET-OFF AGAINST DEBTS.

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

19. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of

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

20. COSTS AND ATTORNEY'S FEES.

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

21. CITY BUSINESS LICENSE / OTHER TAXES.

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

22. SURVIVAL OF TERMS.

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

23. APPLICABLE LAW.

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

24. COUNTERPARTS AND ELECTRONIC SIGNATURE.

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

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

CITY OF SAN RAFAEL

CONSULTANT

JIM SCHUTZ, City Manager

By: _____

Name: _____

Title: _____

ATTEST:

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

LINDSAY LARA, City Clerk

By: _____

APPROVED AS TO FORM:

Name: _____

Title: _____

ROBERT F. EPSTEIN, City Attorney



399 Lindbergh Avenue
Livermore CA 94551
P 925.315.3151
www.bskassociates.com

Exhibit "A"

December 9, 2021

BSK Proposal CL21-22265

A. Fabiola Guillen-Urfer
Sr. Project Manager
City of San Rafael, Department of Public Works
Fabiola.GuillenUrfer@cityofsanrafael.org

SUBJECT: Proposal for Materials Testing & Special Inspection Services
and Geotechnical Inspection Services
City of San Rafael Essential Facilities Projects, Fire Station 54 and Fire Station 55
San Rafael, California

Dear Ms. Guillen-Urfer:

As requested, BSK Associates (BSK) prepared this proposal to provide special inspections and materials testing services during construction of the planned Essential Facilities Fire Stations 54 & 55 located in San Rafael. The objective of our services will be to monitor and test conformance of the construction aspects of the project with regards to the project plans and specifications. We understand that Terracon Consultants, Inc. of Concord, California has prepared two geotechnical engineering reports,¹ and therefore are the Geotechnical Engineer-of-Record (GEOR) for the project. BSK will not be assuming the role of the GEOR and will only be providing materials testing and special inspections, and geotechnical testing and inspection services per your acceptance letter dated December 1, 2021. However, as requested, we have included an optional fee for BSK to take on the GEOR role and provide geotechnical observations and testing services during construction.

We have based our construction estimate on the approved project specific plans² prepared by LCA Architects of Walnut Creek, California, and our experience with similar projects. Note, that there is no project construction schedule available at this time. When a schedule does become available, BSK would like the opportunity to revisit our estimate and assumptions. The following sections present discussions regarding our understanding of the project, our proposed scope of services, fee estimate, and project limitations for your consideration.

BSK is committed to providing quality service to its clients, commensurate with their wants, needs and desired level of risk. If a portion of this proposal does not meet the project's needs or if those needs have

¹ Terracon Consultants, Inc, (2019), Geotechnical Engineering Report, Fire Station 54 Upgrade, San Rafael, Marin County, CA 94901, Project No. ND195033, dated September 11, 2019.
Terracon Consultants, Inc, (2019), Geotechnical Engineering Report, Fire Station 55 Upgrade, San Rafael, Marin County, CA 94901, Project No. ND195034, dated September 16, 2019

² LCA Architect (2021), City of San Rafael, Fire Stations 54 & 55, San Rafael, California, dated December 1, 2021.

changed, BSK will consider appropriate modifications, subject to the standards of care to which we adhere as professionals. Modifications such as changes in scope, methodology, scheduling, and contract terms and conditions may result in changes to the risks assumed by the client and adjustments to our fees.

PROJECT UNDERSTANDING

We understand that BSK's role on the project will be to provide materials testing and special inspection, and geotechnical inspection services during the retrofit of two fire stations located in San Rafael. Fire station 54 will be expanded to be a 5,108 square feet (sf), two story fire station, that will include building and site improvements such as updating two apparatus bays, new medical storage, janitor facilities, living spaces such as kitchen, dining, dayroom, laundry, office, gym, sleeping quarters, restrooms, mechanical, electrical, communication rooms, a new elevator, and emergency generator. Fire station 55 will be expanded to be a 4,869 sf, single story fire station that will include building and site improvements such as updating two apparatus bays, new medical storage, janitor facilities, living spaces such as kitchen, dining, dayroom, laundry, office, gym, sleeping quarters, restrooms, mechanical, electrical, communication rooms, a new elevator, emergency generator, and a fueling station. BSK has the expertise and is willing to take on the role of Geotechnical Engineer-of-Record (GEOR) for the project if needed.

If the actual project description differs significantly from that described above, we should be notified so that we can review our scope of services for applicability.

SCOPE OF SERVICES AND FEE ARRANGEMENTS

Our anticipated scope of services and fee estimate listed below are based on part-time observation and testing services during construction as noted below. We will provide our services on a time and materials, and on-call basis in accordance with our Basis of Charges and fee schedule included with this proposal. We will require 24-hour notice for scheduling our observation and testing visits. Note that for on-call services, we rely on the Client or its representatives (i.e., inspector or record (IOR), construction manager, contractor, etc.) to schedule our visits. Inspections can be scheduled via livermoredispatch@bskassociates.com and cc BSK's project manager.

We have assumed that the site visits by our representatives will be approximately 4 to 8 hours long (including travel) and will be carried out during weekdays only. A minimum charge of 4 hours will apply to each site visit, except for show-up (no work performed) and sample pickup visits, as discussed in the Basis of Charges below. If the site visits are longer than 8 hours and/or weekend/holiday work becomes necessary due to the contractor's schedule, overtime rates will apply as noted in the Basis of Charges. Our anticipated scope of services and estimated fee breakdown, including assumed field hours, are presented below.



Fire Station 54

FIELD SERVICES	DAYS	HRS/DAY	HOURS	RATE	EXTENSION
Earthwork Construction					
Footing Observation	4	6	24	\$135.00	\$3,240.00
Compaction Testing Technician	10	8	80	\$135.00	\$10,800.00
Nuclear Gauge Equipment Fee	10			\$64.00	\$640.00
Concrete Construction					
Reinforcing Steel Placement Observation	12	6	72	\$149.00	\$10,728.00
Concrete Placement Observation & Sampling (Half Day)	6	6	36	\$149.00	\$5,364.00
Concrete Placement Observation & Sampling (Full Day)	6	8	48	\$149.00	\$7,152.00
Sample Pickup and Delivery	12	2	24	\$108.00	\$2,592.00
Shear/Diaphragm Nailing Observation					
Shear/Diaphragm Nailing ≤ 4" O.C.	3	6	18	\$149.00	\$2,682.00
Post Installed Anchors/Dowels					
Placement Observation	4	6	24	\$118.00	\$2,832.00
Torque Testing/Proofload Testing	4	6	24	\$118.00	\$2,832.00
Equipment Fee	4			\$64.00	\$256.00
Welding Observations					
Shop Welding / Material Identification (Non-PW)	8	8	64	\$130.00	\$8,320.00
Field Welding / High-Strength Bolting	6	8	48	\$149.00	\$7,152.00
Mobilization / Travel					
Trip Charge (Mileage, Bridge Toll)	75			\$100.00	\$7,500.00
FIELD SERVICES ESTIMATE					\$72,090.00

LABORATORY TESTING	FREQUENCY	SETS/UNITS	RATE	EXTENSION
Laboratory Testing				
Concrete Compressive Strength Test (Set of 4)	1 Set / 100 CY	18	\$155.00	\$2,790.00
Non-Shrink Grout Compressive Strength Tests (Set of 3)	1 set / day	2	\$137.00	\$274.00
Compaction Curves - Base Rock (6" Mold)	1 per material	2	\$286.00	\$572.00
Compaction Curves - Site Soils (4" Mold)	1 per material	1	\$269.00	\$269.00
LABORATORY TESTING ESTIMATE				\$3,905.00

BSK SERVICES ADMINISTRATION	HOURS	RATE	EXTENSION	
Registered Engineer (Review, support and reporting)	12	\$230.00	\$2,760.00	
Project Manager (Field Oversight, Daily Report Review)	12	\$230.00	\$2,760.00	
Administration (Data Processing, Report Prep., Field Coordination)	12	\$90.00	\$1,080.00	
Certified Payroll / DIR Upload	Monthly	4	\$300.00	\$1,200.00
Reports				
Final Affidavit	1 Per Permit	1	\$375.00	\$375.00
ADMINISTRATION ESTIMATE			\$8,175.00	
TOTAL BUDGET ESTIMATE			\$84,170.00	

20% CONTINGENCY - \$16,834.00
 TOTAL INSPECTION AND TESTING ESTIMATE - \$101,004.00



Fire Station 55

FIELD SERVICES	DAYS	HRS/DAY	HOURS	RATE	EXTENSION
Earthwork Construction					
Pier Drilling Observation	4	8	32	\$135.00	\$4,320.00
Compaction Testing Technician	5	6	30	\$135.00	\$4,050.00
Compaction Testing Technician - HMA	1	8	8	\$135.00	\$1,080.00
Nuclear Gauge Equipment Fee	6			\$64.00	\$384.00
Concrete Construction					
Reinforcing Steel Placement Observation	10	6	60	\$149.00	\$8,940.00
Concrete Placement Observation & Sampling (Half Day)	6	6	36	\$149.00	\$5,364.00
Concrete Placement Observation & Sampling (Full Day)	4	8	32	\$149.00	\$4,768.00
Sample Pickup and Delivery	10	2	20	\$108.00	\$2,160.00
Shear/Diaphragm Nailing Observation					
Shear/Diaphragm Nailing ≤ 4" O.C.	3	6	18	\$149.00	\$2,682.00
Post Installed Anchors/Dowels					
Placement Observation	6	6	36	\$118.00	\$4,248.00
Torque Testing/Proofload Testing	6	6	36	\$118.00	\$4,248.00
Equipment Fee	6			\$64.00	\$384.00
Mobilization / Travel					
Trip Charge (Mileage, Bridge Toll)	55			\$100.00	\$5,500.00
FIELD SERVICES ESTIMATE					\$48,128.00

LABORATORY TESTING	FREQUENCY	SETS/UNITS	RATE	EXTENSION
Laboratory Testing				
Concrete Compressive Strength Test (Set of 4)	1 Set / 100 CY	10	\$155.00	\$1,550.00
AC Max Density Rice Method	1 per material	1	\$286.00	\$286.00
Compaction Curves - Base Rock (6" Mold)	1 per material	1	\$286.00	\$286.00
Compaction Curves - Site Soils (4" Mold)	1 per material	1	\$269.00	\$269.00
LABORATORY TESTING ESTIMATE				\$2,391.00

BSK SERVICES ADMINISTRATION	HOURS	RATE	EXTENSION	
Registered Engineer (Review, support and reporting)	6	\$230.00	\$1,380.00	
Project Manager (Field Oversight, Daily Report Review)	8	\$230.00	\$1,840.00	
Administration (Data Processing, Report Prep., Field Coordination)	6	\$90.00	\$540.00	
Certified Payroll / DIR Upload	Monthly	4	\$300.00	\$1,200.00
Reports				
Final Affidavit	1 Per Permit	1	\$375.00	\$375.00
ADMINISTRATION ESTIMATE			\$5,335.00	
TOTAL BUDGET ESTIMATE			\$55,854.00	

20% CONTINGENCY - \$11,170.80
 TOTAL INSPECTION AND TESTING ESTIMATE - \$67,024.80



The following optional fee estimate is for BSK to take on the GEOR role.

GEOR Services - Alternative

GEOTECHNICAL ENGINEER OF RECORD (GEOR) SERVICES - ALTERNATIVE	DAYS	HRS/DAY	HOURS	RATE	EXTENSION
Geotechnical review of the plans and specifications Principal Engineer- Geotechnical Engineer			12	\$260.00	\$3,120.00
Geotechnical Consultation, RFI Reviews, Report Reviews, Etc. Principal Engineer- Geotechnical Engineer			10	\$260.00	\$2,600.00
TOTAL BUDGET ESTIMATE					\$5,720.00

TOTAL GEOR SERVICES ESTIMATE (ALTERNATIVE) \$5,720.00

Our fee estimate applies to services commenced within 90 days of this proposal. After that time, we should review our proposal for applicability. The fees for our services will be charged on a time and materials basis in accordance with our attached fee schedule. Laboratory tests and engineering time would be per the fee schedule and billed for the number of tests accomplished and the number of hours provided. Any services required in addition to those listed above would be in accordance with our attached fee schedule. We have assumed that there is no Project Labor Agreement in-place for this project. We have also assumed that California Prevailing Wages do apply to this project and have adjusted our hourly rates accordingly.

For the basic scope of services outlined above, we anticipate an estimated total not-to-exceed time and materials fee of approximately \$84,170 for Fire Station 54, and \$55,854 for Fire Station 55. For the optional scope of services outlined above, we anticipate an estimated total fee of approximately \$5,720. Note that if selected, the optional scope of services is additive to the basic scope of services. Should the construction schedule or your requested site visits require a lesser or greater amount of service than that estimated herein, our fees would vary accordingly. Our fee estimate does not include a contingency for retesting or re-inspection of failing tests or unsatisfactory work by the contractor. The actual charges for our services will depend largely on the contractor's actual schedule and progress, as well as possible impacts of weather, work stoppages, and quality of material used, all of which are beyond our control. Proficient contractor performance reduces the number of test and inspection visits required, consequently resulting in lower total fees. We are not in control of such events, nor how and when construction activities are completed, and as a result, we can only approximate our estimates for your use. To account for such uncertainties, we suggest that a contingency budget of at least 20 percent of the above estimated fee for construction be set aside for our services as outlined above in our estimates.

It is our practice to notify you if it appears our fees will exceed our estimate, but due to the timing and nature of our services and to make sure that your project is not delayed, this may not always be possible. Our invoices will serve as an update of our progress as well as fees charged versus our estimate. Invoices are payable upon receipt and deemed delinquent if not paid within 60 days. Delinquent invoices may be subject to interest/service charges, and collection expenses including attorney's fees, at our election.



AUTHORIZATION

If you agree with our proposed services described above, please send us a Professional Services Agreement for the services outlined above. As indicated previously, BSK has reviewed the City's sample Professional Services Agreement (PSA) and takes no exceptions to the language in the agreement.

Acceptance of this proposal will indicate that the Client has reviewed the scope of services and determined that they do not need or want more services than are being proposed at this time. If there is a need for any change in the scope of services or schedule described in the proposal, please call us immediately. Changes may require revision of the above fee estimate.

This proposal presents our understanding of your current needs for construction observation and testing services during construction of this project. BSK is committed to providing quality service to its clients, commensurate with their wants and needs. If a portion of this proposal does not meet your needs, or if those needs have changed, BSK is prepared to consider appropriate modifications, subject to the standards of care to which we adhere as professionals. Modifications such as changes in scope, methodology, scheduling, and contract terms and conditions may result in changes to the risks assumed by the Client as well as adjustments to our fees.

LIMITATIONS

BSK will perform its services consistent with that level of care and skill ordinarily exercised by other consultants practicing in the same discipline and locale at the time the services are performed. No other warranties, either express or implied are provided. Unless the City selects the optional services presented above, BSK will not take over the role of GEOR for this project.

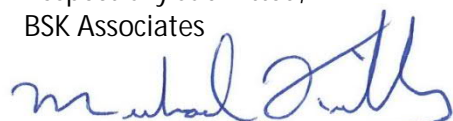
It should be recognized that construction monitoring is a technique employed to reduce the risk of problems arising during construction. Provision of construction monitoring by an engineer is not insurance, nor does it constitute a warranty or guarantee of any type. Even with diligent construction monitoring, some construction defects may be missed. In all cases, the contractor shall retain responsibility for the quality of the work and for adhering to plans and specifications and for repairing defects regardless of when they are found. We do not undertake the guarantee of construction nor production of a completed project conforming to the project plans and specifications.



CLOSURE

We appreciate the opportunity to submit this proposal for your consideration and we look forward to working with you on this project. If you have questions concerning this proposal or require additional information or services, please contact the undersigned at (925) 315-3151.

Respectfully submitted,
BSK Associates



Michael Kibbey
Assistant Project Manager



Tim Rodriguez
Northern Regional Manager

Enclosures: Basis of Charges
 BSK 2021-2022 Fee Schedule





399 Lindbergh Avenue
Livermore CA 94551
P 925.315.3151
www.bskassociates.com

BASIS OF CHARGES
Special Inspections and Materials Testing Services
San Rafael Fire Stations 54 and 55
San Rafael, California

The charge schedule listed below will be our basis for invoicing.

Show-up (No site work performed) and sample pickup	Bill 2 Hours
Work up to 4 Hrs.	Bill 4 Hours
Work from 4 to 6 Hrs.	Bill 6 Hours
Work from 6 to 8 Hrs.	Bill 8 Hours
Work from 8 to 12 Hrs. and Saturdays	Time and One Half
Work Over 12 Hrs., Sundays and Holidays	Double Time
Travel (Portal-to-Portal)	Hourly



BSK Associates - September 1, 2021 to June 30, 2022 Schedule of Fees (North Determination)

PERSONNEL RATES	
PROFESSIONAL STAFF	TECHNICAL STAFF (North Prevailing Wage)
Principal	Group 1 - Special Inspector
Senior Professional	Group 2 - Special Inspector
Project Professional II	Group 3 - Engineering Technician
Project Professional I	Group 4 - Technician
Staff Professional II	Ground Penetrating Radar Scanning Technician
Staff Professional I	Core Drilling Technician
Seismic GIS	Floor Flatness Testing Technician
GIS Specialist	Courier
Information Specialist II	Laboratory Technician
Information Specialist I	Administrative Assistant / Clerical
CAD	Litigation support
Project Administrator	1.5x standard rate
REIMBURSABLES	
Mileage (Portal to Portal)	Field Work from 0 to 4 hours
Per Diem (as required)	Field Work from 4 to 8 hours
Bridge Toll	Field Work over 8 hours / Saturdays
Parking Fees	Sundays, holidays and over 12 hours
Subconsultant Services	Second/Special/Multi-Shift
Project Administration Fees	Show-up time (no work performed)
DIR Administration Fees	Sampling or cylinder pickup, minimum charge
Project Setup (Project)	
	BASIS OF CHARGES FOR FIELD TECHNICIAN SERVICES
	Field Work from 0 to 4 hours
	Field Work from 4 to 8 hours
	Field Work over 8 hours / Saturdays
	Sundays, holidays and over 12 hours
	Second/Special/Multi-Shift
	Show-up time (no work performed)
	Sampling or cylinder pickup, minimum charge
	EQUIPMENT
	Nuclear Gauge (Day)
	Ultrasonic Weld Equipment (Day)
	Torque Wrench (Day)
	Proof Load Equipment (Day)
	Rebar Locator / Pachometer
	Hand Auger (Day)
	Water Meter (Day)
	Drilling Kit - Paint, stakes and lath - (Project)
	Drilling Supplies - Reuse of tubes/caps (Project)
	Manometer (Day)
	Double Ring Infiltrometer (Day)
	DIR/PREVAILING WAGE ADMINISTRATION FEES (MONTHLY)
	Certified Payroll / DIR Upload
	Non-Performance Certified Payroll / DIR Upload
	Subcontractor Management / Compliance Forms
	Additional LCP Tracker or Other Compliance Software
	Additional Special Forms, as required
	MATERIALS LABORATORY TESTS
SOILS	
Moisture Density Curves	California Bearing Ratio (CBR)
Standard Proctor, 4" (ASTM/AASHTO)	CBR at 100% (ASTM D1883 or AASHTO T-180)
Modified Proctor, 4" Mold (ASTM/AASHTO)	CBR at 95% (ASTM D1883 or AASHTO T-180)
Modified Proctor, 6" mold (ASTM D1557)	
Caltrans Maximum Wet Density (CT 216)	Permeability Tests
Check Point	Rigid Wall Permeability (ASTM D2434)
	Flexible Wall Permeability (ASTM D5084)
	Remolded Flexwall Perm (ASTM D5084)
	Soil Corrosivity Tests
	Minimum Resistivity of Soils (CT 643)
	pH
	Soluble Sulfate, Chloride and Sulfide
	Soil Cement Tests
	Freeze Thaw Abrasion (ASTM D560)
	Wetting-Drying Abrasion (ASTM D559)
	Preparation of Freeze-Thaw or Wetting-Drying Tests
	Soil Cement Compression (ASTM D1633)
	Other
	Sand Density Calibration (ASTM D1566)
	Unconfined Compression
	Unconfined Compression (ASTM D2166)
	Shear Tests
	Direct Shear, Undisturbed (ASTM D3080)
	Direct Shear, Remolded (ASTM D3080)
	Triaxial Compression Testing
	QUOTE
Particle Size Analysis	
Sieve Analysis w/ Wash (ASTM D422)	
Minus #200 Wash, Soil (ASTM D1140)	
Hydrometer Analysis (ASTM D422)	
Double Hydrometer (ASTM D4221)	
Specific Gravity of Soil (ASTM D854)	
Visual Classification (ASTM D2488)	
Sand Equivalent (ASTM D2419)	
% Organics in Soil (ASTM D2974)	
Atterberg Limits / Swell Tests	
Plasticity Index (ASTM D4318)	
Shrinkage Limits of Soils (ASTM D427)	
Moisture Density Test	
Tube Density	
Moisture Content of Soils (ASTM D2216)	
"R" Value Determination	
R-Value of Soils (CT 301)	
R-Value of Treated Materials (CT 301))	
Consolidation Tests	
Consolidation (ASTM D2435)	
Consolidation , Extra Points (ASTM D2435)	
Collapse Potential of Soils (ASTM D2435)	
Remolded Consolidation (ASTM D2435)	
One-Dimen Swell of Soil (ASTM D4546)	

BSK Associates - September 1, 2021 to June 30, 2022 Schedule of Fees (North Determination)

MATERIALS LABORATORY TESTS			
AGGREGATES			
Sieve Analysis Coarse or Fine (ASTM C136)	\$	95.00	
Sieve Analysis w/ Fineness Modulus	\$	102.00	
Minus 200 Wash, Aggregates (ASTM C117)	\$	95.00	
Specific Gravity/Absorption (ASTM C127)	\$	183.00	
Specific Gravity/Absorption (ASTM C128)	\$	183.00	
Organic Impurities (ASTM C40)	\$	95.00	
% Lumps/Friable Particles (ASTM C142)	\$	92.00	
% Flat and Elongated (ASTM D4791)	\$	144.00	
Fine Aggregate Angularity (AASHTO 304)	\$	92.00	
Moisture Content (ASTM D2216)	\$	49.00	
Aggregate Wt., pcf Compacted (ASTM C29)	\$	101.00	
Aggregate Wt., pcf Loose (ASTM C29)	\$	75.00	
Abrasion by LA Rattler, Small Size (ASTM C131)	\$	269.00	
Abrasion by LA Rattler, Large Size (ASTM C131)	\$	327.00	
Sodium Sulfate Soundness, Per Sieve (ASTM C88)	\$	125.00	
Sodium Sulfate Soundness, Min. Charge (ASTM C88)	\$	399.00	
Sand Equivalent (ASTM D2419 OR CT 217-I)	\$	144.00	
Durability Index (CT 229)	\$	286.00	
Potential Reactivity of Aggregates		QUOTE	
Cleanness Value of Aggregate (CT 227)	\$	206.00	
Hydrometer (ASTM D422 OR CT 205-E)	\$	256.00	
% Crushed particles (CT 205)	\$	189.00	
Lightweight Pieces (ASTM 123)	\$	250.00	
HOT MIX ASPHALT			
JMF Mix Design, HVEEM	\$	3,542.00	
JMF Mix Design, Marshall	\$	4,197.00	
JMF Mix Design, Superpave / Caltrans	\$	10,226.00	
JMF Verification - HMA - Superpave / Caltrans	\$	5,926.00	
JMF Production Startup - Superpave / Caltrans	\$	5,513.00	
RAP Material Testing - Additional Fee	\$	717.00	
Rubberized RHMA Material - Additional Fee	\$	1,654.00	
Hamburg Wheel Track (AASHTO T324)	\$	3,005.00	
Gyratory Compaction (AASHTO T312)	\$	382.00	
AC Content by Centrifuge (ASTM D2172)	\$	328.00	
AC Content-Ignition (ASTM D6307 / CT382 / AASHTO T308)	\$	256.00	
Superpave Ignition Oven Correction (AASHTO T308)	\$	595.00	
Moisture Content of Asphalt (CT 370)	\$	75.00	
Gradation/Extraction Aggregate (ASTM D5444)	\$	155.00	
Film Stripping	\$	102.00	
Compaction/Preparation of HMA Briquette (CT 304)	\$	250.00	
Stabilometer Value (CT 366 / AASHTO T246)	\$	201.00	
AC Core Specific Gravity (ASTM D2726)	\$	64.00	
AC Core Specific Gravity - Paraffin Coated (AASHTO T275)	\$	167.00	
AC Max Density Rice Method (ASTM D2041)	\$	286.00	
CIR/FDR Compressive Strength Testing (pre-compacted specimen, includes conditioning) – CTM 371	\$	275.00	
Tensile Strength Ratio (AASHTO T283)	\$	1,253.00	
Moisture Vapor Susceptibility (CT 307)	\$	233.00	
AC Surface Abrasion (CT 360)	\$	572.00	
Index Retained Strength (ASTM D1074-D1075)	\$	512.00	
AC Hveem Maximum Density (CT 375)	\$	512.00	
Marshall Stability and Flow (ASTM D6927)	\$	286.00	
Calculated AC Maximum Density (CT 367)	\$	113.00	
Marshall Maximum Density, 50 Blows (ASTM D6926)	\$	333.00	
Examination of AC Cores	\$	39.00	
Thickness Determination of AC Cores	\$	25.00	
AC Tensile-Strength Premixed ASTM D4867	\$	740.00	
AC Tensile-Strength Lab Mixed ASTM D4867	\$	1,253.00	
REINFORCING STEEL			
Tensile & Bend of Rebar, #3 - #8	\$	169.00	
Tensile & Bend of Rebar, #9 - #11	\$	169.00	
Bend Test of Rebar	\$	69.00	
Slip and Tensile Rebar Couplers (CT 670)	\$	246.00	
Tension Test of Welded Wire Fabric		QUOTE	
Bend Test of Welded Wire Fabric		QUOTE	
Weld Shear Test, Welded Wire Fabric		QUOTE	
PT Cable Tensile and Elongation (ASTM A416 or A421)	\$	310.00	
PT Cable Preparation		QUOTE	
CONCRETE			
Cement Content Concrete (ASTM C1084)	\$	431.00	
Chemical Test (ASTM C150)		QUOTE	
Set Times Cement-Vicat Needle (ASTM C191)	\$	357.00	
Specific Gravity of Hydraulic Cement (ASTM C191)	\$	172.00	
Lineal Shrinkage Set of 3 (ASTM C157)	\$	454.00	
Compression Test of Concrete - 1 (ASTM C39)	\$	39.00	
Compression Test of Concrete - 4 (ASTM C39)	\$	155.00	
Compression Test of Core (ASTM C42)	\$	69.00	
Preparation of Specimens, Sawing	\$	78.00	
Compressive Strength of Shotcrete Panel	\$	364.00	
Proportion of Cement in Concrete (ASTM C85)	\$	399.00	
Flexural Test Per Beam (ASTM C78)	\$	102.00	
Splitting Tensile Strength of Concrete (ASTM C496)	\$	102.00	
Unit Weight Lt Wt Concrete (ASTM C567)	\$	64.00	
"AZ" Test-Reinforced Concrete Pipe "Life Factor"	\$	89.00	
9 Pt Core Measurements, Each (ASTM C174)	\$	39.00	
Concrete Trial Batches		QUOTE	
Unit Weight & Abs Concrete (ASTM D642)	\$	144.00	
Accelerated Curing of Concrete (ASTM C684)	\$	286.00	
Cylinder Molds (each)	\$	8.00	
Storage of Concrete Cylinders for more than 45 Days	\$	66.00	
RH Probe	\$	66.00	
Calcium Chloride Kit	\$	44.00	
Mixing Water (pH, elec. conductance, chloride, sulfate)	\$	113.00	
Contact Soil (pH, elec. conductance, chloride, sulfate)	\$	136.00	
MASONRY			
Concrete Masonry Units Testing (ASTM C90)			
Compression Test Pavers, Single	\$	88.00	
Compression Test Composit CMU Prism	\$	189.00	
Specific Gravity and Unit Weight	\$	131.00	
Moisture Content	\$	61.00	
Compression Test, Masonry Units (ASTM C140)	\$	119.00	
Absorption / Moisture Content (ASTM C140)	\$	119.00	
Linear Shrinkage (ASTM C426)	\$	460.00	
Masonry Core Shear Test (Title 24)	\$	214.00	
Masonry Core Compression/Shear Test (Title 24)	\$	214.00	
Compression Test Brick, Each (ASTM C67)	\$	85.00	
Absorption/ Unit Wt. of Brick (ASTM C67)	\$	89.00	
Compression Test Grout (Set of 3 or 4)	\$	137.00	
Compression Test Mortar (Set of 3 or 4)	\$	125.00	
WELDING AND STRUCTURAL STEEL			
Welder Qualification Testing			
Welder / Procedure Welder Qualification Testing		QUOTE	
Face Bend of Steel	\$	69.00	
Root Bend of Weld Coupon	\$	69.00	
Side Bend of Weld Coupon	\$	69.00	
Tensile Test of Steel Coupon	\$	95.00	
Bend Test of Steel Coupon	\$	82.00	
Machining Charges (Per Coupon)		QUOTE	
Brinell Hardness of Steel (ASTM E10)	\$	113.00	
Rockwell Hardness of Steel (ASTM E18)	\$	113.00	
Bolt Ultimate Load	\$	151.00	
Bolt Hardness (set of 3)	\$	113.00	
Nut Hardness (set of 3)	\$	113.00	
Washer Hardness (set of 3)	\$	113.00	
Proof Loading, bolt or nut	\$	161.00	
FIREPROOFING			
Cohesion/Adhesion Fireproofing Materials	\$	144.00	
Dry Density Fireproofing (ASTM E605)	\$	108.00	

Escalation: The prices noted above are subject to an increase of 3-5% annual, effective January 1 of each year following the initiation of a services agreement.



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Manager

Prepared by: Marc Sabin, Homeless Program
Manager

City Manager Approval: 

TOPIC: HOMELESSNESS UPDATE

SUBJECT: INFORMATIONAL REPORT ON STATUS OF HOMELESSNESS IN SAN RAFAEL

RECOMMENDATION:

Accept informational report and provide direction and/or comment to staff.

BACKGROUND:

The [homelessness update](#) that was presented to the City Council on June 7, 2021 serves as the comprehensive background to this informational update. In addition to the link, staff has attached the full staff report here so that it can easily be viewed together with this update. This informational report will pick up where the June 7, 2021 staff report left off and will provide an update on the specific elements of the three-track plan included in that report.

While it is not possible to capture the breadth and depth of the attached comprehensive report in a small number of bullet points, the following are a few key dates to demonstrate some highlights of the past five years:

- Spring 2016: Marin Homeless Outreach Team (HOT Program) launched - develops customized housing strategies across service providers for each person experiencing homelessness.
- Mid-2017: Coordinated Entry System launched – moves customized strategy approach to a Countywide program. Uses objective measurements of vulnerability to determine housing prioritization.
- Mid-2017: Marin Housing Authority pledges annual slots of Section 8 vouchers for referrals from Coordinated Entry. State releases new funding for “Whole Person Care” to provide resources to high utilizers of the healthcare system. “Housing First” is launched at scale, which is the underlying approach for Marin County’s system of care - including housing and case management. In Marin County, the primary provider of case management is through the Marin County Department of Health and Human Services and the Marin Housing Authority is the key player in providing housing.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

- 2017-present: Coordinated Entry system houses 427 people who had been experiencing chronic homelessness.
- 2018-present: Community Homeless Fund supported by all Marin jurisdictions.
- Fall 2020: City of San Rafael allocates \$1.54M towards Marin’s first Project Homekey site at 3301 Kerner Boulevard.
- Fall 2020: City of San Rafael allocates \$750,000 towards Mill Street 2.0 permanent supportive housing and shelter site.
- Summer 2021: Case Management regional expansion - City of San Rafael contributes \$260,000 for case management services.
- Summer 2021: Service Support Area (SSA) opens to focus supportive services to the encampment.

ANALYSIS:

The below is a brief update on each of the three-tracks recommended in the June 7, 2021 report.

“Track 1 – Immediate. Facilitate using Project Roomkey and Project Homekey existing beds to house people and match them with case management.”

As mentioned in the June 2021 staff report, there are currently 40 hotel room beds through Project Roomkey in San Rafael that the County of Marin is funding (and seeking full reimbursement through the State for the room cost) and are being operated by Catholic Charities. That program is funded to continue at least through January 2022.

There are also beds that come available at our Project Homekey site in San Rafael on Kerner Boulevard that is being operated as a transitional facility while Homeward Bound’s new project on Mill Street is under construction. The “Mill Street 2.0” project, which was partially funded through the City of San Rafael’s Affordable Housing Trust Fund (AHTF), is expected to open and accept individuals in August 2022 and will include 32 permanent supportive housing units in addition to shelter beds. Once Homeward Bound moves back to their Mill Street site, the 3301 Kerner Boulevard site will undergo improvements to create 44 permanent supportive housing units. Partial funding for the 3301 Kerner Boulevard site was also funded through the City of San Rafael’s AHTF.

In addition to the above, the [Casa Buena](#) Project Homekey site in Corte Madera is expected to open in March or April 2022. This will add another 18 units of permanent supportive housing for individuals experiencing homelessness. As an illustration, the following is a table of Project Roomkey, Project Homekey, or City of San Rafael Affordable Housing Trust Fund sites focused on housing for people experiencing homelessness.

Site	Type	Approx.Units
Roomkey Hotel Site – San Rafael	Project Roomkey	40
3301 Kerner Boulevard – San Rafael	Project Homekey and AHTF	44
Casa Buena – Corte Madera	Project Homekey	18
S. Eliseo Drive – Larkspur	Project Homekey	43
Mill Street 2.0 – San Rafael	Affordable Housing Trust Fund	32

“Track 2 – Leverage one-time stimulus monies to supercharge our existing Coordinated Entry system while also mitigating current health and safety concerns (beginning June 2021, subject to ability to hire and operationalize case management capacity)”

Staff's recommendation on this Track was implemented by the San Rafael City Council through the [allocation of \\$260,000](#) to support an increased program of housing-first case management regionally in Marin County. Over the past several months, each of the Marin cities and towns have decided to join in this regional effort to support additional case management in Marin.

As stated in the June 2021 City Council report, this case management will allow local cities and towns to continue to support high-needs, chronically homeless individuals with transitioning into permanent housing. At the same time, it is also critical for the City to continue to address the immediate health and safety concerns among people experiencing unsheltered homelessness. This case management work is already underway, and many individuals experiencing homelessness who have been resistant to case management and unhoused for decades, are finally finding the stability they need to engage on the next step towards getting housed.

As a second component to Track 2, staff recommended possible code amendments to restrict encampments in certain high fire risk areas and critical use facilities to address public health and safety hazards. The San Rafael City Council subsequently [approved such code amendments](#) as a part of the July 6, 2021 City Council meeting.

Also as a part of staff's Track 2 recommendation, staff suggested a program to "create a designated area for people experiencing homelessness where they can have access to clean camping facilities, restrooms, and storage." This recommendation subsequently turned into the Service Support Area (SSA) in early July 2021, which is intended as a temporary solution to assist individuals experiencing homelessness. In the months leading up to July 2021, there were extensive encampments under US 101 in downtown San Rafael on Caltrans owned property. The City worked with Caltrans to relocate the encampments to the block between Fifth and Mission Avenues, so that it can be an area of focused, supportive services.

The SSA is a collaborative approach with involvement from many local service providers who have a focus on homelessness. It creates a central, designated place for our community partners to provide services and they are doing so, some weekly and some multiple times per week. Examples of partners providing services include: the Downtown Streets Team, Ritter Center, Marin County Health and Human Services, Marin Humane Society, the CARE team, the Spahr Center, the Salvation Army, and members of the Marin Street Chaplaincy. Service providers have remarked to staff that the SSA allows them to reach more people and make greater impacts than if encampments were spread out over many locations.

As part of the collaboration with Caltrans, the County of Marin, CHP, and multiple service organizations, the SSA located between Fifth and Mission in downtown San Rafael provides:

- Full time security, 24x7
- Tents, cots, and sleeping bags
- Three restrooms with on-going maintenance
- Handwashing stations
- Electrical outlets and phone charging stations
- Garbage pick-up three times weekly
- Regular outreach
- Service referrals
- Dedicated meeting space to meet with case managers/social workers
- Weekly showers through Downtown Streets Team
- Other quality of life amenities

The SSA allows for the continuing of work with local partners to identify permanent paths to housing. Currently, there are 36 individuals living within the SSA and 23 that have been assigned a case manager since the program started. Individuals continue to be in a safe place where their social worker can work with them. The SSA is already getting people moved into housing options while community partners provide onsite services throughout the week. Eleven participants have been successfully housed in either permanent or transitional housing. The program continues to showcase its success through a significant reduction of police calls for service throughout the City and an increase in interest among potential residents applying to join the SSA (there is currently a 16-person waitlist).

The primary on-going cost for the SSA is in the 24x7 security which is approximately \$32,000 a month. Residents have reported a much greater degree of personal safety compared to when they were living outdoors without a security presence. Also, each person experiencing homelessness at the SSA has been offered a platform and a storage box to assist with weather preparedness.

“Track 3 – Leverage new housing monies to create additional permanent supportive housing (beginning summer 2021)”

As noted above, 3301 Kerner Boulevard was selected as an original Project Homekey site in the first round of the program. While there was not a Project Homekey 2.0 site recommended in the City of San Rafael through the County of Marin’s process, a site was identified in Larkspur. The County of Marin and the City of Larkspur, in partnership with Episcopal Community Services (ECS), identified a Project Homekey site at the former skilled nursing facility at 1251 S. Eliseo Drive. The property represents a unique opportunity to revitalize an underutilized parcel and increase capacity to serve vulnerable Marin residents experiencing homelessness. The property will be operated by ECS as a 43-unit, permanent supportive housing facility for single adults experiencing homelessness.

Also of note, the City of San Rafael released a [Notice of Funding Availability \(NOFA\)](#) for the next round of affordable housing funding through our Affordable Housing Trust Fund. Responses are due on December 23, 2021. The City of San Rafael announced the availability of two million five hundred thousand dollars (\$2,500,000) in funding available for the construction or the preservation of permanently affordable rental housing for seniors, families, and individuals and families with special needs including individuals and families formerly experiencing homelessness.

Additional Updates

- As of December 1, 2021, the City of San Rafael filled its vacant “Homeless Program Manager” position, continuing a commitment to dedicated staff on this topic that began in 2013 with the mental health liaison position and then in 2016 with the homeless program manager position.
- The County of Marin has recently stood up a [data dashboard](#) to illustrate the impact of the coordinated entry system in Marin.
- The Marin County Board of Supervisors, at their December 14th meeting, set aside \$500,000 in matching funds to assist with support on homeless encampment strategies. The staff report listed potential proposals could include service for encampment security, camp management, and outreach or other services.

The three tracks above are taking place concurrently. In addition to these items:

- The City of San Rafael is in the process of submitting a grant to the State of California for Encampment Resolution Funding. The funding request is to provide services such as enhanced case management services for encampments.

- San Rafael continues to advocate for additional support and housing at the County level. The City has seen the success of the SSA and believes that a similar program on County property would provide an ongoing option for interim shelter for unhoused individuals who are stabilizing before moving into housing.
- Housing First has been the primary approach in Marin County to house the homeless population since 2016/17. The City is currently working with the Marin County Board of Supervisors to convene a Homelessness Summit in spring 2022 to consider additional tools and programs to address emerging issues.

Lastly, staff would like to pass along the most recent update from [Opening Doors](#) which sends out a monthly update on the impact of Marin's coordinated entry system. The most recent report, from November 30, 2021, contains the following data for Marin:

Chronic Homelessness

- Since October 1, 2017, 427 people have been housed who were experiencing chronic homelessness
- 94.38% are still housed
- In November of 2021, 10 more people were housed

Veteran Homelessness

- Since October 1, 2017, 59 homeless veterans were housed
- In November of 2021, 5 more veterans moved into housing
- There are approximately 28 homeless veterans in Marin

Family Homelessness

- Since June of 2020, 88 homeless families have been housed
- In November of 2021, 5 more families were housed
- There are approximately 31 unsheltered and 27 sheltered homeless families in Marin

FISCAL IMPACT:

There is no fiscal impact associated with this report.

RECOMMENDATION:

Accept informational report and provide direction to staff.

ATTACHMENT:

June 7, 2021 City Council staff report, "Informational Report on Status of Homelessness in San Rafael"



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Manager

**Prepared by: Andrew Hening
Director of Homeless Planning and Outreach**

City Manager Approval: _____ 

TOPIC: HOMELESSNESS

SUBJECT: INFORMATIONAL REPORT ON STATUS OF HOMELESSNESS IN SAN RAFAEL

RECOMMENDATION:

Accept Informational Report and provide direction to staff.

BACKGROUND:

In January 2017, according to a [report](#) from the Bay Area Economic Institute and McKinsey Consulting, Marin County had the seventh highest per capita rate of homelessness in the entire country. By January 2019, however, overall homelessness in Marin had fallen by 7%, long-term chronic homelessness had declined by 28%, and unsheltered homelessness in San Rafael had dropped by 30%. Over this same two-year period, approximately 80% of California counties saw [increases](#) in homelessness, including a 20% increase in San Mateo County, a 31% increase in Santa Clara County, and a 43% increase in both Alameda County and Contra Costa County.

These results were not an accident. Beginning in the spring of 2016, the City of San Rafael, alongside the County of Marin and local nonprofit partners, began implementing a series of pilot programs that ultimately became county-wide strategies for transforming Marin's homeless service system.

The initial drive for change was spurred by community concerns about the impacts of homelessness in Downtown San Rafael, specifically issues like disruptive public intoxication and untreated mental illness. As the City, County, and local providers began to focus on these issues, it became clear that these behaviors were not being generated uniformly across every person experiencing homelessness. Instead, a small number of very vulnerable, physically and/or mentally ill people were generating a hugely outsized impact in the community. Ironically, our providers knew all these people by name. In some cases, they had been serving these individuals for decades. In short, although we didn't have the language at the time, we realized our number one challenge was chronic homelessness.

Chronic homelessness describes people who have experienced homelessness for at least a year — or repeatedly over a number of years — who also struggle with a disabling condition such as a serious

FOR CITY CLERK ONLY

Council Meeting: June 7, 2021

Disposition: Accepted Report

mental illness, substance use disorder, trauma brain injury, and/or physical disability. Making up just 10-30% of the overall homelessness population at any given community, these individuals tend to generate significant public complaints, as well as substantial systemic costs. One [study](#) at that time, which focused specifically on homeless chronic inebriates, found that these high-needs individuals were costing the community \$60,000+ per year in public services (e.g. emergency room visits, EMS transports, criminal justice interventions).

Importantly, at the same time that people experiencing chronic homelessness are generating a significant community impact, these are also some of the most vulnerable people in the community, on average dying 20+ years earlier than their housed peers from treatable chronic illnesses.

To begin to serve this population, a team of local leaders, co-led by the City of San Rafael, began visiting other Bay Area communities to learn more about how this group could be helped. During those field trips, we discovered an outreach program in San Mateo which had essentially ended chronic homelessness in their downtown. The San Mateo Police Department led the effort by convening every local service provider, creating a by-name-list of the most challenging individuals in their community, and then meeting every two weeks to develop and implement customized housing strategies for each person. This effort seemed promising, so the City, the County, and local partners launched the Marin Homeless Outreach Team (HOT) in early 2016 with an initial focus on Downtown San Rafael.

In its first 18 months, HOT housed 23 of the most high-impact, long-term chronically homeless individuals in San Rafael. Because of the success, the [League of California Cities](#) named HOT a state-wide best practice for addressing homelessness.

Based on HOT's early success, our team started looking at ways to scale our impact. The tipping point was when we discovered [Community Solution's Built for Zero campaign \(BfZ\)](#). BfZ is a national movement of over 80+ communities who are working to end chronic and veteran homelessness by using a shared methodology and data standards. To-date, with the help of the BfZ model:

- 1 California community (Riverside City & County) has ended veteran homelessness
- 3 communities nationally have ended chronic homelessness
- 11 communities nationally have ended veteran homelessness
- 44 communities nationally have driven a community-wide reduction in homelessness

The BfZ methodology is predicated on:

- **Integrating the Local Team:** Traditionally, homelessness response systems are deeply siloed. BfZ communities build integrated, multi-agency teams which take responsibility for getting to zero.
- **Real-Time Measurement:** BfZ communities build privacy-protected, continuously updated, by-name lists of all those experiencing homelessness to track and respond to the problem in real time.
- **Rapid Cycle Testing:** Homeless is too dynamic for ten-year plans. BfZ communities use the same iterative problem-solving skills that have revolutionized global health efforts like the fight against polio to test, evaluate and scale the highest impact strategies quickly.
- **Targeted Housing Investments:** Many cities have ramped up affordable housing with no effect on homelessness. BfZ communities use real-time data to make targeted investments that yield reductions.

Encouraged by the example of BfZ communities who were farther along in the process than we were (e.g. Montgomery County, Maryland, a suburban community outside of Washington, D.C. had reduced

chronic homelessness by 50%; Bergen County, New Jersey, a suburban community outside of New York City had ended chronic homelessness), in October 2017 we officially launched our new countywide “Coordinated Entry System”. Coordinated Entry took the by-name-list concept we piloted in San Rafael with HOT and made it a countywide system. We shifted from subjectively determining who the most high-needs individuals were and instead moved to more objective measurements of vulnerability to determine housing prioritization.

Of course, the by-name-list was just the first step – it was the organizing principle. To be successful, we needed more housing and services. Prior to the launch of Coordinated Entry, we had been reliant on one-off openings in existing supportive housing programs, as well as an occasional housing voucher from Marin Housing Authority (MHA). Impressed by our results, however, in the summer of 2017, MHA pledged annual slots on the Section 8 Waitlist for referrals from Coordinated Entry. This commitment, in turn, was contingent on the County of Marin providing sufficient supportive services to ensure these high-needs individuals were receiving sufficient assistance. Fortunately, at that same time, the State of California released new funding through “Whole Person Care”, which was designed to provide counties with the resources they needed to serve individuals who were high utilizers of the healthcare system. Because of the new vouchers and service dollars, our community was able to launch “Housing First” at scale.

[Housing First](#) is an evidence-based best practice for housing people experiencing chronic homelessness. Historically, communities often make housing contingent on a person first getting sober, getting medicated, getting employed, and thriving in emergency housing. The result is that the most high-needs people are unable to meet these requirements, precisely because they are high-needs, and, thus, they never get housed. Housing First flips that notion on its head. It treats the lack of permanent housing as *the* paramount, foundational challenge. Once someone is back inside, then they can begin to work on their sobriety, employment, etc. Interestingly, the long-term retention rates in Housing First programs are in some cases 200% higher than the status quo of “treatment first”.

Since October 2017, of the 330+ chronically homeless people we’ve housed, over 90% are still housed. For individuals who were homeless in San Rafael, based on data from the Police Department and Fire Department, we have observed a 54% reduction in EMS transports after people are housed and an 86% reduction in police interactions. Of note, thanks to the flexibility of the housing vouchers, the people who are being housed are finding units throughout the county, not simply in San Rafael, including in Mill Valley, Corte Madera, San Anselmo, Novato, and Inverness.

In addition to the City’s strategic efforts around chronic homelessness, over the last five years there have also been a number of tactical changes that have also gone into effect in San Rafael to mitigate the impacts of homelessness in our community.

- First and foremost is providing permanent housing. In 2020, Homeward Bound of Marin started construction on 32 new units of permanent supportive housing at their Mill Street Center. The City of San Rafael contributed \$750,000 through the Affordable Housing Trust Fund. Additionally, in November of last year, the City Council [approved allocating funding](#) from the Affordable Housing Trust Fund in the amount of \$1.54 million to support the County’s purchase of 3301 Kerner Boulevard through the State of California’s Project Homekey initiative. This will produce another 44 units of permanent supportive housing (3301 Kerner is currently being used as the temporary Mill Street Shelter as Homeward Bound finishes work at their current site). In total, the City of San Rafael has provided over \$2.2 million in funding to these homelessness-related sites. Additionally, the City allocated \$800,000 from the Affordable Housing Trust Fund to the 67-unit Vivalon (former Whistlestop) senior housing project downtown (Eden Housing) which will be 100% affordable units.

- In 2017, based on a Memorandum of Understanding between the City of San Rafael and the Ritter Center, the Ritter Center stopped providing general mail services. The City now funds Ritter (\$10,000 per year) to administer PO Boxes at the San Rafael Post Office on Bellam Blvd, and the Ritter Center is still able to provide mail for people who would otherwise be unable to utilize this service (e.g. clients with significant disabilities).
- In 2018, based on the same Memorandum of Understanding, Ritter stopped providing shower services Downtown. This closure was coordinated with the launch of the [Marin Mobile Care](#) mobile showers, which are now operated by Downtown Streets Team in East San Rafael, Novato, Fairfax, and Sausalito. They are also approved to operate in Corte Madera and Larkspur. Given that over 70% of Marin's homeless community is located *outside* of San Rafael, this service has been able to help people who otherwise would not have any such hygiene support.
- Through continued leadership from the City, every city and town in Marin has been contributing to the Community Homeless Fund. Since 2018, the fund has been used to support the mobile shower program as an outreach platform for Coordinated Entry. With total annual funding of \$180,000, San Rafael contributes \$36,000 a year. The current three-year funding commitment ends after FY20-21; however, Marin Community Foundation has provided \$180,000 to cover FY21-22.
- The City continues to support the [Downtown Streets Team](#), which is a work experience program designed to beautify the community while helping people experiencing homelessness regain the skills and confidence they need to reenter the workforce. After starting as a pilot in Downtown San Rafael in July 2013, the program is now operating city and countywide. The City is currently considering a new contract with Downtown Streets Team for FY21-22 and FY22-23, which would not exceed \$100,000 per year.
- The City continues to provide proactive outreach to the homeless community through the Police Department's Special Operations Unit, which is led by Sgt. Carl Huber and includes San Rafael's Mental Health Outreach Liaison Lynn Murphy (and comfort dog Blue).

ANALYSIS:

The last year has raised many new challenges and concerns in our community about homelessness, and it is yet again requiring a fresh look at the way the City and its partners address this complex issue.

The conventional benchmark for evaluating homeless services is the Homeless Point-in-Time Count, which is conducted in every odd year in January. Because of COVID-19 public health guidelines, communities could opt out of conducting the PIT in 2021, and that's what Marin County decided to do. However, in its place, the County coordinated [a dedicated vehicle count](#). It is commonly believed that people who are living in their vehicles are more recently homeless (i.e. if a person loses their housing, they are more likely to transition to their vehicle, if they have one, than directly to the street). From 2019 to 2021, there was a 91% countywide increase in the number of people living in vehicles, including a 119% increase in San Rafael specifically (58 vehicles to 127). Of note, the number of people experiencing homelessness in San Rafael remains less than 30% of the countywide total population, yet again showing the countywide nature of this problem.

Even while the number of people experiencing homelessness while living in their vehicles has risen substantially, the majority of the public feedback and commentary over the last year has arisen out of community frustration about growing encampments, most notably under the central San Rafael 101 viaduct and in Boyd Park, though staff is aware that there are encampments throughout the entire city.

Despite their outsized visibility and impacts, encampments remain relatively rare overall. Based on the best data we have (the 2019 Homeless Point-in-Time Count), just 15% of people experiencing

homelessness in Marin County reside in tent encampments. It's also worth noting that, at least in San Rafael, it appears that upwards of 90% of people residing in encampments are in fact chronically homeless. Therefore, we again see a nexus with needing to provide support and services for the most vulnerable people in our community.

One of the biggest challenges over the last 12 months is that a number of evolving factors have been impacting local communities' ability to respond to these growing encampments, which has contributed to them growing in size and visibility:

- **Public Health Guidance:** At the start of the pandemic, when very little was known about the COVID-19 virus, the Centers for Disease Control (CDC) put out guidance to communities across the country regarding how to support people experiencing homelessness. Those guidelines specifically called out encampments. "If individual housing options are not available, allow people who are living unsheltered or in encampments to remain where they are. Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread."
- **Legal Guidance:** In recent years a court case called *Martin v. Boise* gradually worked its way through the federal courts, ultimately resulting in a decision by the 9th Circuit Court of Appeals holding that it is unconstitutional to impose criminal penalties on people experiencing homelessness for sitting, sleeping, or lying outside on public property if there is not sufficient shelter for those individuals. The Supreme Court declined to take up the case, and the original 9th Circuit precedent remains in place. When the 9th Circuit ruling was appealed to the US Supreme Court, a key question was sleep. The original ruling centered around sleep being a basic human right. It is cruel to wake people up or move them along if they're not doing anything wrong, especially if they have nowhere else to go. In the wake of this ruling, however, there is a serious question about the intersection of sleep and informal shelter. Are encampments – which essentially become permanent structures, a place for gathering during waking hours, and a location for storage and other personal belongings – the same thing as sleep? As Bay Area cities like Santa Cruz have been learning, over the past few months, as more litigation around encampments has been arising, rather than further refining the *Martin v. Boise* precedent, local judges have been focused on public health concerns (i.e. the CDC's guidance).
- **Jurisdictional Boundaries:** Both of these issues are further complicated by the intersection of public agency jurisdictional boundaries. For example, the San Rafael Viaduct Encampment is on State property controlled by Caltrans and monitored by the California Highway Patrol. Thus, the City must work with these agencies and navigate their interpretation of the factors above.

Given this new environment, the City of San Rafael and its partners have been working to mitigate the impacts of these encampments while continuing to focus on our core strategy of permanently housing the most vulnerable people in our community.

- City Elected Officials and staff have been meeting with Senator Mike McGuire, Caltrans, and the County of Marin since September to develop new approaches.
- Nonprofit providers including Downtown Streets Team, Community Action Marin, and the Ritter Center have been conducting regular outreach, as well as Lynn Murphy, the City's Mental Health Outreach Liaison.
- All of this outreach is ultimately about housing. The County, City, and local service providers are meeting weekly to case-conference the individual housing needs of the people living in the city's largest encampments.
- The City's Department of Public Works continues to assist with regular trash pickups.
- Marin Sanitary is now servicing trashcans that have been deployed throughout the park and ride.

- The City and County have deployed handwashing stations and bathrooms throughout the city.

To put it plainly, the scale of these challenges is beyond anything the City of San Rafael on its own can respond to. Compared to the County of Marin, as well as other larger cities in the Bay Area and California, the City of San Rafael does not have funding or capacity to provide health, human, and social service functions on any acceptable scale. While the City has played a leadership role in helping to shape local policy around homelessness, the City is ultimately dependent on the resources of other partner agencies to fully implement these strategies. Fortunately, in the wake of the COVID-19 pandemic, the State and Federal government are beginning to step up to offer unprecedented resources for local communities.

For example, based on the State of California's FY21-22 May Budget Revise, the State wants cities and counties to move away from strategies that just manage homelessness and instead focus on true systems-level solutions that prevent and end homelessness. New state funding in the coming year is expected to include:

- \$2.75 billion to cities and counties for additional Homekey acquisitions over two years, for a combined \$3.5 billion in total Homekey funding
- \$1.75 billion to support shovel-ready affordable housing projects, and another \$300 million for preservation of affordable housing units with expiring affordability covenants
- \$475 million to expand the CalWORKs Housing Support Program, which provides rental assistance, moving costs, and landlord recruitment activities to rapidly rehouse families
- \$150 million to support transitioning Project Roomkey participants into permanent housing
- \$50 million for an encampment strategy with grants to local governments to assist people in moving out of unsafe, unhealthy encampments

At a federal level, in addition to significant state and local government stimulus funding, the Biden Administration recently announced the rollout of 70,000 new housing vouchers for people experiencing homelessness, over 100 of which will come to Marin.

Given the urgency of the community's concerns, the health and safety of the people currently living in encampments, and the impending infusion of new financial resources, staff is recommending a three phased approach:

Phase 1 – Immediate. Facilitate using Project Roomkey and Project Homekey existing beds to house people and match them with case management.

There are currently 40 hotel room beds through Project Roomkey in San Rafael that the County of Marin is funding (and seeking full reimbursement through the State for the room cost) and is being operated by Catholic Charities. There are also beds that come available at our Project Homekey site in San Rafael on Kerner Boulevard that is being operated as a transitional facility while Homeward Bound's new project on Mill Street is under construction. The City would actively work with our homeless community to fill existing beds and also seek to expand the number of Project Roomkey beds through working with the County of Marin. As shown above, the State may be providing \$150 million to support transitioning Project Roomkey participants into permanent housing. It is unclear yet if that would allow an expansion of additional hotel rooms and how much would be available in Marin County. Staff could return with a recommendation to use additional American Rescue Plan Act (ARPA) funding if needed to facilitate a Project Roomkey expansion.

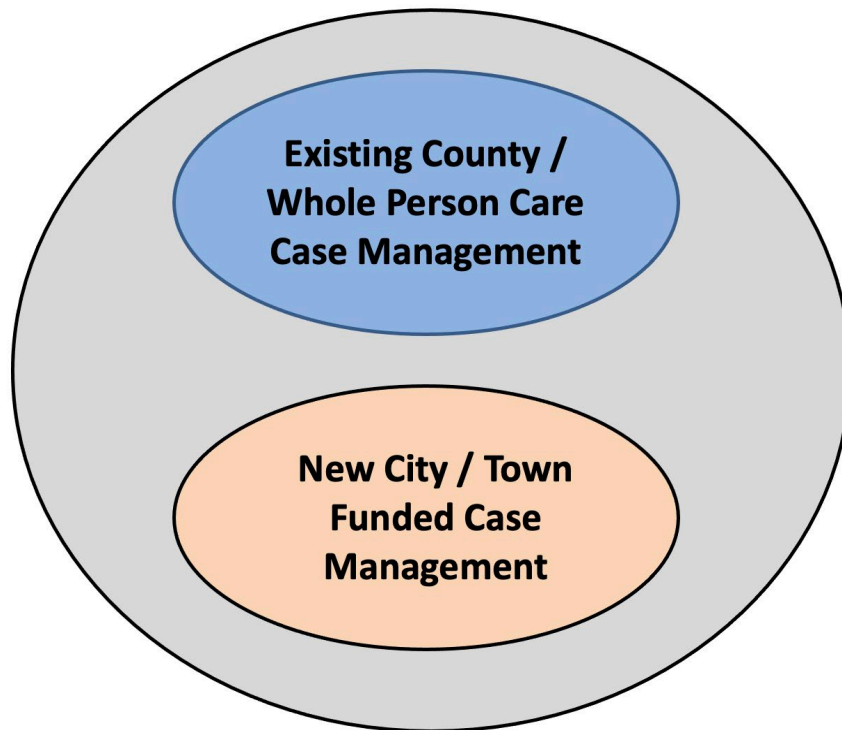
Phase 2 – Leverage one-time stimulus monies to supercharge our existing Coordinated Entry system while also mitigating current health and safety concerns (beginning June 2021, subject to ability hire and operationalize case management capacity)

As of May 2021, the number of people experiencing chronic homelessness throughout Marin County has dropped below 400 people. For people in this group, over the past few years the County has done an incredible job cobbling together different funding streams to create new case management capacity, most notably for medically fragile people. This new funding would create another subset of case management to help accelerate our progress (see Figure 1).

In order to ensure stability for any person entering housing, staff is recommending new Housing First-level case management capacity be funded for a 3-5 year period. Housing First case management typically requires one case manager to not have a caseload larger than 17 clients. The approximate all-in cost for a housing first case manager (i.e. salary, benefits, management) is \$100,000 per year. Staff is recommending that the cities and towns pool their resources to create such a program. Eight case managers, for example, would be able to provide services for 136 people throughout Marin County.

Figure 1.

Countywide Chronic Homeless Community



This case management will allow local cities and towns to continue to support high-needs, chronically homeless individuals with transitioning back into permanent housing. At the same time, it is also critical for the City to continue to address the immediate health and safety concerns among people experiencing unsheltered homelessness.

Therefore, at the same time that the City, County, and local partners are scaling up increased case management, staff recommends that the City immediately launch a pilot safe-camping program. Communities throughout the state and country have been launching similar programs that create a designated area for people experiencing homelessness where they can have access to clean camping facilities, restrooms, and storage.

To address public health and safety hazards that are frequently associated with homeless encampments, City staff is studying possible City code amendments to restrict encampments in high fire risk areas and in certain critical use facilities. The Fire Chief already exercises his discretion under City codes to close City open space to public use and encampments during fire season due to extreme wildfire risk, but staff has noted a dramatic increase in fires and other hazardous activities or conditions stemming from encampments in other significant public use areas, such as City parking garages. Staff is looking at code amendments that would give City officials more power to restrict camping or related activities in such City facilities or in other highly sensitive public areas.

Phase 3 – Leverage new housing monies to create additional permanent supportive housing (beginning summer 2021)

The City of San Rafael has been a countywide leader on permanent supportive housing. As stated earlier, in 2020 Homeward Bound of Marin started construction on 32 new units of permanent supportive housing at their Mill Street Center. Additionally, in November of last year, the City Council [approved allocating funding](#) from the Affordable Housing Trust Fund to support the County's purchase of 3301 Kerner Boulevard through the State of California's Project Homekey initiative. This will produce another 44 units of permanent supportive housing.

The City of San Rafael has also been a supporter of the State's Project Roomkey program which provided funding (in our case, to the County of Marin) to rent hotel rooms for people experiencing homelessness and then provide services to seek more permanent housing. To the extent the State of California continues to provide Project Roomkey funding, the City supports participation with location(s) in San Rafael or other jurisdictions as it is one step towards getting people permanently housed.

Also, as stated above, the State of California is planning to allocate billions of new dollars to a possible Homekey 2.0. To the extent possible, staff recommends that the City of San Rafael pursue a second Homekey 2.0 project in San Rafael, while simultaneously supporting other community partners in creating a broad and robust countywide portfolio. Homekey 1.0 created 63 new units of housing. There is no reason that Homekey 2.0 could not create, 100, 200, even 300 new units of housing. Given the expedited timing of Homekey and the requirement that units be occupied within 90 days of acquisition, even on an interim basis, Homekey 2.0 could create hundreds of new housing opportunities over the next 6-12 months.

Notably, the County of Marin is expected to set aside an additional \$5 million for Homekey 2.0 and supportive services for such projects. This will help make Homekey 2.0 a reality in Marin County.

Based on Homekey's flexibility, staff also recommends that the City and its partners consider innovative housing models, including tiny home villages, modular construction, pallet shelters, and other creative housing units. Many communities are pursuing these models for interim housing, but as we've found, the fastest way to end someone's homelessness, particularly someone who is chronically homeless, is to create a permanent unit.

In conclusion, the City of San Rafael's new City Council is inheriting a strong foundation of strategies, tactics, and partnerships that have historically been driving measurable improvements to homelessness, and these proposed modifications could further accelerate our progress.

FISCAL IMPACT:

There is no fiscal impact associated with this report.

RECOMMENDATION:

Accept Informational Report and provide direction to staff.



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: COMMUNITY DEVELOPMENT

**Prepared by: Alicia Giudice, AICP, Director
Jeff Ballantine, Senior Planner**

City Manager Approval: _____

TOPIC: MINISTERIAL REVIEW OF TWO-UNIT RESIDENTIAL DEVELOPMENTS AND URBAN LOT SPLITS PURSUANT TO SENATE BILL 9

SUBJECT: A RESOLUTION DIRECTING STAFF TO PREPARE AN INTERIM GUIDANCE DOCUMENT ESTABLISHING STANDARDS AND REVIEW PROCEDURES FOR MINISTERIAL REVIEW OF TWO-UNIT RESIDENTIAL DEVELOPMENTS AND URBAN LOT SPLITS TO IMPLEMENT SB 9 - THE CALIFORNIA HOME ACT; AND DIRECTING THE PREPARATION OF AN SB 9 IMPLEMENTING ORDINANCE

RECOMMENDATIONS:

Adopt a resolution directing staff to prepare an interim guidance document establishing standards and review procedures for ministerial review of two-unit residential developments and urban lot splits.

BACKGROUND:

On September 16, 2021, Governor Newsom signed Senate Bill 9 (SB 9) into law which will take effect January 1, 2022. This bill requires cities and counties to ministerially approve housing development projects containing no more than two residential units and new lot splits (urban lot splits) that meet certain criteria established under SB 9. The result is that, pursuant to the law, if a lot split is followed by the construction of two units on each lot, four units could be built on what was previously a single-family residential parcel. Pursuant to the regulations adopted by SB 9, local agencies may only apply existing or newly adopted objective development standards (i.e. objective zoning, design review, and subdivision standards) to these types of projects. However, such standards may not have the effect of physically precluding the construction of up to two units that are at least 800 square feet in floor area with four foot side and rear yard setbacks, on each of the existing or newly created lots.

The City's Municipal Code currently contains objective standards in Chapter 14 (Zoning) and Chapter 15 (Subdivisions) that are currently applied to residential projects and/or lot splits and can continue to be applied to these types of projects. Staff recommends developing an interim SB 9 guidance document; the interim guidance document will identify existing, objective standards that apply to SB 9 urban duplexes and urban lot splits. The interim guidance document will also invoke those standards reserved by SB 9 to City discretion and establish review procedures that would be in effect in the event the City receives an application for a housing development or lot split pursuant to SB 9 any time after January 1, 2022.

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

DISCUSSION AND ANALYSIS

SB 9 mandates that cities ministerially approve the construction of up to two residential units and urban lot splits that meet certain State standards and objective City standards (i.e. objective zoning, design review and subdivision standards). However, such standards may not have the effect of physically precluding the construction of up to two units that are at least 800 square feet in floor area with four foot side and rear yard setbacks within each existing lot or on any lot created pursuant to SB 9. The State’s adopted criteria along with a description of standards that are left to the City’s discretion are provided below.

Eligibility Requirements for Ministerial Review of up to Two Units

Regulations Established by SB 9 Legislation. SB 9 requires that a proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

1. The project site is in a single family residential zoning district
2. The proposed housing development would not require demolition or alteration of existing housing that:
 - a. Is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
 - b. Is subject to any form of rent or price control through a public entity’s valid exercise of its police power.
 - c. Has been occupied by a tenant in the last three years.
3. The proposed housing development would not result in the demolition of more than 25 percent of the existing exterior structural walls unless the site has not been occupied by a tenant in the last three years.
4. The development is not on a parcel on which the owner has withdrawn it from renting or leasing under Section 7060 of the Government Code (Ellis Act) within 15 years preceding the development application.
5. The project site is not a historic landmark, or located within a state or local historic district.
6. The development is not located in specified designated areas, including:

A high fire hazard severity zone, farmland, wetland, hazardous waste site (according to listing on the Cortese list), flood hazard area as determined by FEMA maps, lands within conservation plans, lands under conservation easement, or lands designated as habitat protection areas for species identified in the California Endangered Species Act (CESA) and the U.S. Endangered Species Act (ESA). In addition, State law prohibits the rental of any unit created under SB 9 for a term less than 30 days

Standards Reserved to City Discretion. SB 9 reserves to local agencies the authority to impose objective development standards and regulations. The San Rafael Municipal Code (“SRMC”) currently contains objective development standards embedded in Chapter 14 (Zoning) and Chapter 15 (Subdivision) and the City is able to apply those standards to urban duplexes. The City may also require off-street parking of up to one (1) space per unit unless the parcel is located within:

- a. one-half mile walking distance of a high-quality transit corridor,
- b. one-half mile walking distance of a major transit stop, or one block of a car share vehicle.

Finally, the City may adopt additional objective standards that specifically apply to SB urban duplexes and urban lot splits. For example, the City could adopt additional, more restrictive development standards related to height, setbacks, or lot coverage limits. However, as mentioned above, the City may not impose any existing or proposed development standards that preclude the following:

1. A development consisting of two attached or detached primary dwelling units, each no more than eight hundred (800) square feet in size with side and rear setbacks of four feet.
2. Conversion of an existing structure or reconstruction of any structure constructed in the same location and to the same dimensions as an existing structure.

Eligibility Requirements for Urban Lot Splits

Regulations Established by SB 9 legislation. Similar to review limits established for development projects of up to two units, SB 9 requires that jurisdictions must ministerially approve, without discretionary review or hearing, a parcel map for an urban lot split. Such projects are eligible for ministerial review only if these projects comply with the following requirements:

1. The parcel subdivision would create no more than two new parcels of approximately equal lot area and the smaller parcel shall be not less than forty (40) percent of the lot area proposed for subdivision.
2. Each parcel would have a minimum size of 1,200 square feet, unless authorized by ordinance.
3. The parcel being subdivided is located within a single-family residential zoning district and would not result in the demolition or alteration of the following types of housing units:
 - a. Housing unit that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
 - b. Housing unit that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
 - c. Housing units that have been occupied by a tenant in the last three years.
 - d. Housing units that are located on a parcel on which the owner has withdrawn it from renting or leasing under Section 7060 of the Government Code within 15 years preceding the development application (i.e., an exit of the rental housing business pursuant to the Ellis Act);
4. The Site is not a historic landmark, or located within a historic district (state or local)
5. The development is not located in specified designated areas, including a high fire hazard severity zone, farmland, wetland, hazardous waste site (according to listing on the Cortese list), flood hazard area as determined by FEMA maps, lands within conservation plans, lands under conservation easement, or lands designated as habitat protection areas for species identified in the California Endangered Species Act (CESA) and the U.S. Endangered Species Act (ESA).
6. The parcel has not been established through a prior exercise of an urban lot split authorized by SB 9.
7. Neither the parcel owner nor any person acting in concert with the owner has previously exercised an urban lot split under SB 9 on an adjacent parcel.
8. SB 9 requires the City to approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act, except as otherwise provided in SB 9. In addition, SB 9 requires that the City require an applicant for an urban lot split to sign an affidavit stating that

the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split. However, no such affidavit is required of a community land trust or qualified nonprofit.

9. No dwelling unit that exists on a lot that was created by an urban lot split is permitted to be rented for a period shorter than 30 days.

Standards Reserved to City Discretion. Development proposed on lots created by an urban lot split subdivision shall comply with all objective development standards applicable to the parcel based on the underlying zoning district. SRMC Chapter 14 (Zoning) and Chapter 15 (Subdivisions) are currently used for review of lot splits, including requirements to facilitate access and provision of public service and facilities to all parcels. The City would continue to use objective standards in these Chapters for review of urban lot splits. The City may also require additional objective provisions and standards that have been reserved to the City's discretion, including:

1. Requirements to facilitate access and provision of public service and facilities to all parcels. These types of requirements are already included in Chapter 15 of the SRMC.
2. Setback requirements of up to four feet from the side and rear lot lines, except that no setback can be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure. The proposed resolution includes these setback requirements reserved to the City.
3. Off-street parking of up to one (1) space per unit unless the parcel is located within: one-half mile walking distance of a high-quality transit corridor, one-half mile walking distance of a major transit stop, or one block of a car share vehicle. The proposed resolution includes these parking requirements which have been reserved to the City's discretion.
4. The City may limit the number of units (including primary dwelling units, accessory dwelling units, and/or junior accessory dwelling units) allowed on parcels that have taken advantage of both the urban lot split and the two unit development provisions under SB 9. The proposed resolution includes this limitation. However, the staff will study whether there is value to allowing additional ADUs/JADUs on certain parcels as part of a future update.

Regardless of the above items that have been left to City discretion, the City cannot impose standards that would physically preclude the construction of two (2) units on either of the resulting parcels or that would result in a unit size of less than eight hundred (800) square feet. In addition, the City is prohibited from requiring dedications of rights-of-way or the construction of offsite improvements and shall not require the correction of nonconforming zoning conditions as part of any approval for these types of projects.

Cause for Denial of Projects proposed pursuant to SB 9 (urban lot splits and development of up to 2 units)

Whether or not the City has adopted additional regulations related to SB 9 projects, the City may deny a proposed housing development or urban lot split proposed pursuant to SB 9 if the building official makes a written finding, based on a preponderance of the evidence, that the proposed project would have a specific, adverse impact, upon health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the adverse impact. This provision has been added to the proposed resolution.

Next Steps

With the Council's direction, CDD staff will prepare an interim guidance document that identifies existing, applicable objective standards, invokes those standards reserved by SB 9 to City discretion, and

establishes review procedures for SB 9 projects. This interim guidance document will be finalized by January 1, 2022. In addition, CDD staff will work with other departments, explore opportunities for establishment of additional standards and begin drafting an ordinance that will be brought back for City Council consideration at an early future date. Staff is requesting input from the City Council on whether there is a desire to consider incorporating additional development standards specific to SB 9 projects, which may not already be contained in the City's Municipal Code.

ENVIRONMENTAL DETERMINATION:

Pursuant to Government Code sections 65852.21(j) and 66411.7(n), adoption of the proposed Resolution is not a project under the California Environmental Quality Act and no CEQA review is required.

FISCAL IMPACT:

There is no direct fiscal impact to the City in connection with the action requested in this report.

OPTIONS:

The City Council has the following options:

- Adopt the Resolution (staff recommended);
- Adopt the Resolution with edits and additions;
- Continue the matter for additional information and further review; or
- Reject the Resolution

RECOMMENDED ACTION:

Adopt a resolution adopting and directing staff to prepare interim guidance and establishing application criteria and standards for Senate Bill 9 projects.

ATTACHMENTS:

1. Resolution Directing Staff to Prepare an Interim Guidance Document Establishing Standards and Review Procedures for Ministerial Review of Two-Unit Residential Developments and Urban Lot Splits to Implement SB 9 —The California Home Act; and Directing the Preparation of an SB 9 Implementing Ordinance
2. Senate Bill 9

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
DIRECTING STAFF TO PREPARE AN INTERIM GUIDANCE DOCUMENT
ESTABLISHING STANDARDS AND REVIEW PROCEDURES FOR MINISTERIAL
REVIEW OF TWO-UNIT RESIDENTIAL DEVELOPMENTS AND URBAN LOT
SPLITS TO IMPLEMENT SB 9 - THE CALIFORNIA HOME ACT; AND
DIRECTING THE PREPARATION OF AN SB 9 IMPLEMENTING ORDINANCE**

WHEREAS, Senate Bill 9 (Atkins) (“SB 9”), entitled the California Home Act, was signed into law by the Governor on September 19, 2021 and becomes effective on January 1, 2022; and

WHEREAS, SB 9 amends Government Code Section 66452.6, and adds two new Government Code Sections 65852.1 and 66411.7; and

WHEREAS, SB 9 requires cities and counties, including charter cities, to provide for the ministerial approval of a housing development containing two residential units of at least 800 square feet in floor area (“duplex”) and a parcel map dividing one existing lot into two equal parts (“lot split”) within a single-family residential zone for residential use; and

WHEREAS, SB 9 eliminates discretionary review and public oversight of proposed subdivisions of one lot into two parcels by removing public notice and hearings by the Planning Commission, by requiring administrative review of the project, and by providing ministerial approval of a lot split; and

WHEREAS, SB 9 exempts projects authorized thereunder from environmental review pursuant to the California Environmental Quality Act (CEQA), by establishing a ministerial review process without discretionary review or a public hearing; and

WHEREAS, SB 9 further stipulates that a city or county cannot require an urban duplex project to comply with any standard that would prevent two units of at least 800 square feet each from being built on each resultant lot, and prohibits a local agency from imposing regulations that require dedications of rights-of way or the construction of offsite and onsite improvements for parcels created through a lot split; and

WHEREAS, in addition to various constraints on SB 9 developments as set forth therein, SB 9 also authorizes cities and counties to enact local SB 9 implementation ordinances and guidelines that are objective and that are not inconsistent with its mandatory provisions; and

WHEREAS, due to SB 9’s effective date of January 1, 2022, there is insufficient time for a publicly-considered implementation ordinance to be developed, publicly reviewed, and adopted by January 1, 2022; however, in the short-term, the City may develop interim regulations and standards to guide City Departments to implement SB 9

until such time as an implementation ordinance may be considered by the City Council for adoption; and

WHEREAS, adoption of this Resolution and the interim SB 9 guidance document are not projects under the California Environmental Quality Act pursuant to Government Code sections 65852.21(j) and 66411.7(n);

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

Section 1. The City of San Rafael finds and declares that urban housing developments authorized under SB 9 are a valuable form of housing that allows for the expansion of affordable and flexible housing options.

Section 2. The purpose of this resolution is to establish and adopt interim guidance to comply with Government Code Sections 65852.21 and 66411.7 until an SB 9 implementation ordinance may be prepared and considered for adoption by the City Council. This resolution identifies provisions and standards that shall apply to SB 9 urban lot splits and SB 9 urban duplexes.

Section 3. The City Manager, Community Development Department Director, and City Attorney are directed to establish application procedures for SB 9 urban duplexes and urban lot split applications.

Section 4. The City Manager, Community Development Department Director, and the City Attorney are further directed to consult with the appropriate City Departments and staff to develop an SB 9 implementation ordinance for presentation to, and consideration by, the City Council.

Section 5. Interim SB 9 Implementation Rules and Regulations. The City Council hereby establishes and adopts the following rules, regulations and standards for all projects proposed pursuant to the authority of SB 9 (Government Code sections 65852.21 *et seq.* and 66411.7 *et seq.*):

1. All SB 9 urban duplexes and urban lot splits shall be subject to applicable existing objective development standards including, but not limited to those set forth in the General Plan 2040, Downtown Precise Plan, and the San Rafael Municipal Code.
2. All SB 9 urban duplexes shall meet the requirements mandated by SB 9. (Government Code sections 65852.21(a), (b)(2), (e), (g), and (h).)
3. All SB 9 urban duplexes shall be subject to the following conditions (which conditions are reserved to City discretion pursuant to SB 9):
 - a. Setbacks of up to four feet from side and rear yard lot lines, except No setback shall be required for an existing structure constructed in

- the same location and to the same dimensions as an existing structure. (Gov. Code § 65852.21 (b)(2)(B)(ii).)
- b. One off-street parking space per unit, except no parking shall be required in either of the following instances:
 - i. The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code. (Gov. Code § 65852.21(c)(1).)
 - ii. There is a car share vehicle located within one block of the parcel.
 - c. The City shall deny an SB 9 housing development application if the Building Official makes a specific written finding that the development project would have an adverse impact as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no method to mitigate or avoid the specific, adverse impacts. (Gov. Code § 65852.21(d).)
 - d. The City shall not permit any ADUs or JADUs on parcels that use both the authority of Government Code section 65852.21 (SB 9 housing developments) and section 66411.7 (SB 9 urban lot splits.)
4. All SB 9 urban lot splits shall meet the requirements mandated by SB 9. (Government Code sections 66411.7(a), (b), (c)(2), (f), (g), (h), (k) and (l).)
 5. All SB 9 urban lot splits shall be subject to the following conditions (which conditions are reserved to City discretion pursuant to SB 9):
 - a. Setbacks of up to four feet from side and rear yard lot lines, except no setback shall be required for an existing structure constructed in the same location and to the same dimensions as an existing structure. (Gov. Code § 66411.7(c)(3).)
 - b. The City shall deny an SB 9 housing development application if the Building Official makes a specific written finding that the development project would have an adverse impact as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no method to mitigate or avoid the specific, adverse impacts. (Gov. Code § 66411.7 (d).)
 - c. Each lot created by an SB 9 urban lot split must adjoin the public right-of-way, or provide access to the public right-of-way, by way of a recorded access easement in favor of the parcel requiring ROW access. (Gov. Code § 66411.7(e)(2).)
 - d. One off-street parking space per unit, except no parking shall be required in either of the following instances:
 - i. The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major

transit stop, as defined in Section 21064.3 of the Public Resources Code.

- ii. There is a car share vehicle located within one block of the parcel. (Gov. Code § 66411.7(e)(3).)
- e. The City shall not permit more than two units of housing, including primary dwelling units, SB 9 housing development units, ADUs, and/or JADUs, on lots created pursuant to the authority of Government Code section 66411.7 (SB 9 urban lot splits). (Gov. Code § 66411.7(j).)

EFFECTIVE PERIOD.

This Resolution shall become effective immediately upon adoption and shall expire, and be of no further force effect, upon the effective date of an ordinance, adopted by the City Council, implementing the provisions of SB 9.

SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project Revisions, shall continue in full force and effect unless amended or modified by the City.

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

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

Lindsay Lara, City Clerk



SB-9 Housing development: approvals. (2021-2022)

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Date Published: 09/17/2021 09:00 PM

Senate Bill No. 9

CHAPTER 162

An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the Government Code, relating to land use.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 9, Atkins. Housing development: approvals.

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions.

This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving the construction of 2 residential units, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of up to 2 units or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency and sets forth procedures governing the local agency's processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24 months after its approval or conditional approval or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill, among other things, would require a local agency to ministerially approve a parcel map for an urban lot split that meets certain requirements, including, but not limited to, that the urban lot split would not require the demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the parcel is located within a single-family residential zone, and that the parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving an urban lot split, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of 2 units, as defined, on either of the resulting parcels or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances. The bill would require an applicant to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of 3 years from the date of the approval of the urban lot split, unless the applicant is a community land trust or a qualified nonprofit corporation, as specified. The bill would prohibit a local agency from imposing any additional owner occupancy standards on applicants. By requiring applicants to sign affidavits, thereby expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill would also extend the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and would make other conforming or nonsubstantive changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This bill, by establishing the ministerial review processes described above, would thereby exempt the approval of projects subject to those processes from CEQA.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined, that shall be based on various coastal resources planning and management policies set forth in the act.

This bill would exempt a local agency from being required to hold public hearings for coastal development permit applications for housing developments and urban lot splits pursuant to the above provisions.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65852.21 is added to the Government Code, to read:

65852.21. (a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows.

(B) The site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.

(2) (A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:

(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(f) Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.

(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(i) For purposes of this section, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.

(2) The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(3) "Local agency" means a city, county, or city and county, whether general law or chartered.

(j) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this section.

SEC. 2. Section 66411.7 is added to the Government Code, to read:

66411.7. (a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet.

(B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for a parcel map for an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for a parcel map for an urban lot split ministerially without discretionary review.

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.

(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), a local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:

(1) Easements required for the provision of public services and facilities.

(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way.

(3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(f) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses.

(g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.

(2) This subdivision shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.

(3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.

(h) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.

(j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.

(2) For the purposes of this section, "unit" means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

(k) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(l) Local agencies shall include the number of applications for parcel maps for urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(m) For purposes of this section, both of the following shall apply:

(1) "Objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(o) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.

SEC. 3. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. However, if the subdivider is required to expend two hundred thirty-six thousand seven hundred ninety dollars (\$236,790) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way that abut the boundary of the property to be subdivided and that are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 48 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) Commencing January 1, 2012, and each calendar year thereafter, the amount of two hundred thirty-six thousand seven hundred ninety dollars (\$236,790) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency that approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed before the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or

periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Before the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action before expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency that owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency that owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency that owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

SEC. 4. The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

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

City Manager Approval: _____

TOPIC: EMERGENCY VEHICLE PREEMPTION OF TRAFFIC SIGNALS – PUBLIC SAFETY INITIATIVE

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MASTER SALE OF GOODS AND SERVICES AGREEMENT WITH GLOBAL TRAFFIC TECHNOLOGIES TO PROVIDE PREEMPTION SERVICES FOR POLICE AND FIRE VEHICLES AT SIGNALIZED INTERSECTIONS

RECOMMENDED ACTION: Adopt the resolution approving and authorizing the City Manager to execute the master services agreement.

BACKGROUND: The City of San Rafael invested in technology for traffic signals as part of a Metropolitan Transportation Commission (MTC) grant and the use of traffic mitigation fees. The investments included most traffic signals in and around the downtown area. The technology provided basic location and status information to be cloud-based utilizing the City’s fiber infrastructure and vendor (MioVision) communications platform services. In the meantime, both Police and Fire departments have Vehicle Safety Gateway service contracts with the Whelen Cloud Platform. This platform provides essential movement and location services for the police and fire vehicles.

When an emergency vehicle moves towards a desired location with full siren and lights, the emergency vehicle driver slows down significantly at signalized intersections, especially if the approaching light is red. The cumulative delay caused by an emergency vehicle navigating several traffic signals can add up to several critical minutes. Emergency vehicle preemption allows the emergency vehicle to command a green light for the approaching vehicle to facilitate safe and efficient movement of the emergency vehicle through the signalized intersection.

The City of San Rafael does not currently have the ability to preempt traffic signals for emergency vehicles. Instead, they must navigate with extra caution and associated delays. The typical solution used by many municipalities is the use of preemption equipment on the vehicles and compatible equipment on the traffic signal itself. The City has always planned for Emergency Vehicle Preemption (EVP) to facilitate the safe and efficient movement of emergency vehicles as they respond to emergencies. The upgrade of communications and traffic signal hardware has always been cost prohibitive as a typical upgrade would include additional hardware to be mounted on both traffic signals, and on emergency vehicles.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

EMERGENCY VEHICLE PREMPTION OF TRAFFIC SIGNALS – PUBLIC SAFETY INITIATIVE / Page: 2

Recent investments in traffic signal technology by the City and a unique partnership with Global Traffic Technologies (GTT), Whelen, and MioVison have created an opportunity for the City to use existing field and vehicle equipment to implement an emergency vehicle preemption system. The City of San Rafael's Fire, Police and Public Works departments have been collaborating with our vendors to provide a unique and centralized preemption solution using critical speed and location information from real time cloud-based traffic data. The solution involves reading the speed, direction and location of a moving emergency vehicle and relaying the basic information through the cloud to trigger a green light before the vehicle gets to the traffic signal. This solution is more advanced than a typical line of sight dependent solution.

ANALYSIS: GTT has proposed an agreement to provide this emergency vehicle preemption program for \$548,850 spread over a contract term of ten years (\$54,885 per year). The City of San Rafael would be among the first to receive this cloud-based and georeferencing EVP solution. When an emergency vehicle is in a Level III response mode which includes the full visual and audible displays, a wireless signal is emitted to the cloud-based system to start tracking (once per second) the movement of the vehicle. Meanwhile, a cloud-based perimeter (also known as geofencing) is established at each signalized location equipped with the MioVision Smart Link. Through the wireless tracking signal and geofenced perimeter, an estimated arrival time to a traffic signal is established. Also, the direction of travel is read by the geofencing around the traffic signal triggering the green light for the approaching emergency vehicle.

There are several advantages with the proposed solution:

- 1- All Fire and Police vehicle fleet of 56 vehicles will be equipped with Whelen transceivers (modems) which will monitor and report state mandated vehicle tracking information. The provision of the Whelen devices is indirectly included in this agreement. The City is contracting with GTT and GTT has an agreement with Whelen.
- 2- The system will start working immediately and bring the benefits of reduced response time once the City vehicles are retrofitted with the Whelen devices.
- 3- The payment for this system is spread over the next ten years and established as an annual service fee.
- 4- The performance standards for the preemptions are recorded and easily diagnosed. City staff and vendors will be able to monitor performance and make adjustments as needed.
- 5- Software upgrades and technological advancement will be provided as part of this agreement.

The agreement with GTT includes the Fire and Police vehicle fleet of 56 vehicles that are equipped with Whelen devices for ten years. It currently includes 53 traffic signals that are equipped with the MioVision devices. The specifics of the agreement will have to be adjusted as more intersections are added to the system as the City plans to expand the MioVision network in the future. The adjustments and the performance measures will be reviewed annually with all partners and stakeholders.

The City is engaged in long-term agreements providing long-term contractual services for emergency services. Should the City determine that this service is no longer achieving the goal of reducing response time, the City will have several options including the termination of the agreement and paying the remaining contract obligation at the time that services are terminated.

Staff recommends a waiver of competitive bidding for this contract as a sole-source purchase pursuant to San Rafael Municipal Code 2.55.100(C), due to the unique nature of the product offered by the partnership of the three companies (Attachment 2).

**EMERGENCY VEHICLE PREMPTION OF TRAFFIC SIGNALS – PUBLIC SAFETY
INITIATIVE / Page: 3**

FISCAL IMPACT: The quoted cost of the agreement is \$548,850, which is being amortized over a 10-year period. The amount will be paid over time with an initial annual subscription of \$54,885. This amount will be absorbed in the current budget and will be funded by the Internal Service Fund – Communications #609. Future annual payments for the 10-year contract will be appropriated for through the annual budget process.

OPTIONS:

1. The City Council may adopt the resolution and accept the proposed master agreement.
2. The City Council may reject the resolution and direct staff to take other action.

RECOMMENDED ACTION: Adopt the resolution approving and authorizing the City Manager to execute the master sale of goods and services agreement with Global Traffic Technologies.

ATTACHMENTS:

1. Resolution Approving and Authorizing the City Manager to Execute a Master Sale of Goods and Services Agreement with Global Traffic Technologies to Provide Preemption Services for Police and Fire Vehicles at Signalized Intersections
2. Global Traffic Technologies Sole Source Letter
3. Master Sale of Goods and Service Agreement

RESOLUTION NO.

RESOLUTION OF CITY COUNCIL OF THE CITY OF SAN RAFAEL AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH GLOBAL TRAFFIC TECHNOLOGIES, LLC (GTT) TO PROVIDE EMERGENCY VEHICLE PREEMPTION SERVICES AT SIGNALIZED INTERSECTIONS IN SAN RAFAEL

WHEREAS, the City of San Rafael desires to facilitate safe and convenient movement of emergency vehicles within the City; and

WHEREAS, delays currently experienced by emergency vehicles at signalized intersections could be improved with traffic signal preemption; and

WHEREAS, technological advancement in this field has now made it possible to provide preemption without making significant investment in the infrastructure; and

WHEREAS, the City has made investments in MioVision Technology enabling traffic signals to receive emergency vehicle preemption through a cloud-based solution; and

WHEREAS, all 56 City-owned emergency vehicles are equipped with Whelen transceivers enabling emergency vehicles to call on traffic signals to be preempted; and

WHEREAS, Global Traffic Technologies, LLC (“GTT”) is a leading provider of preemption hardware and software; and

WHEREAS, GTT has made a business alliance with both MioVision and Whelen to receive and transmit preemption data for the purpose of emergency vehicle preemption; and

WHEREAS, GTT proposed a unique and sole source offer, in a form of an agreement, to the City to provide this service for the sum of \$548,850, payable over the next ten years, and this agreement qualifies for a waiver of competitive bidding pursuant to San Rafael Municipal Code 2.55.100(C); and

WHEREAS, City staff from fire, police and public works reviewed the terms of the agreement, as included with the staff report for this resolution, and found it beneficial to the community;

NOW, THEREFORE, BE IT RESOLVED, that, in consideration of the above, the City Council hereby waives the requirement of competitive bidding and authorizes the City Manager to execute the agreement with GTT to provide emergency vehicle preemption service within the City of San Rafael in the amount of \$548,850, payable over ten years, in the form set forth in the staff report for this resolution, subject to final approval as to form by the City Attorney.

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

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

Lindsay Lara, City Clerk



October 6, 2021

To Whom It May Concern:

This letter is being sent in response to your request regarding the Opticom™ priority control system. Opticom is manufactured by Global Traffic Technologies, LLC (GTT). Since 1968, Opticom has been the standard in priority control, now totaling more than 5,000 agencies, 90,000+ intersections and 90,000+ vehicles worldwide. Worth noting, GTT's Opticom system is used in 48 of the 50 largest U.S. cities, amongst many other deployments in Canada, Europe, Asia-Pacific and the Middle-East.

GTT invests heavily in research and development, to ensure its customers always receive the best value and most feature-rich solutions when buying priority control. This effort has led to more than 100 patents, either granted or in-process.

The recent partnership between GTT and Whelen Engineering provides a unique and novel cloud-based traffic signal priority control solution for municipalities. There are no other like solutions or products available for purchase that would serve the same purpose or function. Opticom centralized emergency vehicle preemption (EVP) functions as an application on the Whelen Cloud Platform. No other priority control solutions are available on the platform – Opticom is the exclusive priority control application. Accessing Opticom EVP through the Whelen Cloud Platform and the Vehicle Safety Gateway reduces the hardware required for this solution, saving deployment time and resources.

While Opticom centralized preemption solutions can be deployed through a variety of system architectures, Whelen is the sole lighting and control system manufacturer to offer this solution on its platform.

For the above reasons, GTT strongly recommends enabling the Opticom centralized priority control solution using the Whelen Cloud Platform.

In Marin County, Calif., Advanced Traffic Products (ATP), is the authorized dealer for GTT. There are currently no other authorized dealers of GTT's products in this region and GTT is the sole-source provider/manufacture of Opticom products.

Please contact GTT or Whelen if you have further questions or if you require additional detail.

Best Regards,

A handwritten signature in black ink, appearing to read 'Nicole Rennalls', is positioned above the typed name.

Nicole Rennalls
President
Global Traffic Technologies.

MASTER SALE OF GOODS AND SERVICES AGREEMENT

This Master Sale of Goods and Services Agreement (“MSA” or “Agreement”) is made as of this 27th day of September, 2021, (the “Effective Date”) by and between Global Traffic Technologies, LLC (“GTT”), with its offices at 7800 Third Street North, Building 100, Saint Paul, Minnesota, 55128 and San Rafael, California (“Customer”), having its offices at 1400 Fifth Ave, San Rafael, California, 94901. Together, GTT and Customer may be referred to as “Parties” and individually as a “Party” to this MSA.

WHEREAS, GTT is the provider of certain hardware and software products manufactured and distributed by GTT and is therefore in a unique position to provide services related to its products; and

WHEREAS, Customer desires that GTT perform services as defined herein for the Customer in relation to certain products; and GTT desires to perform such services for the Customer, subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. DEFINITIONS.

- A. “Customer” – as used herein, means any purchaser or user of any of GTT’s products and/or services, including but not limited to, contractors, dealers, end users and original equipment manufacturers.
- B. “Products” – as used herein, means any hardware and/or software, excluding any software offered as a service, as specified in any schedule, purchase order or otherwise, regardless of whether such Products are purchased, leased, or subscribed to.
- C. “Software” – as used herein, means the executable code made available to Customer as a perpetual license, including documentation and to the extent software maintenance is kept current, software updates.
- D. “Services” – as used herein is defined as the services provided by GTT or its subcontractors as outlined in the Agreement, which may include but are not limited to:
 - 1. “Up-Front Services” – as used herein, means the Services provided initially that are necessary to achieve First Productive Use (defined herein):
 - i. Site survey (intersections and/or vehicles) – GTT will survey Customer’s intersections and vehicles to determine current infrastructure and needs, including wiring, hardware mounting locations and other key information necessary to ensure a successful deployment. For avoidance of doubt, Customer agrees to make vehicles and intersections available to GTT to enable the site survey.
 - ii. Project management – GTT will assign a project manager to work with Customer to create a project plan and then manage the resources deployed to execute the plan.
 - iii. Installation (intersections) – GTT will install, configure and test phase selectors, modems, radios, antennas and/or cables, including testing to ensure proper operation and in preparation for Final Testing (defined herein).

- iv. Installation (vehicles) – GTT will install, configure and test vehicle kits, computers, modems, radios, antennas, cables and/or software, including testing to ensure proper operation and in preparation for Final Testing.
 - v. Training (2 days, 1 trainer; includes travel) – GTT will provide two days of training at the Customer's location. Customer may have an unlimited number of participants so long as they are employees or representatives of Customer. Customer must provide the training room and any needed audio/visual equipment.
 - vi. Engineering services – GTT will provide custom work if/when applicable and included in the Agreement.
2. "Ongoing Services" – as used herein, means the Services provided subsequent to Up-Front Services:
- i. Hosting – GTT will install its software on a remote, secure, 3rd party server, to be accessed by Customer and/or GTT as a service. All maintenance of the server is included. Fees for this service are billed annually, quarterly or monthly, depending upon the payment terms outlined in the Agreement.
 - ii. Data collection and reporting – GTT will collect data, generate reports and publish as defined as appropriate by GTT, or as agreed to in writing by the Parties.
 - iii. Monitoring and optimizing – GTT will monitor Customers' systems to ensure operational status. GTT will also look for opportunities to optimize the system, which will be communicated to Customer as applicable. To the extent outages are discovered, GTT will (or alert Customers as to the need to) deploy resources to provide repair/replacement services locally. For avoidance of doubt, monitoring includes reviewing data related to vehicles and intersections, but does not include outages that aren't managed by GTT (e.g., customer-provided cellular connectivity).
 - iv. Repairs/replacements (intersections) – When outages occur, GTT will attempt to repair remotely if possible and will deploy local resources to provide services when needed. Local resources will be GTT, GTT's dealers, or other 3rd party resources approved and subcontracted by GTT.
 - v. Repairs/replacements (vehicles) – When outages occur, GTT will attempt to repair remotely if possible and will deploy local resources to provide services when needed. Local resources will be GTT, GTT's dealers, or other 3rd party resources approved and subcontracted by GTT.
 - vi. Cellular data – Machine to machine cellular connectivity. Provided by vendor of GTT's choice, but contracted by GTT for the benefit of Customer.
 - vii. "Software Maintenance" – Provides Customer with access to the customer care center, defect fixes and Software Updates.
 - viii. "Software as a Service" or "SaaS" – Hosted software made available as a Service to Customer by GTT, where no perpetual license is granted.

THE INFORMATION ABOVE CONCERNING SERVICES IS INTENDED TO DEFINE ALL AVAILABLE SERVICES OFFERED BY GTT, WHICH MAY OR MAY NOT BE INCLUDED IN THIS AGREEMENT. THE FACT THAT SUCH DEFINITIONS ARE INCLUDED IN THE AGREEMENT IN NO WAY IMPLIES OR IMPLICATES GTT TO PROVIDE SUCH SERVICES, UNLESS THE SERVICES ARE SPECIFICALLY LISTED IN SCHEDULE A.

- E. "Services Completion" – is defined as the point at which individual Services have been delivered, as determined and documented by GTT. Services Completion represents acceptance of the individual Services delivered when Services Completion occurs.
 - F. "Final Testing" is the point at which the following can be confirmed and documented by GTT, or in the case of delays caused by the Customer, 30 days from the date Services Completion occurred, whichever is sooner:
 - 1. As applicable, the Products installed in all vehicles available for testing can send a request for priority control to the Products installed in all intersections available for testing; and all Products installed in all intersections available for testing can receive a request for priority control; and documentation of the events can be provided to Customer.
 - 2. As applicable, GTT's management software can connect with all intersections and vehicles available for testing and documentation of the event can be provided to Customer.
 - G. "First Productive Use" is the point at which the following can be confirmed and documented by GTT, or in the case of delays caused by the Customer or other third-parties not within the control of GTT, 30 days from the date Service Completion occurred, whichever is sooner:
 - 1. Services Completion has occurred.
 - 2. Successful Final Testing has occurred.
 - H. "Order" – as used herein, means any written document, signed by the Customer, to purchase Products and/or Services from GTT.
2. TERMS AND CONDITIONS. The Terms and Conditions in Schedule B are hereby incorporated into this MSA and made part thereof. The Terms apply to all purchases made by Customer, regardless of whether Customer is purchasing, leasing or subscribing to Services. In the event any term or condition in the Terms conflicts with any other term or condition of this MSA, the term or condition of this MSA shall control.
3. SALE OF GOODS AND SERVICES. To the extent Customer purchases Products and/or Services from GTT, the details regarding such purchase are specifically set forth in the attached Schedule A, which attachment is hereby incorporated into this MSA and made a part hereof ("Schedule A"). Specific terms, such as pricing, quantity and the level of service(s) being provided, shall be as set forth in Schedule A. To the extent any subsequent purchases or service offerings are requested by Customer, these additions will be added to the MSA by way of a subsequent Schedule A, which will follow sequential order; for example, Schedule A-1, Schedule A-2 and so forth. GTT agrees to use commercially reasonable efforts to perform the Services during the timeframe outlined within the Schedule A, but reserves the right to extend that timeframe if necessary to complete the work.
4. TERM. The term of this MSA will begin on the Effective Date and will continue as set forth in Schedule A or until the expiration of any subsequent schedules, whichever is longer.
5. INTELLECTUAL PROPERTY.
- A. Definition of Intellectual Property. "Intellectual Property" shall mean all intellectual property and industrial property rights and assets, however arising, pursuant to the laws of any jurisdiction throughout the world, whether registered or unregistered, including without limitation any and all: (a) trademarks, service marks, trade names, brand names, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by and all registrations, applications and renewals for, any of the foregoing; (b) works of authorship, expressions,

designs and design registrations, whether or not copyrightable, including copyrights, author, performer, moral and neighboring rights and all registrations, applications for registration and renewals of such copyrights; (c) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential information and all rights therein; (d) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications and other patent rights and any other governmental authority-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models); and (e) software and firmware, including data files, source code, object code, scripts, mark-up language, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation.

- B. Deliverables. The term "Deliverables" shall include only materials and services delivered to Customer by GTT that are expressly identified in Schedule A or any subsequent schedules, if any ("Deliverables"). Unless otherwise stated in Schedule A or any subsequent schedules, GTT owns and to the extent not owned, is hereby assigned by Customer, all right, title and interest in all Deliverables including without limitation all Intellectual Property in and to such Deliverables. Subject to the terms of this MSA, GTT grants a limited, non-exclusive, royalty-free license to Customer to the Deliverables and GTT Intellectual Property related to the Deliverables solely to extent and term necessary for Customer to use the Deliverables as contemplated under Schedule A or the applicable subsequent schedules.
- C. Trademarks. As may be required in this MSA, including Schedule A and subsequent schedules, GTT may use the trademarks and trade names of Customer in connection with its provision of Services and/or other business uses and Customer hereby licenses such trademarks and trade names to Customer for such purposes.

6. INDEMNIFICATION.

- A. Indemnification by Customer. Customer shall indemnify, defend and hold harmless GTT and its officers, directors, employees, agents, representatives, subsidiaries, parents, affiliates, vendors, resellers, independent contractors, successors and permitted assigns (collectively, "GTT Indemnified Parties") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and attorneys' fees and the costs of enforcing any right to indemnification under this MSA and the attorneys' fees and cost of pursuing any insurance providers, incurred by GTT Indemnified Parties or awarded against GTT Indemnified Parties relating to, arising out of, or resulting from: (1) any claim of a third party arising out of or occurring in connection with Customer's gross negligence, willful misconduct, violation of any applicable law or regulation, or breach of this MSA; or (2) the ownership, licensing, selection, possession, leasing, renting, operation, control, use, maintenance, delivery, return, or other disposition of the Products or Services that results in any personal injury, wrongful death, or property damage resulting in relation to the use of the Products or Services.
- B. Indemnification by GTT. GTT shall indemnify, defend and hold harmless Customer and its officers, directors, employees, agents, representatives, subsidiaries, parents, affiliates, vendors, resellers, independent contractors, successors and permitted assigns (collectively, "Customer Indemnified Parties") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this MSA and the cost of pursuing any insurance providers, incurred by Customer Indemnified Parties or awarded against Customer Indemnified Parties relating to, arising out of, or resulting from any claim of a third party arising out of or occurring in connection with GTT's gross negligence, willful misconduct, violation of any applicable law or regulation, or breach of this MSA.

7. INTELLECTUAL PROPERTY INDEMNIFICATION.

- A. By GTT. GTT agrees to indemnify, hold harmless and defend Customer and its directors, officers, employees and agents from and against all losses, liabilities, damages, claims and expenses, including reasonable attorneys' fees and court costs, arising out of or relating to any claim by any third party unaffiliated with the Customer alleging that: (i) Customer's use of the Products or Services in accordance with this MSA infringes or violates the patent, copyright, trade secret, proprietary, or other Intellectual Property right of any such third party. Should Customer's use of the Products or Services in accordance with the terms and conditions of this MSA become, or in GTT's opinion be likely to become, the subject of such a claim described in the immediately foregoing clause, then, Customer will permit GTT, at GTT's option and expense, either to: (1) procure for Customer the right to continue its use in accordance with the terms and conditions of this MSA of the Products and Services, (2) replace or modify the Products and Services so that Customer's use of the Products and Services in accordance with the terms and conditions of this MSA no longer infringes or violates the Intellectual Property rights of any third party, provided such replaced or modified Products and Services provides at least substantially equivalent functionality and comparable performance characteristics in all material respects; or (3) terminate this MSA (and all licenses granted hereunder), or any addenda or portion thereof (including without limitation the license of specific software or lease of certain products) and Customer shall return the non-conforming Products and Services and GTT shall refund the purchase price of such materially impacted Products and Services. The cost of all return shipping to GTT is the sole responsibility of Customer. Notwithstanding any provision herein to the contrary, GTT shall have no obligation or liability to Customer to the extent any such third party claim of infringement or other violation of any Intellectual Property right of any such third party is caused by the unlicensed use of the Products or Services by Customer, Customer's failure to operate the Products or Services solely as a part of a system comprised entirely of GTT or GTT authorized hardware and software, use of the Products or Services with software or hardware other than as intended.
- B. By Customer. Customer agrees to indemnify, hold harmless and defend GTT and its directors, officers, employees and agents from and against all losses, liabilities, damages, claims and expenses, including reasonable attorneys' fees and court costs, arising out of or relating to any claim by any third party unaffiliated with GTT relating to, arising out of, or concerning any infringement or misappropriation of the Intellectual Property rights of a third party to the extent any such third party claim of infringement or other violation of any Intellectual Property right of any such third party is not indemnified by GTT pursuant to Section 11.3.1 of this MSA.
- C. Indemnification Procedure. The Party seeking indemnification (the "Indemnified Party") shall notify the party from which the Indemnified Party is seeking indemnification (the "Indemnifying Party") promptly after the Indemnified Party receives notice of a claim for which indemnification is sought under this MSA, provided, however, that no failure to so notify the Indemnifying Party shall relieve the Indemnifying Party of its obligations under this MSA except to the extent that it can demonstrate damages directly attributable to such failure. The Indemnifying Party shall have authority to defend or settle the claim; provided however that the Indemnified Party, at its sole discretion and expense, shall have the right to participate in the defense and/or settlement of the claim and provided further, that the Indemnifying Party shall not settle any such claim imposing any liability or other obligation on the Indemnified Party without the Indemnified Party's prior written consent.

8. GENERAL PROVISIONS.

- A. Entire Agreement. This MSA, including any documents attached hereto and incorporated by reference, supersedes any and all other prior agreements, understandings, negotiations, or communications, either oral or in writing, between the Parties or their representatives and constitutes the entire understanding of the Parties with respect to its subject matter. No form, invoice, bill of lading, shipping document, order, purchase order, receipt or other document provided by either Party shall operate to supersede, modify or amend any provisions of this MSA, even if either Party has initialed, signed or otherwise acknowledged such document regardless of the timing of the execution or presentment in relation to the execution of this MSA, unless the

document expressly states that it modifies or amends this MSA and is signed by authorized representatives of both Parties. This MSA may not be modified, altered, or waived, in whole or in part, except in a writing signed by the duly authorized representatives of the Parties hereto. In the event of any conflict between the terms of the addenda, schedule, exhibits, terms and conditions or schedules, if any, to this MSA, the terms of the conflicting provision in the addenda, schedule, exhibits, terms and conditions shall supersede the conflicting terms in this MSA. Wherever possible, the terms of the addenda, schedule, exhibits, terms and conditions or schedules, if any, to this MSA shall be read to be in addition to and not in conflict with, this MSA.

- B. Notices. Written notices as required under this MSA shall be deemed to have been given or made on the next business day when sent by the use of overnight courier, or on the fifth business day after deposit, postage prepaid in the U.S. mail for certified or registered mail to the addresses of the Parties set forth at the beginning of this MSA, Attention: LEGAL. The address for notice may be changed at any time by giving prior written notice as above provided.
- C. Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants or conditions of this MSA by the other Party will not be deemed a waiver of that term, covenant or condition; nor will any waiver or relinquishment of that right or power be for all or any other times.
- D. Non-Solicitation. Each Party agrees during the term of this MSA and for a period of twelve (12) months thereafter, it will not directly solicit for hire the employees of the other, without the written consent of the other Party. Employees hired in response to general employment solicitations advertised in the usual and customary manner by either Party shall be excluded from this provision.
- E. Assignment. This Agreement shall be binding on the Parties and their successors and permitted assigns. However, neither Party shall have the right to grant sublicenses hereunder or to otherwise assign, alienate, transfer, encumber, or hypothecate any of its rights or obligations hereunder, in whole or in part, or delegate any of its obligations hereunder to any person without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign its rights or obligations in whole or in part under this Agreement to a wholly-owned subsidiary of its parent or to an entity under common control, or pursuant to a merger, consolidation, reorganization or a sale of substantially all of its assets; provided that the assigning Party shall provide written notice to the other Party, which consent shall not be unreasonably withheld of any such assignment shall not relieve either Party of its obligations under this Agreement and that the terms of this Agreement shall be performed and provided in the same fashion and in the same manner as set forth herein.

SIGNATURE BLOCK FOLLOWS.

IN WITNESS WHEREOF, GTT and Customer agree to the terms and conditions of this MSA and have duly executed this MSA as set forth below:

Global Traffic Technologies, LLC	San Rafael, California
Signature: _____	Signature: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**SCHEDULE A
STATEMENT OF WORK**

Effective Date: Effective Date of MSA

1. For subscription or capital lease sales, the billing cycle will begin upon First Productive Use (defined herein), however the amount invoiced will be prorated on a monthly basis (“Interim Rent”) to the point of the Commencement Date (defined herein), based on the number of vehicles and intersections deployed upon First Productive Use. For the purpose of determining termination of this Schedule A, the term of this Schedule A will not begin until the first day of the month following Services Completion (defined herein) for all Up-Front Services (defined herein) for all vehicles and intersections (“Commencement Date”), unless otherwise agreed to by the Parties in writing. For avoidance of doubt, Interim Rent will be invoiced monthly. For avoidance of doubt, all vehicles and intersections added after the original Commencement Date will carry their own Commencement Date, thus extending the term.
2. When included, intersection installation pricing assumes a standard configuration without complications. Not included in this proposal are the following items, which will require additional cost: a) crushed conduit or any other issues preventing cable from being installed, b) lane or road closures, c) police or other resources needed at the installation area and/or d) other third-party costs not known at the time of the proposal.
3. Proposal assumes the intersection cabinets are in good working order and contain wiring diagrams. Vehicle installation assumes standard installation and does not include: a) special mounting brackets, b) excess wiring and/or c) swapping out previously installed (replacement) vehicle hardware.
4. Proposal excludes any activities associated with: a) traffic control plan, b) water pollution control plan, c) changeable message signs/flaggers, d) permits/bonds/fees and/or e) removal/repair/replacement of concrete, asphalt, conduits or wiring.
5. Customer agrees to accept all applicable hardware and software upon shipment, where shipment is defined as the point at which hardware and/or software has been picked up from a GTT facility by the shipper (“Shipment”) for delivery to Customer or its designated 3rd party, however acceptance in no way relieves GTT from its obligations as described in this Agreement or its product warranties.
6. Customer Care center phone support: GTT operates a Customer Care call center that is dedicated to supporting all GTT customers, whether in or out of warranty. To access GTT’s Customer Care, customers can dial 800-258-4610 within the United States, or for callers outside of the United States, 651-789-7333. GTT’s Customer Care call center will use commercially reasonable efforts to provide technical or sales support, process warranty claims and/or route calls to other GTT departments. For technical issues, a ticketing system is in place to track cases through to resolution, escalating within the organization if/where necessary to ensure calls are resolved as quickly as possible. Customer Care is not available to customers of GTT’s software Products if such customer is not current on its Software Maintenance.

	Resolution Category	Definition	Response Time Goal	Resolution Goal
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	Immediate	Reported issue requires immediate attention.	Within 1 business hour	Same business day
	Moderate	Reported issue requires attention within 1-2 business days	Within same business day	2 business days
	Minor	Reported issue requires attention when convenient.	Within 1 business day	As feasible



Direct Customer

Global Traffic Technologies
 7800 Third Street North
 Bldg 100
 St. Paul MN 55128-5441
 US

Bill To	Customer	Estimate Number	Date	Expires
San Rafael (CA)	San Rafael (CA)	10429	9/14/2021	9/14/2022

Ship To	Procurement Method	Term: For Ongoing Services
1375 Fifth Avenue San Rafael, CA 94901 Attn: Matthew Windrem	PCaaS	10

Solution Type	Intersections	Vehicles
Emergency and Law Enforcement	53	56

Category	Quantity	Description
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Back-office Components

1 Opticom Central Platform – Base, Cloud (per year)

Services

1 Project management
 1 Setup, testing, and verification
 109 Data collection and reporting (per vehicle and intersection, per year)
 1 Monitoring and system maintenance (per year)

Miscellaneous

53 Configuration, intersections (centralized)
 53 Opticom Central Platform – (Miovision) Intersection Access Fee (per intersection, per year)
 56 Whelen access fee

Annual Subscription Total (USD)	\$54,884.97
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Please reference estimate number **10429** when submitting all purchase orders

Proposal Notes:

Quote assumes no additional intersection certification or design documents are required.
Quote does not include formal site acceptance testing, unless otherwise noted.
Unless otherwise noted, GTT's PCaaS solution includes one standard monthly report of system health. If custom reports are needed, they can be quoted optionally.
Quote assumes any required controller configuration is the responsibility of purchaser and configuration/programming is complete prior to final commissioning.
Quote assumes all management software will be hosted by GTT.
Quote assumes a VPN connection between the cloud-hosted Opticom centralized software application and the traffic network(s) of the targeted intersections.
Quote assumes purchaser is responsible for network communication to the intersection controllers. Any troubleshooting of issues due to purchaser-initiated network changes will be billed on a time and materials basis.
Quote assumes all intersections included in this quote are network-connected by the purchaser, with at least 5Mbps and maximum average latency of 200ms.
Quote assumes customer will provide a cellular modem with at least one network port for use by the Opticom system.
Quote assumes intersection controllers are capable of receiving an NTCIP 1202/1211 preemption request from the Opticom centralized system.
Quote assumes intersection controllers follow the NTCIP 1202/1211 standard, per the published specification.
Proprietary implementations of NTCIP 1202/1211 or other protocols for network-based preemption requests are not included in this quote.
Quote assumes that customer-provided modem is an approved GTT modem model and firmware version.
Quote assumes Cradlepoint IBR1700 vehicle modems will be provided by customer, and modems will support Opticom centralized platform.
Quote assumes customer will configure Cradlepoint IBR1700 modems to provide necessary data to GTT cloud solution.
Quote assumes Miovision device at all intersections.

General Notes:

To the extent this proposal is a "Budgetary Proposal," it is to be used for informational purposes only and is not intended to be a binding contract between the Parties. The prices provided in the Budgetary Proposal are estimates only and are based on information and pricing known as of the date of the Budgetary Proposal.

For services, a signed Master Service Agreement ("MSA") must accompany the order. The terms and conditions that govern the MSA are available at http://www.gtt.com/sales_terms/.

When included, intersection installation pricing assumes a standard configuration without complications. Not included in this proposal are the following items, which will require additional fees: 1) crushed conduit or any other issues preventing cable from being installed, 2) lane or road closures, 3) police or other resources needed at the installation area, and/or 4) other third-party costs not known at the time of the proposal. Proposal assumes the intersection cabinets are in good working order and contain wiring diagrams.

Vehicle installation assumes standard installation and does not include: 1) special mounting brackets, 2) excess wiring, and/or 3) swapping out previously installed (replacement) vehicle hardware.

Project management expenses can increase in instances where development, if required, is not fully scoped.

Proposal excludes any activities associated with: 1) traffic control plan, 2) water pollution control plan, 3) changeable message signs/flaggers, 4) permits/bonds/fees, and/or 5) removal/repair/replacement of concrete, asphalt, conduits or wiring.

Quote does not include any applicable travel expense. A budgetary "not exceed" price can be provided upon request if required.



Direct Customer

Global Traffic Technologies
 7800 Third Street North
 Bldg 100
 St. Paul MN 55128-5441
 US

Bill To	Customer	Estimate Number	Date	Expires
San Rafael (CA)	San Rafael (CA)	10429	9/14/2021	9/14/2022

Ship To	Procurement Method	Term: For Ongoing Services
1375 Fifth Avenue San Rafael, CA 94901 Attn: Matthew Windrem	PCaaS	10

Solution Type	Intersections	Vehicles
Emergency and Law Enforcement	53	56

Category	Quantity	Description
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Back-office Components

10 Opticom Central Platform – Base, Cloud (per year)

Services

1 Project management
 1 Setup, testing, and verification
 1,090 Data collection and reporting (per vehicle and intersection, per year)
 10 Monitoring and system maintenance (per year)

Miscellaneous

53 Configuration, intersections (centralized)
 530 Opticom Central Platform – (Miovision) Intersection Access Fee (per intersection, per year)
 560 Whelen License Fee (per vehicle/month)

Ten Year Subscription Total (USD)	\$548,849.70
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Please reference estimate number **10429** when submitting all purchase orders

Proposal Notes:

Quote assumes no additional intersection certification or design documents are required.
Quote does not include formal site acceptance testing, unless otherwise noted.
Unless otherwise noted, GTT's PaaS solution includes one standard monthly report of system health. If custom reports are needed, they can be quoted optionally.
Quote assumes any required controller configuration is the responsibility of purchaser and configuration/programming is complete prior to final commissioning.
Quote assumes all management software will be hosted by GTT.
Quote assumes a VPN connection between the cloud-hosted Opticom centralized software application and the traffic network(s) of the targeted intersections.
Quote assumes purchaser is responsible for network communication to the intersection controllers. Any troubleshooting of issues due to purchaser-initiated network changes will be billed on a time and materials basis.
Quote assumes all intersections included in this quote are network-connected by the purchaser, with at least 5Mbps and maximum average latency of 200ms.
Quote assumes customer will provide a cellular modem with at least one network port for use by the Opticom system.
Quote assumes intersection controllers are capable of receiving an NTCIP 1202/1211 preemption request from the Opticom centralized system.
Quote assumes intersection controllers follow the NTCIP 1202/1211 standard, per the published specification.
Proprietary implementations of NTCIP 1202/1211 or other protocols for network-based preemption requests are not included in this quote.
Quote assumes that customer-provided modem is an approved GTT modem model and firmware version.
Quote assumes Cradlepoint IBR1700 vehicle modems will be provided by customer, and modems will support Opticom centralized platform.
Quote assumes customer will configure Cradlepoint IBR1700 modems to provide necessary data to GTT cloud solution.
Quote assumes Miovision device at all intersections.

General Notes:

To the extent this proposal is a "Budgetary Proposal," it is to be used for informational purposes only and is not intended to be a binding contract between the Parties. The prices provided in the Budgetary Proposal are estimates only and are based on information and pricing known as of the date of the Budgetary Proposal.

For services, a signed Master Service Agreement ("MSA") must accompany the order. The terms and conditions that govern the MSA are available at http://www.gtt.com/sales_terms/.

When included, intersection installation pricing assumes a standard configuration without complications. Not included in this proposal are the following items, which will require additional fees: 1) crushed conduit or any other issues preventing cable from being installed, 2) lane or road closures, 3) police or other resources needed at the installation area, and/or 4) other third-party costs not known at the time of the proposal. Proposal assumes the intersection cabinets are in good working order and contain wiring diagrams.

Vehicle installation assumes standard installation and does not include: 1) special mounting brackets, 2) excess wiring, and/or 3) swapping out previously installed (replacement) vehicle hardware.

Project management expenses can increase in instances where development, if required, is not fully scoped.

Proposal excludes any activities associated with: 1) traffic control plan, 2) water pollution control plan, 3) changeable message signs/flaggers, 4) permits/bonds/fees, and/or 5) removal/repair/replacement of concrete, asphalt, conduits or wiring.

Quote does not include any applicable travel expense. A budgetary "not exceed" price can be provided upon request if required.

SCHEDULE B
OTHER TERMS AND CONDITIONS OF PRODUCTS AND SERVICES (“TERMS”)

1. **ACCEPTANCE OF TERMS.** These Terms are applicable to the provision of any and all Products and Services, provided by Global Traffic Technologies, LLC, Global Traffic Technologies Canada, Inc. (“GTT”) or its subcontracts to the Customer (hereinafter referred to a “Party” and collectively as the “Parties”). These Terms are applicable to any Master Service Agreement (“MSA”), Schedule, quote, proposal and/or any documents incorporated by reference herein (“Contract Documents”). These Terms and any Contract Documents are the complete and exclusive statement of agreement between Customer purchasing Products and/or Services and GTT, unless otherwise agreed to by the parties in a signed agreement. GTT expressly objects to and rejects any other terms and conditions, including any additional or conflicting terms and conditions the Customer includes at any stage during the Order process, including but not limited to, quotes, purchase orders, invoices and/or any other documents submitted by Customer regarding an Order, unless otherwise set forth in the Contract Documents. Customer’s acceptance of Products and/or Services will constitute its acceptance of these Terms. GTT reserves the right to update these Terms and any document referenced herein at any time.
2. **ORDERS.** A Party may request to amend an Order by requesting the change in writing and if such request results in an Order being changed, such change will be documented by GTT issuing a written document, which must be accepted and signed by the Customer and may result in additional fees. All Orders are final and may not be cancelled, returned, or exchanged, except as provided herein.
3. **PRICE, BILLING AND PAYMENT.** GTT reserves the right to change the pricing for any Product and/or Service at any time by providing written notice to Customer at least sixty (60) days prior to the change, unless otherwise stated in the Contract Documents.
 - A. If applicable, the fees for Software Maintenance will be calculated annually at fifteen-percent (15%) of the then current list price of the Software license(s).
 - B. Unless otherwise indicated by GTT, prices are exclusive of and Customer agrees to pay all foreign, federal, state, local excise, sales, use, personal property or any other taxes or duties, except taxes based on GTT’s income. If GTT does not collect such amounts from Customer and is later requested or required to pay the same to any taxing authority, Customer will promptly pay GTT or such taxing authority if requested by GTT. Customer must provide any certificates or other evidence of applicable exemptions to any taxes or duties to GTT prior to invoicing or GTT will charge such taxes or duties to Customer.
 - C. GTT does not represent its prices are equal to or lower than prices charged to other customers, or its prices are comparable to prices offered by any third party. However, GTT hereby agrees that should the total published list price for the Products, Software and Services (as defined herein) decrease during the duration of this contract from the total price agreed to by the Parties herein, the Parties may, at the discretion of GTT, renegotiate the remainder of the term of the Annual Subscription Total as set forth in Schedule A. For Customers in the United States and Canada, payment is due within (thirty) 30 days of the date of GTT’s invoice, unless otherwise agreed to in writing by GTT; provided however, GTT may require payment in advance if in GTT’s reasonable opinion, Customer’s financial condition calls for pre-payment. Payment is required in advance for all other Customers. GTT may assess a monthly service charge of one and one-half percent (1.5%) on overdue accounts. Customer will pay any collection costs incurred by GTT to collect payment from Customer, including reasonable attorneys’ fees.

- D. If Customer fails to make timely payments, has a receiving order in bankruptcy made against it, makes any arrangement with its creditors, or has a receiver appointed, GTT may, without prejudice to its other rights, demand immediate payment of all unpaid accounts, suspend further deliveries and/or cancel all Orders without liability. Payments are not subject to setoff or recoupment for any claim Customer may have.
4. DELIVERY. GTT will make commercially reasonable efforts to ship Products within sixty (60) days of receipt of an Order, however, delivery dates are approximate and GTT is not be liable for any damages or costs resulting from delays in delivery. If GTT deems necessary, Orders may be partially shipped and partially backordered, unless otherwise agreed upon in writing by the Parties.
- A. Sales within U.S./Canada. GTT will arrange for transportation of all Products and GTT will bear any expenses, including routing, handling, packaging and additional freight charges, unless Customer furnishes special transportation instructions that result in expenses beyond what GTT would normally provide.
- B. Sales outside of U.S./Canada. Customer will arrange and provide for transportation of all Products from GTT's facility(ies) at Customer's cost. Customer is the importer of record and will furnish all consular and customs declarations and is responsible for any expenses, including but not limited to, additional export packing fees, export duties, licenses, fees and any applicable taxes. Customer may not re-export the Product or items which incorporate the Product if such re-export would violate applicable export laws.
- C. Title and Risk of Loss. Products are deemed accepted upon shipment. Title and risk of loss or damage to the Products or any part of the Products will pass to Customer upon shipment and Customer will be responsible for filing any damage claims with the carrier.
- D. Inspection of Products. Customer is responsible for inspecting and filing any claims for Product loss or damage directly with GTT's Customer Care Center or the carrier within ten (10) days of delivery, unless otherwise specified by the carrier. All claims must be based on a complete inspection of the shipment and include any documents applicable to the claim. If Customer timely notifies GTT of any Product loss or damage, GTT may, in its sole discretion (i) replace the Product or (ii) issue a credit or refund for the price of the Product. Customer acknowledges and agrees that the remedies set forth in these Terms are Customer's sole and exclusive remedies for the loss or damage of Products.
5. SOFTWARE.
- A. Federal Government End User. This Section applies to all acquisitions of this Software by or for the federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government. The government hereby agrees that the Software qualifies as "commercial" computer software within the meaning of the acquisition regulations applicable to this procurement. The terms and conditions of this Agreement shall apply to the government's use and disclosure of this Software and shall supersede any conflicting contractual terms and conditions. If this Agreement or the license granted hereunder fails to meet the government's needs or is inconsistent in any respect with federal law, the government agrees to return the Software, unused, to GTT.
- B. Customer Responsibility. Customer is solely responsible for all actions taken by Customer, its employees, agents and others accessing or using the Software. Customer is solely responsible for all necessary software, hardware, Internet connection and network and all other equipment and services necessary to access and use the Software.
- C. Software Performance and Limited Warranty. GTT represents and warrants that the Software will substantially conform in all material respects to and perform substantially in accordance with its documentation and these Terms and/or any Contract Documents for a period of one (1) year from the date the Order was placed,

provided that: (i) Customer gives GTT written notice of any claimed breach of this warranty while this warranty is in effect; (ii) any such breach is not, in GTT's reasonable opinion, a result of any modification of or damage to the Software or its operating environment by any party other than GTT or a party acting under GTT's control or direction; and (iii) Customer is in compliance with these Terms. For any breach of the foregoing warranty, Customer's sole and exclusive remedy shall be as follows: (a) GTT will endeavor to repair or replace the non-conforming Software within thirty (30) days, or such longer period as the parties may mutually agree, such that the Software conforms to the foregoing warranty; or (b) if GTT is unable to repair or replace the non-conforming Software within such period such that the Software conforms to the foregoing warranty, either party may terminate this Agreement (and all licenses granted hereunder), Customer shall return the non-conforming Software and GTT shall refund the license fee paid hereunder less depreciation calculated on a five-year straight-line basis. GTT's warranty (including without limitation any extended warranty) applies solely to the Software and its documentation as it existed at the time of installation and warranties covering any follow-on versions, all updates, or upgrades are subject to a further written agreement by the Parties.

- D. **Viruses and Disabling Codes.** GTT represents and warrants that to the best of GTT's knowledge, the Software shall not contain viruses, worms, or spyware (collectively, "Malicious Code"); provided, however, that, notwithstanding the foregoing, Customer acknowledges and agrees that GTT reserves the right to remotely prevent access to and/or use of the Software in the event that (i) GTT becomes aware, from Customer or otherwise, of unauthorized access or use of the Software by any third party, or (ii) this Agreement is terminated. Notwithstanding any provision of this Agreement to the contrary, in no event shall GTT be in breach of the warranty set forth above if, at the time any Malicious Code was introduced into the Software, GTT employed commercially-reasonable measures, consistent with the standards of GTT's industry, to detect such Malicious Code in order to prevent its introduction into the Software.
 - E. **Audit Rights.** Customer shall, while using GTT's Products and Services and for one year thereafter, keep true and accurate accounts and records in sufficient detail to enable an audit of the manner and extent of the use, sublicensing, transfer, or other disposition of the licensed Software, its derivatives, or any product or service based upon or incorporating or using all or portions of the Software to confirm Customer's compliance with the Terms and/or any Contract Documents. At the reasonable request of GTT, but no more than once per year, unless there is a reasonable suspicion of a breach of these Terms and/or any Contract Documents, Customer shall allow GTT to inspect and audit such information and Customer facilities as is necessary to ensure Customer's compliance with these Terms.
 - F. **Software Upgrades.** GTT hereby represents and warrants that in the event that updated versions of the Products, Software and or Services as defined herein are released by GTT, at GTT's discretion, Customer's Product's, Services and or Software will be upgraded.
6. **HAZARDOUS MATERIALS.** Customer acknowledges that certain materials provided by GTT may be considered hazardous materials under various laws and regulations. Customer agrees to familiarize itself (without reliance on GTT, except as to the accuracy of special safety information furnished by GTT), with any hazards of such materials, their applications and the containers in which such materials are shipped and to inform and train its employees and customers to such hazards. Customer will hold GTT harmless against any claims by its agents, employees or customers relating to any such hazards, except to the extent such claims arise solely and directly from GTT's failure to meet its written specifications or the inaccuracy of safety information furnished by GTT.
7. **WARRANTY.** GTT warrants its Products in accordance with its limited warranty, available at www.gtt.com/support/warranty-repair and as otherwise provided herein. GTT warrants all Services will be performed in a professional and workmanlike manner in accordance with applicable industry standards, in the event that any Product fails to conform to the terms of GTT's warranty, the sole and exclusive remedy shall be limited to the return of the non-conforming Product to GTT for repair or replacement of the non-conforming components, as determined by GTT in its sole discretion. The cost of return shipping to GTT is the responsibility

of the Customer. All claims for non-conformance are returned to GTT All claims for non-conformance or breach of warranty shall be deemed waived, unless the non-conforming components are returned to GTT within 30 days of discovery of the alleged non-conformance.

THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING OUT OF A COURSE OF DEALING OR PERFORMANCE, CUSTOM OR USAGE OF TRADE AND NON-INFRINGEMENT. IN ADDITION TO THE EXCLUSION OF AFOREMENTIONED WARRANTIES, SERVICES, ARE PROVIDED "AS IS" AND GTT DOES NOT WARRANT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, BE UNINTERRUPTED, OR BUG OR ERROR-FREE. NO EMPLOYEE OR AGENT OF GTT, OTHER THAN AN OFFICER OF GTT BY WAY OF A SIGNED WRITING, IS AUTHORIZED TO MAKE ANY WARRANTY IN ADDITION TO THE FOREGOING. EXTENDED WARRANTIES MAY BE AVAILABLE UPON REQUEST.

8. LIMITATION OF LIABILITY. IN NO EVENT WILL GTT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ASSERTED IN TORT, CONTRACT, WARRANTY, STATUTORY OR OTHER THEORY OF LIABILITY. GTT SHALL ALSO NOT BE LIABLE FOR ANY PERSONAL INJURY, WRONGFUL DEATH OR PROPERTY DAMAGES CAUSED BY OR ARISING FROM ANY ALLEGED DEFECT, NON-CONFORMANCE, OR FAILURE OF ITS SYSTEMS TO FUNCTION, OPERATE OR PERFORM, WHETHER ASSERTED IN WARRANTY, CONTRACT, TORT OR OTHER THEORY OF LIABILITY.

IN ANY EVENT, GTT SHALL BE SOLEY LIABLE FOR ACTUAL DAMAGES CAUSED BY GTT'S BREACH AND GTT'S TOTAL LIABILITY HEREUNDER, REGARDLESS OF THE LEGAL THEORY, WILL NOT EXCEED THE AMOUNT PAID TO GTT PURSUANT TO THE RESPECTIVE ORDER FOR PRODUCTS AND SERVICES IN THE ONE YEAR IMMEDIATELY PRECEDING THE START OF THE EVENT GIVING RISE TO THE CLAIM. IN NO EVENT WILL GTT BE REQUIRED TO INDEMNIFY CUSTOMER OR ANY OTHER PARTY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR ALLEGING EITHER A BREACH OF ANY WARRANTY OR A BREACH OF ANY CONTRACTUAL TERM OR LEGAL DUTY BY GTT MAY BE BROUGHT MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES.

9. SUSPENSION. Without waiving any other rights or remedies, GTT may suspend performance hereunder and/or under any Order or other contract if: (i) Customer fails to pay any invoice within sixty (60) days from the invoice date; (ii) GTT reasonably believes Customer's use of the Products or Services may violate any applicable law, rule or regulation, or infringes upon third party rights; or (iii) GTT is entitled to terminate this Agreement for cause.
10. PROPRIETARY RIGHTS. GTT and its licensors will retain all intellectual property rights to the Products and Services, including without limitation, all designs, drawings, patterns, plans, specifications, technology, technical data and information, technical processes and business methods, whether patentable or not, arising from the provision of Products and/or Services to Customer, including GTT rendering engineering services to and designing systems and goods for Customer's use. Customer agrees not to enforce against GTT or GTT's customers any patent rights that include any system, process or business method utilizing or otherwise relating to the Products and/or Services.
11. RESALE. Customer, by placing an Order and accepting these Terms, hereby expressly agrees, acknowledges, represents and warrants to GTT that Customer is purchasing the Products and Services for its own internal business use and not for resale and in the event Customer breaches the foregoing by selling the Products or Services that are the subject of the Order. Notwithstanding the foregoing, nothing in this Terms is intended to restrict a Customer that is an authorized GTT dealer, contractor, or original equipment manufacturer from reselling, if such Customer is authorized to do so pursuant to GTT's acceptance of an Order.

12. COMPLIANCE WITH LAWS/ANTI-CORRUPTION. Customer will fully comply with all applicable laws, rules and regulations, including without limitation, those of the United States and any and all other jurisdictions globally (“Laws”) that apply to Customer’s activities in connection with an Order. Specifically, Customer must comply with all Laws relating to anti-corruption, bribery, extortion, kickbacks, or other similar matters that are applicable to Customer’s business activities in connection hereunder and/or with any Orders or the Contract Documents, including without limitation the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. Customer will take no action that may cause Customer, GTT, or their affiliates to violate any Laws.
- A. Products and Services will comply with applicable federal legal requirements in the United States and Canada. If they must comply with any additional legal requirements, such as a state or local municipality, or another country, Customer is solely responsible for identifying all such requirements to GTT in writing.
13. CONFIDENTIAL INFORMATION. As used herein, “Confidential Information” means all information of a party (“Disclosing Party”), obtained by or disclosed to the other party (“Receiving Party”) that by its nature would reasonably be considered as confidential or is identified as confidential by the Disclosing Party.
- A. Confidential Information excludes information that: (a) is or becomes public knowledge through no fault of Receiving Party; (b) was in Receiving Party’s possession before receipt from Disclosing Party; (c) is rightfully received by Receiving Party from a third party without any duty of confidentiality; (d) is independently developed by Receiving Party without reference to or use of Confidential Information; or (e) is related to the terms and conditions of this Agreement and is disclosed by GTT to an authorized GTT dealer in the course of normal business operations, provided that said dealer was involved in the sales process pertaining to this Agreement..
- B. Receiving Party Obligations. The Receiving Party agrees (i) not to use Confidential Information of Disclosing Party other than in furtherance of the Order; (ii) to hold Confidential Information of the Disclosing Party in confidence and to protect the Confidential Information using the same degree of care it uses to protect its own Confidential Information but in no event with less than reasonable care and to restrict disclosure of the Confidential Information to its employees and agents who have a “need to know”; and (iii) Confidential Information of Disclosing Party may be disclosed in response to a valid court order or other legal process only to the extent required by such order or process and only after the Receiving Party has given the Disclosing Party written notice of such court order or other legal process promptly, if allowed by law and the opportunity for the Disclosing Party to seek a protective order or confidential treatment of such Confidential Information. Upon Disclosing Party’s request, Receiving Party will return Confidential Information to Disclosing Party or destroy the same if requested by Disclosing Party. Receiving Party agrees its breach of this section may cause irreparable damage and Disclosing Party may seek equitable remedies, in addition to other remedies hereunder or at law.
14. GOVERNING LAW; VENUE; ACTIONS; ATTORNEYS FEES. The Order and these Terms will be governed by and construed in accordance with the laws of the State of Minnesota without regard to conflicts of laws provisions. The parties consent to the sole and exclusive venue and jurisdiction of the federal and state courts situated in or having jurisdiction over Ramsey County, Minnesota. The United Nations Convention on Contracts for the International Sale of Goods will not apply. Customer must commence all actions relating to an Order within one (1) year from the initial date of occurrence of the event giving rise to any claim or such claim will be forever barred. If GTT substantially prevails in any dispute, Customer will pay all reasonable costs incurred by GTT, including but not limited to collection costs, attorneys’ fees and costs of legal action.
15. FORCE MAJEURE. GTT will not be liable for damages of any kind resulting from any delays in performance, in whole or in part, or any loss, damage, cost or expense, including any loss or damage to the Product that may prevent GTT from performing any obligations hereunder, resulting from causes beyond its reasonable control, such as acts of God, fire, strikes, epidemics, embargos, acts of government, war, riots, vandalism, theft, delays in

transportation, difficulties in obtaining necessary labor, materials, or manufacturing facilities or other similar causes ("Force Majeure Event"). In such event, the Party delayed will promptly give notice to the other Party. In the event of a delay, the Parties, through mutual agreement, may: (a) extend the time for performance for the duration of the Force Majeure Event, or (b) cancel all or any part of the unperformed part of the Order if such Force Majeure Event exceeds sixty (60) days. If GTT's costs are increased as a result of such Force Majeure Event, GTT may increase pricing upon written notice to Customer.

GTT reserves the right to charge Customer reasonable, additional fees that occur as a result of: 1) a report of an outage or disruption that is later determined to be unrelated to GTT's Products or Services and/or 2) Services or Product replacements that become necessary as a result of loss or damage due to Customer's (or Customer's other suppliers') removal of Products or negligence.

16. TECHNOLOGY REQUIREMENTS.

- A. If GTT's North American variant has been requested, Customer acknowledges that North American radio equipment is certified to North American standards (e.g., the FCC) and not international standards (e.g., ETSI). Customer has specifically requested the North American variant and accepts all responsibility for obtaining the necessary waivers from the appropriate agencies in the country in which the equipment will be operated, before the equipment is installed and/or made operational; and purchaser accepts all associated liability for not doing so.
- B. Customer is responsible for ensuring that the traffic infrastructure, including the traffic controller, is compatible with the Products.
 - 1. When integration services are proposed (for transit applications), integration assumes: a) route and run information is available on the vehicle via J-1708 or RS485, whenever driver updates either the route or run; schedule data is available in standard GTFS format via an IP portal accessible to the Opticom Central Management Software (CMS); b) connectivity is available to all transit vehicles. If any of the preceding is not available, pricing for integration services may be affected.
- C. In instances where GTT is providing PCaaS or any ongoing services requiring remote access, GTT assumes the presence of and access to a customer-provided connectivity network for remote access to intersections and vehicles, unless a GTT-provided cellular data plan has been included amongst the listed services.

17. MISCELLANEOUS. If any provision of these Terms to any extent is declared invalid or unenforceable, the remainder of these Terms will not be affected thereby and will continue to be valid and enforceable to the fullest extent permitted by law. Any modifications hereto must be in writing and signed by both parties. GTT's failure to strictly enforce any of these terms will not be considered a waiver of any of its rights hereunder. Neither Party will assign this these Terms nor any of its obligations hereunder without the prior written consent of the other Party, except in the case of a reorganization, merger, acquisition, or sale of substantially all its assets. These Terms will be binding on and inure to the benefit of each Party's successors and assigns. The termination or expiration of any Order and/or any the Contract Documents, will not affect the survival or continuing validity of any provision that expressly or by implication is intended to continue in force after such termination or expiration.

18. SERVICES. Customer is responsible for Up-Front Services and Ongoing Services, unless such services are included in the Order or a subsequent Order. Prices for Up-Front Services and Ongoing Services are charged at the then-prevailing rates, unless otherwise agreed to in writing in the Contract Documents. Services excludes integration of GTT's Products with third party products, unless otherwise agreed to in writing by GTT. Customer is responsible for any delays due to failure to comply with its portion of any applicable project plan related to Services.

- A. Ongoing Services required due to the following are excluded and subject to an additional fee: (1) modification of Products or Services without GTT's written consent; (2) use of parts and/or supplies not approved by GTT for use with the Products or Services; (3) misconduct, accident, neglect or misuse; (4) failure of installation site to conform to GTT's applicable specifications; (5) failure or inadequacy of electric power, humidity or air control; (6) failure to follow operating procedures provided by GTT; (7) Customer's failure to ensure that the traffic infrastructure, including the traffic controller, is compatible with the Products; and (8) service or maintenance performed by an unauthorized representative of GTT.
 - B. GTT's performance of Ongoing Services at its expense, is contingent upon the Customer: (1) exercising reasonable care in the operation of the Products; (2) operating the Product within GTT's published specifications; (3) maintaining the Product in conformance with GTT's maintenance standards; (4) properly maintaining the operating environment; and (5) providing necessary utility services for use of the Product in accordance with accompanying specifications.
 - C. Customer acknowledges that it is aware that in order to install Products and perform Services it may be necessary to drill holes and/or connect to a vehicle's electrical system and/or traffic cabinet's electrical system and agrees that GTT shall not be liable for any costs, expenses or damages arising from such work.
19. REPLACEMENT PARTS. In performing PCaaS services, GTT reserves the right to use replacement parts that are new, refurbished or equivalent in performance to new parts, at no extra charge to Customer. Parts being replaced will be the property of GTT. Customer acknowledges certain parts may be subject to discontinuance by the manufacturer, in which event GTT's obligation will be limited to making reasonable efforts to replace such discontinued parts with an equivalent part.
20. DATA. Customer warrants that it has sufficient rights, title and interests in and to all means of information, data and/or files Customer transmits or uploads to or stores on any environment, in connection with its use of the Products or Services ("Customer Data"). Customer will not transmit or upload any personally identifiable information and will be solely responsible for the security of such information. GTT may view, store, copy, delete or otherwise process any Customer Data to provide the Products and/or Services to Customer and unless prohibited by law, GTT may also collect, analyze and otherwise use anonymized versions of Customer Data for its own business purposes.
21. SUPPORT. GTT will provide helpdesk support during GTT's normal business hours, which are 8:00 am to 5:00 pm central time, Monday through Friday, excluding holidays.
- A. Warranty Support. Contact your authorized Opticom dealer, or contact GTT technical service at 800-258-4610 or download a warranty & services request form at www.gtt.com. Outside of the United States, please contact our headquarters in St. Paul, MN at 651-789-7333 for assistance in locating an authorized repair facility servicing your country.
22. TERMINATION. Either party may terminate the Services for cause immediately upon written notice if the other party is in material breach of these Terms, any schedules and/or Contract Documents and fails to cure within thirty (30) days of receipt of a written demand to cure, or if the other party (a) is liquidated, dissolved, or adjudged to be in a state of bankruptcy or receivership, (b) is insolvent, unable to pay its debts as they become due, makes an assignment for the benefit of creditors or takes advantage of any law for the benefit of debtors, (c) ceases to conduct business for any reason on an ongoing basis, leaving no successor in interest or (d) for convenience, in which case Customer will be responsible to pay GTT for all Product and Services delivered, all costs incurred by GTT that have not yet been amortized and any other operating expense incurred by GTT that are specifically applicable to this Agreement.

23. OTHER. GTT reserves the right to publicly disclose Customer as a customer of GTT, without the need for additional approval by Customer. Notwithstanding, case studies, personnel quotes and other references to Customer will require explicit permission by Customer.

Agenda Item No: 6.d
2022 Vice-Mayor

City Council Appointments 2022

Position	2021	2022
Vice Mayor, City Council	Maribeth Bushey	Rachel Kertz
San Rafael Sanitation District	Kate Colin (C) Maribeth Bushey Rachel Kertz (Alt)	
Central Marin Sanitation Agency <i>(informational only- appointed by SRSD)</i>	Maribeth Bushey	
City Rep. to Association of Bay Area Government (ABAG)	Eli Hill	
League of California Cities, North Bay Division	Maika Llorens Gulati Maribeth Bushey (Alt)	
Sonoma/Marin Area Rail Transit (SMART) <i>(informational only- appointed by TAM)</i>	Kate Colin Maribeth Bushey (Alt)	
County Priority-Setting Committee (re Community Development Block Grant Funds)	Eli Hill Rachel Kertz (Alt)	
Marin Clean Energy (MCE)	Maika Llorens Gulati Rachel Kertz (Alt)	
Transportation Authority of Marin (TAM) Board of Commissioners	Kate Colin Maribeth Bushey (Alt)	
Transportation Authority of Marin (TAM) - Safe Routes to Schools Program	Maika Llorens Gulati	
Micro Grid Task Force	Eli Hill	
BayWAVE	Kate Colin	
Age Friendly/ Aging Action Liaison		Rachel Kertz
City Council Standing Committees (Noticed public meetings)		
Climate Change Action Plan Quarterly Update Forum	Maika Llorens Gulati	
City/School Liaison Committee (Noticed Joint City Council /Schools meeting)	Kate Colin Eli Hill	
Economic Development Subcommittee	Kate Colin Rachel Kertz	Maika Llorens Gulati
General Plan 2040 Steering Committee	Maribeth Bushey	

	Maika Llorens Gulati (Alt)	
Library Foundation Board	Maribeth Bushey	
Council Liaisons to Boards, Commissions and Committees (Open, noticed meetings)		
ADA Access Advisory Committee	Eli Hill	
Bicycle and Pedestrian Advisory Committee	Maika Llorens Gulati	
Board of Library Trustees	Maribeth Bushey	
Business Improvement District Advisory Group	Rachel Kertz	
Cannabis Industry Tax Oversight Committee (Measure G)	Maribeth Bushey	
Citizens Advisory Committee “CAC” on Economic Development and Affordable Housing	Eli Hill	
Design Review Board	Kate Colin	
Fire Commission	Eli Hill	
Measure E Transaction and Use Tax Oversight Committee	Rachel Kertz	
Special Library Parcel Tax Committee (Measure D)	Maribeth Bushey	
Pickleweed Advisory Committee	Maika Llorens Gulati	
Park and Recreation Commission	Eli Hill	
Planning Commission	Kate Colin	
Joint Powers Agreement (JPA)		
Marin County Animal Control	Jim Schutz	
Marin County Hazardous and Solid Waste Joint Powers Authority Board and Executive Committee	Jim Schutz Cristine Alilovich (Alt)	
Marin Emergency Radio Authority (MERA) Governing Board	Dave Spiller Glenn McElderry (Alt) Robert Sinnott (Alt)	
Marin Emergency Radio Authority (MERA) Executive Board	Darin White	
Marin General Services Authority	Jim Schutz Cristine Alilovich (Alt)	

Updated:

Marin Wildfire Prevention Authority	Rachel Kertz Eli Hill (Alt)	
Marin County Council of Mayors & Councilmembers (MCCMC)		
Legislative Committee	Rachel Kertz	
Marin Transit District <i>(MCCMC appointment; non-City appointment)</i>	Kate Colin	
Homelessness Policy Maker Group	Kate Colin (C) Rachel Kertz	
Climate Mitigation Committee	Maika Llorens Gulati	
Disaster Preparedness	Eli Hill Maribeth Bushey (Alt)	
MCCMC Economic Recovery	Kate Colin Maika Llorens Gulati	
Ad Hoc Water Policy Committee	Maribeth Bushey Eli Hill	

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