



AGENDA

SAN RAFAEL CITY COUNCIL – MONDAY, APRIL 18, 2022

REGULAR MEETING AT 7:00 P.M.

In-Person:

San Rafael City Council Chambers
1400 Fifth Avenue, San Rafael, CA 94901

Participate Virtually:

Watch on Webinar: <https://tinyurl.com/cc-2022-04-18>

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 in-person, virtually using Zoom and is being streamed to YouTube at www.youtube.com/cityofsanrafael.

How to participate in the meeting in-person:

- Stay home if you are experiencing COVID-19 symptoms
- Face coverings are recommended for attendees
- Use the sign-in sheet (optional) which allows notification of potentially exposed individuals if contact tracing reveals COVID-19 transmission may have occurred in a given meeting
- Attendance will be limited to 50 percent of room capacity (no more than 90 persons) and all in-person attendees should socially distance as recommended by public health authorities. If the Chambers are 50% occupied, please participate online instead or utilize the audio feed in the lobby.
- All attendees are encouraged to be fully vaccinated.

How to participate in the meeting virtually:

- 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 Regular and Special Meetings of Monday, April 4, 2022 and Monday, April 11, 2022 (CC)

Recommended Action - Approve minutes as submitted

b. **Paramedic Tax Rate for Fiscal Year 2022-23**

Final Adoption of Ordinance 2005: An Ordinance Amending the Paramedic Service Special Tax Rates within the Voter-Approved Limit, Commencing with Fiscal Year 2022-2023, for Improved Residential and Non-Residential Properties in the City of San Rafael, County Service Area No. 13, County Service Area No. 19, and the Marinwood Community Services District (FD)

Recommended Action - Approve final adoption of Ordinance 2005

c. **MCSTOPPP Kerner Pump Station Trash Capture Device Project**

Resolution Approving and Authorizing the City Manager to Execute a Second Amendment to the Professional Services Agreement with Schaaf & Wheeler Consulting Civil Engineers, Inc. for Design and Environmental Engineering Services Associated with the MCSTOPPP Kerner Pump Station Trash Capture Device Project, In an Amount Not to Exceed \$280,832 (PW)

Recommended Action - Adopt Resolution

PUBLIC HEARINGS

6. Public Hearings:

a. **Streamlined Review for Certain Residential Projects (Formerly Design Review Advisory Committee, DRAC)**

i. Consideration of an Ordinance Amending Section 14.25.070 of Title 14 (Zoning Ordinance) of the San Rafael Municipal Code to Establish Streamlined Review for Certain

Residential Projects (CD)
Recommended Action – Pass Ordinance to print

- ii. Resolution Establishing a One Year Pilot Program for Streamlined Review for Certain Residential Projects
Recommended Action – Adopt Resolution

b. Adoption of a Military Equipment Funding, Acquisition and Use Policy in Compliance with Assembly Bill 481

Consideration of an Ordinance Adding New Chapter 2.52 to the San Rafael Municipal Code, Entitled “Police Acquisition and Use of ‘Military Equipment,’” and Approving the San Rafael Police Department’s Policy §706 – Military Equipment Funding, Acquisition and Use Policy”
PD

Recommended Action – Pass Ordinance to print

OTHER AGENDA ITEMS:

7. Other Agenda Items:

a. Third Street Safety Improvements Project

Adopt Resolutions Related to the Third Street Safety Improvements Project HSIPL 5043(043), City Project No. 11362 (PW)

- i. Resolution Awarding and Authorizing the City Manager to Execute the Construction Agreement for the Third Street Safety Improvements Projects, HSIPL 5043(043) to Ghilotti Bros., Inc., In the Amount of \$2,236,926, and Authorizing Contingency Funds In the Amount of \$263,074, for a Total Appropriated Amount of \$2,500,000
Recommended Action – Adopt Resolution

- ii. Resolution Approving and Authorizing the City Manager to Execute a Professional Services Agreement with Park Engineering, Inc. for Construction Management, Materials Testing and Inspection Services Associated with the Third Street Safety Improvements Project, HSIPL 5043(043), In the Amount of \$258,499, In a Form Approved by the City Attorney
Recommended Action – Adopt Resolution

- iii. Resolution Approving and Authorizing the City Manager to Execute an Amendment to the Professional Services Agreement with Kimley-Horn and Associates, Inc. for Construction Support Services Associated with the Third Street Safety Improvements Project, HSIPL 5043(043), In the Amount of \$40,000 for a New Total Professional Services Agreement of \$320,000, In a Form Approved by the City Attorney
Recommended Action – Adopt Resolution

b. Merrydale Road Multi-Use Path Connection Alternatives

Informational Report on Multi-Use Path Connection Alternatives from Las Gallinas Avenue to the Civic Center SMART Station via Merrydale Road (PW)

Recommended Action – Accept report

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, in the City Clerk's Office, Room 209, 1400 Fifth Avenue, and placed with other agenda-related materials on the table in front of the Council Chamber prior to the meeting.. Sign Language interpreters may be requested by calling (415) 485-3066 (voice), emailing city.clerk@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. To request Spanish language interpretation, please submit an online form at <https://www.cityofsanrafael.org/request-for-interpretation/>.



MINUTES

SAN RAFAEL CITY COUNCIL – MONDAY, APRIL 4, 2022

REGULAR MEETING AT 7:00 P.M.

Watch on Webinar: <https://tinyurl.com/cc-2022-04-04>

Watch on YouTube: www.youtube.com/cityofsanrafael

Listen by phone: (669) 900-9128

ID: 817-3692-0337#

One Tap Mobile: US: +16699009128,,81736920337#

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

Absent: None

Also Present: Assistant City Manager Cristine Alilovich
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 7:01 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, which included a land acknowledgement, gratitude to City Staff, Ramadan and Russia's attack on Ukraine. She announced the first in-person, hybrid City Council meeting to be held on April 18 at 7:00 p.m. She expressed a very special thank you to the City Clerk's Office and the IT Department for supporting the virtual meetings for the past two years.

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

OPEN TIME FOR PUBLIC EXPRESSION

- Salamah Locks, Marin County Commission on Aging announced their upcoming meeting to be held on Thursday, April 7, at 10:00 a.m. Topics to include Voter's Choice Act in Marin County and Housing Element, Housing Programs & Policies, Alternative Housing Options for Older Adults.
- Eva Chrysanthe, addressed the City Council regarding a recent lawsuit filed against the City regarding the conditions at the Service Support Area.

CITY MANAGER'S REPORT:

3. City Manager's Report:

Assistant City Manager Cristine Alilovich announced:

- Free Curbside Chipper Services
- Defensible Space and Home Hardening Grants
- Community Conversations Update:
 - Councilmember Hill, District 2, April 21 at San Rafael Community Center at 5:30 p.m.
 - Councilmember Llorens Gulati, District 1, Earth Day Cleanup on April 23 at Pickleweed Park at 10:00 a.m.
 - Vice Mayor Kertz, District 4, April 24 at the park in Terra Linda at 4:00 p.m.
 - Councilmember Bushey, District 3, April 27 at Peacock Gap Park at 5:30 p.m.
- Parks and Recreation Master Plan Update
- First In-Person, Hybrid City Council meeting, April 18 at 7:00 p.m.

Mayor Kate invited public comment.

Speaker: Eva Chrysanthe

COUNCILMEMBER REPORTS:

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

4. Councilmember Reports:

- Councilmember Kertz reported on a Jewish Community Relations Council (JCRC) "Here I Am" event, a MCCMC Homeless Committee meeting, the Marin Economic Forum's "Forecasting the Future" event and the Terra Linda Wellness Center Grand Opening.
- Councilmember Hill reported on a Jewish Community Relations Council (JCRC) "Here I Am" event and a MCCMC Ad Hoc Water Policy Committee meeting. He also took part in conducting interviews of finalists to assist the City in conducting its first Equity Audit.
- Councilmember Bushey reported on the County's proposal to close an eastbound lane on Pt. San Pedro Road.
- Councilmember Llorens Gulati reported on a Voces del Canal & Dominican University lighting meeting and a MCCMC for Climate Action Committee meeting. She announced her Earth Day Cleanup on April 23.
- Mayor Kate reported on a Jewish Community Relations Council (JCRC) "Here I Am" event, as well as, Marin Transit, Transportation Authority of Marin (TAM) and SMART meetings.

Mayor Kate invited public comment.

Speakers: Ken King, Salamah Locks

CONSENT CALENDAR:

Mayor Kate invited public comment.

Speaker: Lori Schifrin

Councilmember Kertz moved and Councilmember Llorens Gulati seconded to approve the Consent Calendar.

5. Consent Calendar Items:

- a. **Approval of Minutes**
Approve Minutes of City Council / Successor Agency Regular Meeting of Monday, March 21, 2022 (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 15050 - 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. **Approval for Special Event Street Closures in San Rafael**
Resolution Authorizing the Temporary Closure of Streets in San Rafael for Special Events for Calendar Year 2022 (PD)
Resolution 15051 - Resolution Authorizing the Temporary Closure of Streets in San Rafael for Special Events for Calendar Year 2022
- d. **Bellam Boulevard Traffic Signal Upgrades**
Resolution Authorizing the City Manager to Sign Purchase Orders and/or Agreements with Miovision and DC Electric Group for Traffic Signal Upgrades on Bellam Boulevard at: Andersen Drive, I-580 Ramps, Francisco Boulevard East, and Kerner Boulevard (PW)
Resolution 15052 - Resolution Authorizing the City Manager to Sign Purchase Orders and/or Agreements with Miovision and DC Electric Group for Traffic Signal Upgrades on Bellam Boulevard at: Andersen Drive, I-580 Ramps, Francisco Boulevard East, and Kerner Boulevard
- e. **Temporary Street Closure to Support an Open House for the Canal Community Based Transportation Plan**
Resolution Authorizing Alto Street Closure on Saturday, April 23, 2022 to Support a Canal Community Based Transportation Plan Open House (PW)
Resolution 15053 - Resolution Authorizing Alto Street Closure on Saturday, April 23, 2022 to Support a Canal Community Based Transportation Plan Open House
- f. **Southern Heights Bridge Replacement Project**

Accept Completion of the Southern Heights Bridge Replacement Project, City Project No. 11282, and Authorize the City Clerk to File the Notice of Completion (PW)

Accepted completion and authorized the City Clerk to file the Notice of Completion

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

SPECIAL PRESENTATIONS

6. Special Presentations:

a. [Presentation of Proclamation Supporting Celebrate Diversity Month \(HR\)](#)

Mayor Kate presented the proclamation.

Nadine Hade, Administration Services Director provided comments.

Mayor Kate invited public comment.

Speakers: Eva Chrysanthe, Salamah Locks

b. [Presentation of Proclamation Supporting National Library Week \(LR\)](#)

Mayor Kate presented the proclamation.

Jill Tokutomi and Katie Port, Supervising Librarians provided comments.

Mayor Kate invited public comment.

Speaker: Amy Likover

c. [Presentation of Proclamation Supporting Month of the Young Child \(LR\)](#)

Mayor Kate presented the proclamation.

Catherine Quffa, Assistant Library & Recreation Director provided comments.

Mayor Kate invited public comment.

Speakers: Eva Chrysanthe, Linda Cerutti-Panico

Trisha Cerutti-Saylors, Childcare Director provided comments.

Councilmember Bushey provided comments.

PUBLIC HEARINGS

7. Public Hearings:

a. [Paramedic Tax Rate for Fiscal Year 2022-23](#)

Consideration of An Ordinance Amending the Paramedic Service Special Tax Rates within the Voter-Approved Limit, Commencing with Fiscal Year 2022-2023, for Improved

Residential and Non-Residential Properties in the City of San Rafael, County Service Area No. 13, County Service Area No. 19, and the Marinwood Community Services District (FD)

Thomas Wong, Senior Management Analyst (Fire Department) presented the Staff Report.

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment.

Speaker: Eva Chrysanthe

Councilmembers provided comments.

Councilmember Kertz moved and Councilmember Llorens Gulati seconded to pass Ordinance No. 2005 to print.

Passed to Print Ordinance No. 2005 Amending the Paramedic Service Special Tax Rates within the Voter-Approved Limit, Commencing with Fiscal Year 2022-2023, for Improved Residential and Non-Residential Properties in the City of San Rafael, County Service Area No. 13, County Service Area No. 19, and the Marinwood Community Services District

OTHER AGENDA ITEMS:

8. Other Agenda Items:

a. [San Rafael 2023-2031 Housing Element](#)
Progress Report on the 2023-2031 Housing Element (CD)

Alicia Giudice, Community Development Director introduced Barry Miller, Housing Element Project Manager who presented the Staff Report.

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment.

Speakers: Ray Lorber, Catalysts for Local Control, Ken, Bill Carney, Sustainable San Rafael

Staff responded to public comment.

Councilmembers provided comments.

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

Accepted report

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None

ADJOURNMENT:

Mayor Kate adjourned the meeting at 9:44 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2022

KATE COLIN, Mayor

DRAFT

MINUTES



SAN RAFAEL CITY COUNCIL SPECIAL MEETING
MONDAY, APRIL 11, 2022 AT 4:30 P.M.

Watch Webinar: <https://tinyurl.com/ccsm-2022-04-11>

Listen by phone: (669) 900-9128,

ID: 836-0093-9519#

One Tap Mobile: US: +16699009128,,83600939519#

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

Absent: None

Also Present: City Manager Jim Schutz
City Clerk Lindsay Lara

Mayor Kate called the meeting to order at 4:32 p.m.

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

1. **Planning Commission Interviews**

Interview Applicants and Make an Appointment to Fill One Unexpired Four-Year Term to the End of June 2023 on the Planning Commission Due to the Resignation of Mark Lubamersky (CC)

The City Council interviewed the following applicants: Brad Gaffney, Dale Newhouse, Doran Bilderman, Kelly Shalk, Michael Alexin, Pamela Reaves, Paul Nave and Supriya Menon. Mindy Anderson and Sunny Lee withdrew from interviews.

Councilmember Kertz moved and Councilmember Bushey seconded to appoint Kelly Shalk to fill one unexpired four-year term to the end of June 2023 on the Planning Commission.

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

ADJOURNMENT:

Mayor Kate adjourned the meeting at 7:11 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2022

KATE COLIN, Mayor

ORDINANCE NO. 2005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING THE PARAMEDIC SERVICE SPECIAL TAX RATES WITHIN THE VOTER-APPROVED LIMIT, COMMENCING WITH FISCAL YEAR 2022-2023, FOR IMPROVED RESIDENTIAL AND NON-RESIDENTIAL PROPERTIES IN THE CITY OF SAN RAFAEL, COUNTY SERVICE AREA NO. 13, COUNTY SERVICE AREA NO. 19, AND THE MARINWOOD COMMUNITY SERVICES DISTRICT

WHEREAS, the electors of the City of San Rafael in 1979 and in 1988, adopted a Paramedic Service Special Tax (Chapter 3.28 of the San Rafael Municipal Code) to be imposed annually upon all improved residential and non-residential properties within the City of San Rafael; and

WHEREAS, the City, pursuant to three separate Joint Powers Agreements, provides paramedic services to Marinwood Community Services District, County Service Area No. 13, and County Service Area No. 19; and

WHEREAS, on November 2, 2010, the electors of the City of San Rafael approved Measure "I", subsequently designated as Ordinance No. 1891, increasing the ceiling on the Paramedic Service Special Tax rate to \$108.00 per residential unit for residential properties and to \$0.14 per square foot of buildings on non-residential properties; and providing a corresponding increase in the appropriations limit; and

WHEREAS, the current annual Paramedic Service Special Tax rate in the city limits of the City of San Rafael is \$99.00 per residential unit for residential properties and \$0.140 per square foot of buildings on non-residential properties; and

WHEREAS, Paramedic Service Special Tax rates were approved by the electors of County Service Area No. 13 and County Service Area No. 19 by elections held in November 2006 and November 2011, and by the electors of Marinwood Community Services District by an election held in November 2006; and

WHEREAS, the current annual Paramedic Service Special Tax rate in County Service Area No. 13, and County Service Area No. 19, is \$95.00 per residential unit for residential properties and \$0.132 per square foot of buildings on non-residential properties, which rates are the maximum rates approved by voters in those County Service Areas; and

WHEREAS, the current annual Paramedic Service Special Tax rate in the Marinwood Community Services District is \$85.00 per residential unit for residential properties and \$0.11 per square foot of structures on non-residential properties, which rates are the maximum rates approved by voters in that Community Services District; and

WHEREAS, the City Council, after reviewing the proposed budget recommendation of the City Manager, finds that for the City of San Rafael, the annual Paramedic Service Special Tax rate for residential properties should be adjusted to \$104.00 per residential unit, and the non-residential properties tax rate should remain at \$0.140 per square foot of buildings; for the County Service Area No. 13 and County Service Area No. 19, the annual Paramedic Service Special Tax rate for residential properties should remain at \$95.00 per residential unit, and the non-residential properties tax rate should remain at \$0.132 per

square foot of buildings; and that for Marinwood Community Services District, the annual Paramedic Tax Rates for residential properties should remain at \$85.00 per residential unit, and the non-residential tax rate should remain at \$0.11 per square foot of buildings; these rates will cover the cost of providing paramedic services within these service areas for fiscal year 2022-2023; and

WHEREAS, County Service Area No. 13 and County Service Area No. 19, based upon budgets recommended to them, have advised the City that they approved of the setting of the annual Paramedic Service Special Tax rate within their respective jurisdictions, at \$95.00 per residential unit for residential properties, and at \$0.132 per square foot for buildings on non-residential properties; and

WHEREAS, Marinwood Community Services District, based upon budgets recommended to them, have advised the City that they approved of the continuing of the annual Paramedic Service Special Tax rate within its jurisdiction, at \$85.00 per residential unit for residential properties, and at \$0.11 per square foot for buildings on non-residential properties;

NOW THEREFORE, the City Council of the City of San Rafael does ordain as follows:

Division 1. Pursuant to San Rafael Municipal Code Section 3.28.060, the City Council hereby sets the tax rate for paramedic services within City limits commencing in fiscal year 2022-2023, at \$104.00 per year for each residential unit, and \$0.140 per square foot for non-residential structures.

Division 2. The City Council hereby sets the Paramedic Tax Rates for County Service Area No. 13 and County Service Area No. 19, commencing with fiscal year 2022-2023, at \$95.00 per year for each residential unit, and \$0.132 per square foot for each non-residential structure.

Division 3. The City Council hereby sets the Paramedic Tax Rates for Marinwood Community Services District, commencing with fiscal year 2022-2023, at \$85.00 per year for each residential unit, and at \$0.11 per square foot for each non-residential structure.

Division 4. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such holding or holdings shall not affect the validity of the remaining portions of this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Division 5. This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published, and circulated in the City of San Rafael, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.


KATE COLIN, Mayor

Attest:


LINDSAY LARA, City Clerk

The foregoing Ordinance No. 2005 was introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 4th day of April 2022, and ordered passed to print by the following vote, to wit:

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

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 18th day of April 2022.


LINDSAY LARA, City Clerk

SUMMARY OF ORDINANCE NO. 2005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING THE PARAMEDIC SERVICE SPECIAL TAX RATES WITHIN THE VOTER-APPROVED LIMIT, COMMENCING WITH FISCAL YEAR 2022-2023, FOR IMPROVED RESIDENTIAL AND NON-RESIDENTIAL PROPERTIES IN THE CITY OF SAN RAFAEL, COUNTY SERVICE AREA NO. 13, COUNTY SERVICE AREA NO. 19, AND THE MARINWOOD COMMUNITY SERVICES DISTRICT

This Summary concerns a proposed ordinance of the City Council of the City of San Rafael, designated as Ordinance No. 2005, which will set the Paramedic Service Special Tax rates for Fiscal Year 2022-2023 for properties in the City of San Rafael, County Service Area No. 13 (CSA No. 13), County Service Area No. 19 (CSA No. 19), and the Marinwood Community Services District (CSD) as detailed in the complete text of Ordinance No. 2005. Ordinance No. 2005 is scheduled for adoption by the San Rafael City Council at its regular meeting of April 18, 2022. The City Clerk has been directed to publish this Summary pursuant to City Charter and California Government Code section 36933(c)(1).

SUMMARY OF ORDINANCE

The City of San Rafael has adopted, with required voter approval, San Rafael Municipal Code (SRMC) Chapter 3.28, the Paramedic Service Special Tax, to be imposed annually upon all improved residential and non-residential properties within the City of San Rafael. In addition, pursuant to three separate Joint Powers Agreements, San Rafael provides paramedic services to CSA No. 13, CSA No. 19, and Marinwood CSD. The City Council sets the annual tax rates within those jurisdictions by ordinance pursuant to SRMC Chapter 3.28. Ordinance No. 2005 would set the annual Paramedic Service Special Tax rates for Fiscal Year 2022-2023 as follows:

<u>Jurisdiction</u>	<u>Residential Property Rate</u>	<u>Nonresidential Property Rate</u>
City of San Rafael:	\$104.00/residential unit	\$0.140/square foot of structures
CSA No. 13:	\$95.00/residential unit	\$0.132/square foot of structures
CSA No. 19:	\$95.00/residential unit	\$0.132/square foot of structures
Marinwood CSD:	\$85.00/residential unit	\$0.110/square foot of structures

For a complete copy of the text of the Ordinance amending the Municipal Code, please contact the San Rafael Fire Department at (415) 485-3304 or by email: fire.department@cityofsanrafael.org. Copies of the Ordinance containing this Municipal Code amendment are also available for public review by contacting the City Clerk’s office by email to Lindsay.lara@cityofsanrafael.org

/s/ Lindsay Lara
LINDSAY LARA
San Rafael City Clerk
Dated: 04/06/2022



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: Bill Guerin,
Director of Public Works

City Manager Approval: _____

TOPIC: MCSTOPPP KERNER PUMP STATION TRASH CAPTURE DEVICE PROJECT

SUBJECT: A RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH SCHAAF & WHEELER CONSULTING CIVIL ENGINEERS, INC. FOR DESIGN AND ENVIRONMENTAL ENGINEERING SERVICES ASSOCIATED WITH THE MCSTOPPP KERNER PUMP STATION TRASH CAPTURE DEVICE PROJECT, IN AN AMOUNT NOT TO EXCEED \$280,832

RECOMMENDATION:

Adopt a resolution approving and authorizing the City Manager to execute a second amendment to the professional services agreement with Schaaf & Wheeler Consulting Civil Engineers, Inc. for additional design and environmental engineering services associated with the MCSTOPPP Kerner Pump Station Trash Capture Device Project, in an amount not to exceed \$280,832, increasing the total not to exceed amount under the agreement to \$466,466.

BACKGROUND:

On [October 19, 2020](#), the City Council authorized a professional services agreement to Schaaf & Wheeler Consulting Civil Engineers, Inc. (Schaaf & Wheeler) to conduct a feasibility study of two stormwater pump stations in the Canal neighborhood to ascertain which location may be best suited for installation of a full trash capture device. The draft feasibility study was reviewed by both City staff and Marin County staff who manage the Marin County Stormwater Pollution Prevention Program (MCSTOPPP). On October 7th, 2021, the alternatives were presented to the various environmental regulatory agencies at the monthly Marin Project Coordination Meeting to get their feedback.

On [May 3, 2021](#), the City Council authorized a first amendment to the agreement with Schaaf & Wheeler for design and environmental engineering services in an additional amount not to exceed \$50,090. Under this amendment, Schaaf & Wheeler conducted hydraulic modeling and an aquatic resources mitigation analysis.

After weighing the pros and cons of each alternative, which considered costs, ease of maintenance, and environmental impacts, staff have selected alternative 5, which is to pursue installation of a concrete cast-in-place trash capture device downstream of the Kerner Boulevard

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

stormwater pump station. The device would be located at Pickleweed Park near the San Rafael Canal and will not impact the public's enjoyment of the park. As such, the existing scoped design tasks were modified to provide the services necessary to complete the design of the device.

Another factor for selecting the Kerner location is the integration of the trash capture device with the Marin Audubon Society's (MAS) Tiscornia Marsh project. The Tiscornia Marsh project is a marsh restoration and levee project that wraps around the north and east boundaries of Pickleweed Park. The trash capture device is currently designed to be located within the proposed levee on the northwest corner of Pickleweed Park. City staff has been coordinating with MAS' design consultant to help facilitate both projects.

ANALYSIS:

The hydraulic modeling and aquatic resources mitigation analysis completed by Schaaf & Wheeler highlight the potential for increased flooding if the proposed trash capture device is constructed. To counter the hydraulic obstruction created by a trash capture device, the existing Kerner Pump Station will need to be upgraded. This amendment includes an increase in scope to cover the design needed for these upgrades. (Attachment 2, Exhibit A)

The County's MCSTOPPP staff have helped secure Environmental Protection Agency (EPA) funding for the construction of large trash capture devices in San Rafael. Although these funds were meant to cover construction expenses, the EPA has agreed to allocate a portion for the design phase, which would be used for Schaaf & Wheeler to complete the design of the trash capture device. The City and County are working together with Caltrans to secure funding for the construction phase, which is anticipated for Fall 2023.

FISCAL IMPACT:

This second amendment will increase the compensation payable under the professional services agreement with Schaaf & Wheeler by \$280,832 for a total not to exceed amount under the agreement of \$466,466. The additional consultant's fee of \$280,832 will be paid for and appropriated from the Stormwater Fund (Fund #205). Grant funding from the EPA will reimburse \$280,832 of the total design expense.

OPTIONS:

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

1. Adopt the resolution authorizing the City Manager to execute a second amendment to the agreement with Schaaf & Wheeler.
2. Do not accept the proposal and provide further direction to staff.

ATTACHMENT:

1. Resolution Approving and Authorizing the City Manager to Execute a Second Amendment to the Professional Services Agreement with Schaaf & Wheeler Consulting Civil Engineers, Inc. for Design and Environmental Engineering Services Associated with the MCSTOPPP Kerner Pump Station Trash Capture Device Project, in an Additional Amount Not To Exceed \$280,832
2. Second Amendment to the Professional Services Agreement with Schaaf & Wheeler, Inc. for Design and Environmental Engineering Services for the MCSTOPPP Kerner Pump Station Trash Capture Device Project, with attached Exhibit A (Proposal)

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH SCHAAF & WHEELER CONSULTING CIVIL ENGINEERS, INC. FOR DESIGN AND ENVIRONMENTAL ENGINEERING SERVICES ASSOCIATED WITH THE MCSTOPPP KERNER PUMP STATION TRASH CAPTURE DEVICE PROJECT, IN AN ADDITIONAL AMOUNT NOT TO EXCEED \$280,832

WHEREAS, pursuant to City Council Resolution #14864, the City of San Rafael and Schaaf & Wheeler Consulting Civil Engineers, Inc. (“Schaaf & Wheeler”) entered into a Professional Services Agreement on October 30, 2020, in an amount not to exceed \$135,544, for design and environmental engineering services associated with the MCSTOPPP Kerner Pump Station Trash Capture Device Project; and

WHEREAS, pursuant to City Council Resolution #14905, the City and Schaaf & Wheeler entered into a First Amendment to the Agreement dated May 19, 2021, to perform additional design services for an amount not-to-exceed \$50,090 and increasing the total not-to-exceed amount under the Agreement to \$185,634; and

WHEREAS, the City requires additional design services to complete the design after the results of the hydraulics analysis and aquatic mitigation study; and

WHEREAS, staff received a proposal from Schaaf & Wheeler for said services in an additional amount of \$280,832 and staff has reviewed the proposal and found it complete and within industry standards;

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

1. The City Council hereby approves and authorizes the City Manager to execute a Second Amendment to the professional services agreement with Schaaf & Wheeler Consulting Civil Engineers, Inc. for additional design and environmental engineering services in the amount of \$280,832 and a revised total contract value not to exceed \$466,466, in the form included in the staff report for this resolution.

2. Funds totaling \$280,832 will be appropriated for this project from Fund 205. Staff will seek a max reimbursement of \$280,832 from the EPA grant for these design services.

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

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on the 18th day of April, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH SCHAAF & WHEELER, INC. FOR DESIGN AND ENVIRONMENTAL ENGINEERING SERVICES FOR THE MCSTOPPP KERNER PUMP STATION TRASH CAPTURE DEVICE PROJECT

THIS SECOND AMENDMENT to the professional services agreement by and between the **CITY OF SAN RAFAEL** (hereinafter “**CITY**”), and **SCHAAF & WHEELER CONSULTING CIVIL ENGINEERS, INC.**, (hereinafter “**CONSULTANT**”), is made and entered into as of the _____ day of _____, 2022.

RECITALS

WHEREAS, pursuant to City Council Resolution #14864, on October 30, 2020, the **CITY** and **CONSULTANT** entered into an “Agreement for Professional Services for the MCSTOPPP Full Trash Capture Device Project”, in an amount not to exceed \$135,544, for design and environmental engineering services associated with the MCSTOPPP Kerner Pump Station Trash Capture Device Project (the “Agreement”); and

WHEREAS, pursuant to City Council Resolution #14905, the **CITY** and **CONSULTANT** entered into a First Amendment to the Agreement dated May 19, 2021, to perform additional design services for an amount not-to-exceed \$50,090, and increasing the total not-to-exceed amount under the Agreement to \$185,634; and

WHEREAS, the **CITY** requires additional design services to complete the design after the results of the hydraulics analysis and aquatic mitigation study; and

WHEREAS, staff received a proposal from the **CONSULTANT** for said services in an additional amount of \$280,832 and staff has reviewed the proposal and found it complete and within industry standards;

AMENDMENT TO AGREEMENT

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

1. Section 2 of the Agreement, entitled “DUTIES OF CONSULTANT” is hereby amended to include the additional services set forth in **CONSULTANT**’s proposal entitled “MCSTOPPP/San Rafael Trash Capture Project Revised Design Scope” dated January 14, 2022, attached to this Second Amendment as “Exhibit A” and incorporated herein by reference.

2. Section 4 of the Agreement, entitled “COMPENSATION” is hereby amended to include additional compensation payable to **CONSULTANT** for the services described in “Exhibit

A” to this Second Amendment, on a time and materials basis in accordance with the “Revised Fee” included in “Exhibit A”, in a not-to-exceed amount of \$280,832, and to change the total not-to-exceed amount under the Agreement to \$466,466.

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

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

CITY OF SAN RAFAEL

CONSULTANT:

SCHAAF & WHEELER, INC.

JIM SCHUTZ, City Manager

By:_____

Name:_____

ATTEST:

Title:_____

and

LINDSAY LARA, City Clerk

By:_____

APPROVED AS TO FORM

Name:_____

Title:_____

ROBERT F. EPSTEIN, City Attorney

Schaaf & Wheeler
CONSULTING CIVIL ENGINEERS

870 Market Street, Suite 1278
San Francisco, CA 94102-2906
415-433-4848
FAX 415-433-1029

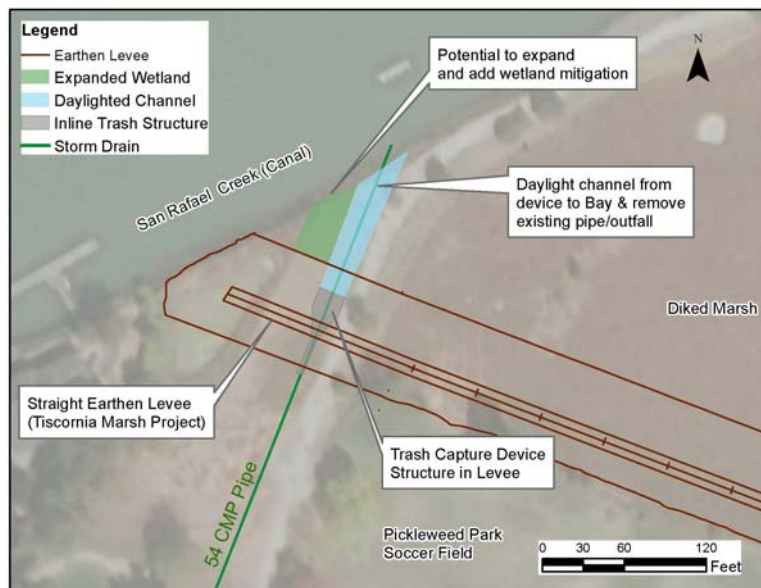
January 14, 2022

April Miller
Assistant Public Works Director/City Engineer
Department of Public Works
City of San Rafael
(415) 485.3409
April.miller@cityofsanrafael.org

Subject: MCSTOPPP/San Rafael Trash Capture Project Revised Design Scope

Dear Ms. Miller:

Based on work completed under Schaaf & Wheeler's existing contract, the City has elected to pursue the design of a cast in place trash capture device at the outfall from the Kerner Pump Station. As such, the existing scoped design tasks are modified herein to provide the services necessary to complete the design of the device. This scope assumes the inline alternative #2 (MCSTOPPP Full Trash Capture Feasibility Analysis Memorandum dated 2/2/21) with setback from the Bay as seen in the image below. **It also assumes that the project will be permitted with the adjacent Tiscornia Marsh project and that trash capture device CEQA will be conducted by the City's consultant, with input from S&W as scoped herein.**



The following revised scope of services is proposed. Where no change is made the text remains in black or omitted and noted as unchanged. Changes and additions are indicated in red text for clarity.

Revised Task 1: Project Management

Quality Control: Schaaf & Wheeler will perform quality control on all deliverables throughout the project tasks outlined herein. Quality control will be conducted by the project manager, Caitlin Gilmore, as well as a separate principal engineer within the firm not familiar with the day-to-day activities of the project to obtain an objective quality assurance analysis.

Monthly Invoicing and Contracting: Schaaf & Wheeler will work with the City and stakeholders to finalize the scope of work and contract associated with this project. This includes subcontracting with the design team. Monthly invoices will be submitted to the city in a timely manner, with billing summaries, project and schedule status and percentage complete. **Revised scope assumes an additional project duration of 1 year, February 2022-February 2023. This contract specifically excludes bidding and construction support anticipated in 2023; however, it can be provided for additional fee.**

Coordination with subconsultants and the City: During the duration of the project, Schaaf & Wheeler will coordinate with the City, stakeholders and subconsultants to monitor timely progress of the project, to stay on budget, and resolve issues as they arise. **Coordination with the Tiscornia Marsh project Team. This assumes up to 10 virtual meetings of 1 hour in duration and two on-site meetings. This assumes Schaaf & Wheeler and Hultgren Tillis will be present at all Tiscornia Marsh coordination meetings, with Finn Design Group present at half of the meetings.**

Deliverables:

- Project schedule updates in MS word
- Billings summaries for monthly billings, including tasks completed and percent complete

Assumptions:

- Project meetings, **besides those associated with Tiscornia Marsh coordination,** have been included within the tasks below

Task 2: Feasibility Analysis

2.5 – Pump Station Capacity Mitigation Feasibility Analysis

The proposed trash capture device will decrease the Kerner Pump Station Capacity by approximately 10%. Schaaf & Wheeler and electrical engineering subconsultant, TJC and Associates, will evaluate alternatives for mitigating the reduction in pump station capacity. Alternatives will likely require replacing one or more pumps. Depending on the power requirements for the new pump(s), additional pump station equipment may also need to be replaced and upsized. The pump station capacity mitigation feasibility analysis will be summarized in a brief memorandum. Preliminary estimates of probable construction costs will be included for planning purposes.

Deliverables:

- Pump Station Capacity Mitigation Summary Memorandum

Assumptions:

- This scope does not include evaluation of the existing force main, or developing alternatives to mitigate the pump station capacity by modifying the force main.

Revised Task 3: Design**3.1 – Field Investigations****3.1.1 – Geotechnical Investigation**

Hultgren-Tillis will drill one boring near the planned trash capture device. The boring will be drilled to a depth of about 80 feet below existing grade or practical refusal with truck-mounted drilling equipment. We anticipate that mobilization and advancing the boring will take one day of field work.

A permit from the Marin County Environmental Health Department will be obtained to drill and grout the boring. If additional permits are required for the boring, we assume that they will be facilitated by the City. We assume that traffic control will not be required.

Before drilling, Underground Service Alert (USA) will be contacted to have their member firms locate utilities. The boring could encounter utilities or other buried structures not marked through USA. The cost to repair damage to utilities or other underground facilities is not included in our scope of services or fee estimate. The cost to repair damage to such facilities will be an additional fee.

Hultgren-Tillis' field engineer will log the boring and obtain soil samples for further visual classification and laboratory testing. After drilling is complete, the boring will be backfilled with grout. Drill cuttings generated from drilling will be collected and disposed. It is assumed that the drill cuttings are nonhazardous. Selected soil samples will be submitted for laboratory testing. The laboratory testing program will include moisture content, dry density, Atterberg limits, sieve analysis, consolidation, unconsolidated undrained (TxUU) triaxial shear strength, and corrosivity tests.

Based upon the results of the field exploration and laboratory testing, a geotechnical engineering analysis will be performed to develop conclusions and recommendations regarding the following:

1. Subsurface conditions;
2. Site preparation and grading;
3. Potential for liquefaction;
4. Site Class and mapped acceleration parameters in accordance with 2019 California Building Code (we assume a site-specific seismic study will not be required);
5. Suitable type(s) and depth(s) of foundations;
6. Geotechnical criteria for deep foundation design including minimum embedment depth, axial pile resistance, and lateral load-moment-deflection relationships;
7. Geotechnical criteria for bedding and backfill;
8. Geotechnical criteria for seepage cutoff; and
9. Estimated total and differential settlement.

The results of the investigation will be summarized and submitted in a report along with a site plan and log of boring.

3.1.2 – Topographic Survey and Boundary Research

No revision to the original scope proposed.

3.1.3 – Utility Locating

Both USA and private underground utility locating will be performed at the selected project site prior to geotechnical boring and site survey. This includes potholing up to five (5) underground utilities adjacent to the proposed device to determine exact location, depth and size. **It is assumed one of the potholes will be to expose the top of the existing CMP force main to determine exterior condition.** This includes pothole backfilling per local standards. This excludes traffic control and encroachment permits as it is assumed the potholes will be located off the city roadway right-of-way.

3.2 – Design Documents

3.2.1 – 65% Design Documents

Design plans will be developed on 22"x34" titleblock provided by the city. A technical specification outline will be developed following Caltrans standards. A construction cost estimate will be developed. This includes development of a draft design report which includes hydraulic and device sizing calculations, as well as the design of the system for dewatering for maintenance as necessary. **Includes design of the device for future FEMA levee certification and connection to the adjacent proposed Tiscornia Marsh levee. Includes the design of removal of the existing CMP outfall. Includes daylighting the existing culvert downstream of the trash capture device. Structural details will not be provided at 65% design. Structural input on the design, foundation and cost will be provided as well as a structural report. This task includes the development of a report detailing the proposed dewatering plan.**

This includes the following construction sheets:

- Title Sheet
- Notes
- **Demolition and outfall removal plan**
- **Dewatering Plan**
- Plan and Profile
- Construction Details
- Erosion Control
- Traffic Control **(includes pedestrian and bike trail detour)**

3.2.2 – 95% Design Documents

95% design plans will be developed, including comments by stakeholders on the 65% plans. Includes written response to comments. The geotechnical study recommendations will be incorporated as well as potholing data. This includes development of 95% specifications per Caltrans standards as provided by the City. The design report and cost estimate will be updated. **Structural design, details and structural calculations will be included.**

3.2.3 –100% Design Documents

Design plans will be developed, including comments by stakeholders on the 95% plans. Includes written response to comments. This includes development of 100% specifications and schedule of bid items and quantities. Includes review of the design by geotechnical engineer. The design report

and cost estimate will be updated. Includes written response to comments. **Structural design and structural calculations will be updated.**

3.2.4 – Bid Set

Final bid set will be developed, incorporating all comments on the 100% set.

FEMA levee certification and accompanying documents will be prepared for future levee accreditation.

Assumptions:

- **City will provide the condition of the existing 54" force main at the proposed trash capture device location. Design of force main repairs beyond the connection point of the trash capture device is not included within this scope of services.**
- **FEMA applications and coordination are not included in this scope of services.**
- Excludes development of a SWPPP. Assumed to be included as a front-end specification requirement for the contractor.
- Excludes post construction water quality treatment as it is assumed not to be needed
- Excludes development of the front-end specification which is assumed to be completed by the City except for the schedule of bid items.
- Assumes the City will be responsible for coordinating any necessary utility relocation
- Does not include a boundary survey.
- Excludes shoring design, which is assumed to be completed by the contractor. Shoring recommendations and specifications are included in this scope.
- Assumes the site will be on publicly owned property, property acquisition excluded
- Traffic control plans and encroachment permits are excluded
- Environmental sampling of soils excluded
- **Excludes mitigation design and planting plans which are assumed to be completed by the Tiscornia Marsh project team as part of permitting process**
- **Excludes bidding and construction support services**

Deliverables:

- 65%, 95%, 100% Design Documents (CAD, PDF, word, excel)
- Stamped and Signed Bid Documents in electronic format
- Basis of Design Report
- Topographic ground survey (CAD and PDF)
- Boundary Research and property line delineation based on research in CAD and PDF format
- Utility research results and coordination letters
- Geotechnical Investigation report including boring logs
- Potholing report
- **Dewatering report**

- Structural Report
- Structural Calculations
- FEMA levee certification documents (geotechnical and structural)

Task 4: Environmental Documentation

No revision proposed. Task is complete.

Task 5: Feasibility Analysis

No revision proposed.

Additional Task 6: Permitting & CEQA Support

This added task includes providing support services during the project permitting and CEQA process.

Task 6.1. Permitting Support

This scope includes supporting the Tiscornia Marsh Team in developing environmental permits which include the trash capture device design scoped herein. This includes up to 4 virtual meetings with permit agencies. This includes providing figures, project description and maintenance description. Scope includes reviewing up to two draft permit application packages and assisting in responding to one round of comments. This assumes one set of compiled comments will be provided for each application.

Task 6.2 CEQA Support

This scope includes supporting the City's CEQA consultant to prepare CEQA documentation. This includes providing a project description, maintenance description, figures, and impact areas. This includes reviewing CEQA documents and providing comment on up to two drafts. This scope includes responding to one set of compiled public comment on the CEQA documents.

Additional Task 7: Pump Station Capacity Mitigation Design

This added task includes providing design services to mitigate the pump station capacity reduction as described in Task 2.5 above. The extents of pump station modifications are not known at this time; therefore, this scope assumes the following:

- Pump station modification will be limited to the replacement of one pump/motor, pump tube, and associated electrical equipment within the existing motor control center (MCC).
- Pump and tube replacement will not require structural modifications to the existing pump station.
- Existing electrical service will not need to be modified or upsized.
- Existing generator has adequate capacity and will not need to be replaced
- Existing MCC, and "Floatrol" pump controller will be reused. Remote monitoring and alarms will be replaced in-kind where necessary.
- Preparation of P&IDs is not required.
- Design submittals will be provided at the 65% (excluding electrical drawings), 95%, 100% draft, and final bid documents.

- Evaluation of the existing force main and potential impacts to the existing force main due to the increased operating pressure are not included within this scope of services; however, they may need to be evaluated by others prior to construction.
- This scope does not include bid or construction support services.

The revised total budget for the scope of services is based on time and materials not to exceed **\$466,466** per the attached fee table with charge rates based on the original contract. This total fee includes previously completed and invoiced work. The original contract fee of \$135,544 was amended in March 2021 by a \$50,090 increase for a total contract fee of \$185,634. This scope revision represents a \$280,832 increase from the previously authorized fee.

If you have any questions, or require additional information, please contact me.

Sincerely,
Schaaf & Wheeler



Ben Shick, PE
Vice President
RCE#68813

San Rafael MCSTOPPP Full Trash Capture Device Project Revised Fee January 14, 2022		Schedule of Hours and Rates by Task				Schaaf & Wheeler Contract Subtotal	NCE Contract Subtotal	TJC and Associates Contract Subtotal	Finn Contract Subtotal	Kier & Wright Contract Subtotal	Hultgren-Tillis Contract Subtotal	Bess Testlab Contract Subtotal	Subsulant Markup (10%) Contract Subtotal	Contract Total
		Schaaf & Wheeler												
		Principal Project Manager	Senior Project Manager	Associate Engineer	Assistant Engineer									
Task	Hourly Rate	\$240	\$225	\$190	\$175									
Task 1	Project Management	34	54	7	0	\$21,640	\$1,125.00	\$0	\$4,000	\$0	\$8,120	\$0	\$113	\$36,210
1	Coordination & Project Management	14	34			\$11,010	\$1,125.00		\$2,000		\$1,960		\$509	\$16,604
2	Three (3) Progress Meetings	6	6			\$2,790							\$0	\$2,790
3	Tiscornia Marsh Coordination Meetings	14	14	7		\$7,840			\$2,000		\$6,160		\$816	\$16,816
Task 2	Feasibility Analysis	26	18	58	32	\$26,910	\$11,465.00	\$6,000	\$0	\$0	\$0	\$0	\$1,147	\$46,122
1	Site Visits & Data Base Searches		2	2		\$830	\$4,870.00						\$487	\$6,187
2	35% Schematic Drawings		4		32	\$6,500							\$0	\$6,500
3	Draft Feasibility Study	1	8	12		\$4,320	\$5,335.00						\$534	\$10,189
4	Final Feasibility Study	1	4	4		\$1,900	\$1,260.00						\$126	\$3,286
5	Pump Station Mitigation Feasibility	24		40		\$13,360		\$6,000					\$600	\$19,960
Task 3	Design Development	16	80	260	106	\$89,790	\$0.00	\$0	\$41,000	\$15,140	\$56,000	\$9,100	\$4,780	\$223,154
1.1	Geotechnical Investigation	4	4			\$1,860					\$51,100	\$1,400	\$5,250	\$59,610
1.2	Topographic Survey and Boundary Research		2			\$450				\$12,360			\$1,236	\$14,046
1.3	Utility Locating		2	8		\$1,970				\$2,780		\$7,700	\$1,048	\$13,498
2.1	65% Design Documents	4	24	112	50	\$36,390			\$10,000				\$1,000	\$47,390
2.2	95% Design Documents	4	24	60	24	\$21,960			\$22,000				\$2,200	\$46,160
2.3	100% Design Documents	2	16	48	16	\$16,000			\$6,000		\$4,900		\$1,090	\$27,990
2.4	Bid Plans, Estimate and Specifications	2	8	32	16	\$11,160			\$3,000				\$300	\$14,460
Task 4	Environmental Documentation	0	2	0	0	\$450	\$4,055.00	\$0	\$0	\$0	\$0	\$0	\$406	\$4,911
1	CEQA CE and no permits		2			\$450	\$4,055.00						\$406	\$4,911
Task 5	Feasibility Analysis	1	14	14	32	\$24,240	\$23,500.00	\$0	\$0	\$0	\$0	\$0	\$2,350	\$50,090
1	Hydraulic Modeling		4		32	\$16,160							\$0	\$16,160
2	Aquatic Resources Analysis		2	2		\$930	\$23,500.00						\$2,350	\$26,780
3	Coordination	1	8	12		\$7,150							\$0	\$7,150
Task 6	Permitting & CEQA Support	16	24	24	0	\$13,800	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$13,800
1	Permitting Support	10	12	12		\$7,380							\$0	\$7,380
2	CEQA Support	6	12	12		\$6,420							\$0	\$6,420
Task 7	Pump Station Capacity Mitigation Design	48	0	104	172	\$61,380	\$0.00	\$28,000	\$0	\$0	\$0	\$0	\$2,800	\$92,180
1	65% Design Documents	12		16	32	\$11,520		\$7,000					\$700	\$19,220
2	95% Design Documents	16		40	60	\$21,940		\$10,000					\$1,000	\$32,940
3	100% Design Documents	12		32	48	\$17,360		\$7,000					\$700	\$25,060
4	Bid Plans, Estimate and Specifications	8		16	32	\$10,560		\$4,000					\$400	\$14,960
TOTAL		141	192	467	342	\$238,210	\$40,145.00	\$34,000	\$45,000	\$15,140	\$64,120	\$9,100	\$11,594	\$466,466



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: COMMUNITY DEVELOPMENT

**Prepared by: Ali Giudice, AICP, CDD Director
Alexis Captanian, Housing Analyst
Jacob Noonan, AICP CEP
Housing Program Manager**

City Manager Approval: _____

TOPIC: STREAMLINED REVIEW FOR CERTAIN RESIDENTIAL PROJECTS (FORMERLY DESIGN REVIEW ADVISORY COMMITTEE, DRAC)

SUBJECT: CONSIDERATION OF AN ORDINANCE AMENDING SECTION 14.25.070 OF TITLE 14 (ZONING ORDINANCE) OF THE SAN RAFAEL MUNICIPAL CODE TO ESTABLISH STREAMLINED REVIEW FOR CERTAIN RESIDENTIAL PROJECTS; AND RESOLUTION ESTABLISHING A ONE YEAR PILOT PROGRAM FOR STREAMLINED REVIEW FOR CERTAIN RESIDENTIAL PROJECTS

RECOMMENDATIONS:

1. Pass to print an Ordinance of the City of San Rafael amending Section 14.25.070 of Title 14 (Zoning Ordinance) of the San Rafael Municipal Code to establish a streamlined design review process for certain residential projects, and
2. Adopt a Resolution establishing a One-Year Pilot Program for streamlined review for certain residential projects.

BACKGROUND:

This item was initially proposed as the Design Review Advisory Committee one year pilot program. It has since been renamed the proposed one-year pilot program for Streamlined Review for Certain Residential Projects. The Design Review Advisory Committee approach has been modified to no longer include a subcommittee of the Design Review Board. On further review it was determined a subcommittee was not needed for two representatives of the Design Review Board to participate in the streamlined review.

Over the past few years, the City Council has received informational reports related to housing and the challenges to housing development in San Rafael. The City Council has directed staff to explore the issues related to the challenges to the approval and development of housing in San Rafael and to identify changes that could be made to facilitate housing development. In addition, for several years the state legislature has adopted laws intended to streamline residential project review. This has included: a requirement to establish Objective Design Standards (Senate Bill 35) intended for a ministerial review process to provide more certainty for applicants in design review approval; enactment of the Housing

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

Crisis Act of 2019 (SB 330, as amended by SB 8), which limits the number of meetings a city may hold to five for certain residential projects and mixed use projects that are two-thirds residential by square footage; and, more recently, SB 9, which mandates a ministerial review for certain types of residential projects and lot splits. To implement evolving state laws, additional changes to how development applications are processed might be necessary.

Since 2018, staff has presented several reports to the City Council on addressing the local challenges to building housing. Staff has met with community members and stakeholder groups, and prepared a list of recommended measures that, if implemented, could address challenges to housing production by providing clarity in and simplifying the review process, providing options for development of affordable housing, and exploring other opportunities to increase housing production.

The following is a summary of the reports and presentations provided to the City Council over the past few years on streamlining development application review for residential projects.

August 20, 2018: The City Council was presented a comprehensive, [informational report](#) on challenges to housing development and the approval process. In response to the housing report information, the City Council directed staff to follow up on four specific housing topics and issues. One of these four topics/issues was the challenges to the approval and development of housing in San Rafael.

September 3, 2019: City staff presented an updated [informational report](#) on challenges to housing development. The report presented 11 key challenges pertaining to the approval and development of housing in San Rafael and identified 13 recommended measures to address these challenges. Staff was directed to host several public housing workshops to solicit the public's view on the housing crisis, as well as to get feedback on the prioritization of the proposed policy actions. The City hosted two housing workshops that were attended by the Mayor, City Council, and the public. These workshops informed the public about issues surrounding the housing crisis and obtained input from the public and City Council.

January 21, 2020: City staff presented an updated [informational report](#) on staff recommendations for prioritization, timing, and future City Council actions on proposed policy actions to address challenges to approving and developing housing. At this meeting, the City Council directed staff to return with a report on potential amendments to the San Rafael Municipal Code (SRMC) aimed at encouraging development and streamlining approvals.

One item proposed in the January 21, 2020 report was to establish a Design Review Advisory Committee (DRAC) with advisory authority over the architectural design of certain projects. As envisioned, the DRAC would review certain housing development applications in-lieu of the full Design Review Board (DRB). The DRAC review would occur concurrently with the Planning Commission review, which would reduce the number of meetings needed to approve the development application while maintaining design review over the project.

August 11, 2020: Staff presented a report to the Planning Commission analyzing potential amendments to the SRMC resulting from City Council direction. At this meeting the Planning Commission provided feedback and supported the amendments proposed by staff.

[September 8, 2020](#) and [September 21, 2020](#): The City Council received reports on the status of measures to facilitate housing development & streamline approvals and focused on four main areas of the San Rafael Municipal Code (SRMC):

- A. Inclusionary Housing Requirement
- B. Density Bonus
- C. SRMC Amendments to Encourage Development and Streamline Approvals, including amendments related to small lot development, hillside exceptions process and appeals process.
- D. Formalize Design Review Board Subcommittee (Streamlined Development Review)

At the September 21st meeting, the City Council directed staff to proceed with Code Amendments related to Items A-C above, and to explore a pilot program for item D for streamlined development review assuring continued transparency and public participation. Items A-C have been completed through adoption of code amendments that occurred in March 2021. This report is focused on Item D, streamlined development review.

November 4, 2020: Staff presented the Design Review Board with a report on the streamlined review concept, then referred to as the Design Review Advisory Committee, or DRAC. Staff requested feedback from the board regarding structure, membership, noticing options, and types of projects to be reviewed. Members of the DRB provided feedback to assure adequate public notice and process, allow projects to be referred to the full DRB, and reduce the size of staff reports as a time savings measure. Staff used the comments received at the DRB meeting and prepared a draft document defining the structure of the one-year Pilot Program.

February 17, 2021: Staff presented the DRB with a [report](#) on the draft pilot program, which incorporated the comments received from the DRB on November 4, 2020. The structure of the streamlined review is described in more detail under the *Proposed Pilot Program* section below. In summary, the program would be structured to have members of the DRB participate in the Planning Commission meeting on certain types of projects defined in the Program (Exhibit 3). The meeting would be a fully noticed public meeting and all members of the public would be allowed to provide comment on the project prior to a decision. The proposed format was presented to the DRB and the DRB provided the following comments:

- Most preferred three members to participate (note: Three members had originally been explored. The City Attorney has advised however this would constitute a quorum of the Design Review Board and would merely replicate the full, five-member Board.);
- Felt it important that building design is right, since buildings will be around for 50 to 100 years; concerned the streamline review may lead to less-than-ideal design;
- Concerned that participating in a separate streamlined review process could result in a substantial amount of work by DRB members; and
- Hoped that items receiving streamlined review could be placed near the beginning of the Planning Commission meeting agenda so attending Board members could be excused after their item(s).

January 25, 2022: The Planning Commission (PC) held a duly noticed public hearing and received a report on the proposed draft pilot program for streamlining certain types of residential projects. The PC recommended approval of the proposed pilot program but asked staff to include clarification regarding the following:

- What types of projects would be eligible for review through this streamlined review process?
- How would projects be referred to the full Design Review Board?
- Clarify the flow of the PC meeting when the DRB representatives are participating.
- Provide assurance that public notice would be provided for these projects.
- Clarify how members from the full board would be selected to serve as representatives in the streamlined process.

Planning Commissioners also mentioned workload as a possible concern and the potential to overwhelm the attending Design Review Board members, as well as a concern that members of the Design Review Board not participating in streamlined review might be under-utilized.

Three members of the public also provided comments. Some of the questions were similar to the questions asked by the PC. In addition, the public expressed an interest in staff addressing the following:

- How will the pilot program be evaluated/what metrics would be used?
- Need to ensure that alternates include one architect and one landscape architect.

ANALYSIS:

Staff recommends a one-year pilot program to test this streamlined review process, beginning immediately upon approval of the City Council. It is envisioned members of the Design Review Board and the Planning Commission will collaborate with staff on the flow of the meeting for these types of projects and will have the opportunity to provide input at the one year mark, or shortly after. All meetings will occur during open public meetings allowing members of the public to participate and provide feedback, thus allowing for full evaluation of the merits of the pilot program for City Council consideration. After the pilot program has been in effect for the one-year term, the effectiveness of the program will be assessed by staff with participation from the Planning Commission and Design Review Board and members of the public, and a recommendation will be provided to the City Council. The recommendation may include continuation of the program, opportunities to modify and/or expand the program, or discontinuation of the program entirely.

Proposed Pilot Program

Staff has prepared a draft ordinance (Attachment 1) and draft resolution (Attachment 2) that would establish a one-year pilot program. The program is based on input provided by the Planning Commission on January 25, 2022, and by Design Review Board members on November 4, 2020, and February 17, 2022. The Ordinance, Attachment 1, provides the required language amendment to the SRMC necessary to effectuate the Pilot Program. The resolution, Attachment 2, provides the framework for the pilot program. Attachment 3 is a flow chart illustrating how the review process would flow under the proposed Pilot Program. Attachment 4 is the Planning Commission resolution recommending the pilot program to the City Council.

Streamlined Review can be summarized as follows. Once a residential project is deemed complete, the project will be reviewed for design following one of two pathways. The pathway selected will be based on whether the project is categorized as a “minor” or “major” project as defined in SRMC Section 14.25.040.

1. Projects subject to Minor Environmental Design Review (SRMC §14.25.040.B) will continue to be reviewed by the Zoning Administrator following current procedures (SRMC §14.25.020.B) and members from the Design Review Board may be invited at the discretion of the Zoning Administrator to provide consultation. The public will be noticed and there will be an opportunity to comment prior to a decision on the project.
2. Projects subject to Major Environmental Design Review (SRMC §14.25.040.A) will be reviewed as follows:
 - a. Projects eligible (see bulleted list below) will be reviewed concurrently by the appointed Design Review Board members and the Planning Commission during the public hearing on the project. The Board members will be able to ask questions and will have an opportunity to comment during the public hearing on the project. The public will be noticed of the meeting and provided the opportunity to provide comment and participate in the meeting prior to the Planning Commission issuing its decision.
 - b. Projects not eligible will continue to be reviewed by the full Design Review Board following the current review process.

Criteria for Streamlined Review:

- Review will be limited to the following residential projects:
 - New construction of up to ten residential units, and

- Additions to existing multi-family residential property with three to ten existing units of no more than 40% of building area and no more than three additional units.
- Membership will include two (2) members and one (1) alternate member selected from the sitting Design Review Board.
- The appointed Design Review Board Members may recommend to the Planning Commission (PC), and the PC could refer a project to the full Design Review Board (if a project is controversial, for example);
- Meetings will be combined with the Planning Commission meeting (and Zoning Administrator hearing, if requested for consultation) for efficiency;
- Public notice will be provided as part of the regular noticing requirements for Planning Commission and Zoning Administrator meetings; and
- Transparency in decision making will be maintained with the public continuing to have opportunities to review applications and provide comments prior to and during the combined meeting.

Staff responses to Design Review Board and Planning Commission questions: In response to the questions raised during staff presentations to the Design Review Board and Planning Commission, staff has developed the following recommendations for the program:

- *Projects eligible for Streamlined Review* would be limited to the following residential projects:
 - New construction of up to ten (10) residential units, and
 - Additions to existing multi-family residential property with three to ten existing units of no more than 40% of building area and no more than three additional units.These types of projects were pulled from projects that are listed as being within the purview of the DRB. Projects that also require Hillside Exception would not be eligible for streamlined review.
- *How would projects be referred to the full Design Review Board*
The framework established under the proposed streamlined review process gives the Planning Commission the authority to refer the project to the full DRB.
- *Clarify the flow of the PC meeting when the DRB representatives are participating*
The flow of the PC meeting would be established as part of the Planning Commission procedures which are agreed upon and adopted by the PC. However, staff envisions the following:
 - Staff provides presentation
 - Applicant provides presentation and public provides comments
 - The DRB representatives ask questions of the applicant and provides their recommendations to the PC
 - PC deliberates and takes action on the project.
- *Provide assurance that public notice would be provided for these projects*
Public notice will be required in the same manner as we currently do for Planning Commission meetings.
- *Clarify how members from the full board would be selected to serve as representatives in the streamlined process*
Staff recommends that the Chair as well as a landscape architect serve as representatives for a full 1-year term. If the representatives are unable to attend, they will contact the Community Development Director ahead of time. The Community Development Director will select a replacement from the full board based on tenure as spelled out in the Design Review Board

rules and procedures. The references to a Design Review Advisory Committee or DRAC would be eliminated. While the concept of DRB representation at the Planning Commission is unchanged, the DRB representatives are not really a “committee” since they would not meet to review the applications outside of the Planning Commission meetings.

- *How will the pilot program be evaluated and what metrics will be used*

The following is a list of recommended measures staff would use to evaluate the success of the pilot:

- Total number of applications received and subject to design review.
- Total number of applications that received a streamlined review.
- Total number of projects that were scheduled for streamlined review but were referred back to the full DRB.
- Conditions that were required for the projects to move forward.
- Number of planning meetings and total amount of time in planning approval process.
- Total time savings achieved.
- Any other costs or benefits to the applicant.
- Amount of staff time savings through administering the streamlined approach.
- Changes to length of Planning Commission meetings.
- Increased workload by certain DRB members.
- Decreased utilization of the full DRB.
- Assurance there is notification of PC meetings that are utilizing representatives of the DRB.

Staff may include additional information about the review process.

- *Need to ensure that alternates include one architect and one landscape architect*

Staff will make every effort to assure both an architect and a landscape architect are represented in streamlined review and will make an effort to use alternates in accordance. However, staff proposes that this not be a requirement if neither of the two landscape architects are available. This is true of the current process.

Additional comments provided by Planning Commissioners included that Planning Commission meetings could become long, and that the Planning Commission Chair and staff liaison would need to be clear in running the meeting to assure there is no confusion of the role of the Planning Commission versus the role of attending Design Review Board representatives.

Staff estimates a minimum two months of savings in time processing applicable housing development applications, with a median average processing efficiency of three to four months.

ENVIRONMENTAL DETERMINATION:

Adoption of this ordinance and the accompanying pilot program resolution are not subject to the California Environmental Quality Act (CEQA) under Public Resources Code Section 15060(c)(2) which provides that CEQA does not apply if the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. The Pilot Program for Streamlined Review for Certain Residential Projects only affects administration of the design review program, which is advisory to the Planning Commission and does not take any action on entitlement applications. Further, CEQA does not apply to the adoption of the Pilot Program for Streamlined Review for Certain Residential Projects because the action is not a Project under Section 15060(c)(3) and Section 15378(b) which includes continuing administrative activities.

COMMUNITY OUTREACH:

Notice of this April 18, 2022 City Council meeting and the January 25, 2022 PC meeting was mailed to all neighborhood groups and homeowner associations within the city, as well as other commercial and housing advocacy groups. A public notice ran in the *Marin Independent Journal* on April 2, 2022. Additional community outreach on the streamlined review process is described in the Background Section. The City Council held meetings on August 20, 2018, September 3, 2019, January 21, 2020, September 8, 2020, and September 21, 2020. Staff also held two evening public workshops dedicated to the housing topics and policies to streamline the development review process on November 3, 2019, and November 14, 2019. Feedback received at these meetings was used to create the draft structure of the streamlined review proposal and the draft structure was presented to the DRB on February 17, 2021. All meetings and workshops were publicly noticed to stakeholders, agencies, and special interest groups 15-days prior to each of these meetings.

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

OPTIONS:

1. Pass the ordinance to print and adopt the resolution establishing the one-year pilot program for streamlined review of certain residential projects.
2. Do not approve the ordinance and resolution, and direct staff to return with additional information or changes.

RECOMMENDED ACTION:

1. Pass to print an Ordinance of the City of San Rafael amending Section 14.25.070 of Title 14 (Zoning Ordinance) of the San Rafael Municipal Code Establishing Streamlined Review for Certain Residential Projects; and
2. Adopt a Resolution of the City of San Rafael Establishing a One Year Pilot Program for Streamlined Review for Certain Residential Projects.

ATTACHMENTS:

1. Ordinance
2. Resolution
3. Streamlined Review Program Flow Chart
4. Planning Commission Resolution
5. [Report to the Planning Commission, January 25, 2022](#)
6. Public Comment

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY SAN RAFAEL AMENDING SECTION 14.25.070 OF TITLE 14 (ZONING ORDINANCE) OF THE SAN RAFAEL MUNICIPAL CODE TO ESTABLISH STREAMLINED REVIEW FOR CERTAIN RESIDENTIAL PROJECTS

WHEREAS, the City Council has directed staff to explore the issues related to the challenges to the approval and development of housing in San Rafael and to identify changes that could be made to facilitate housing development; and

WHEREAS, the City's zoning regulations in Title 14 – "Zoning", contain requirements for environmental and design review of certain development projects by the five-member Design Review Board. The regulations governing the Design Review Board are located in Section 14.25.070 of the San Rafael Municipal Code (SRMC); and

WHEREAS, staff has advanced a proposal to streamline the processing of certain housing development projects by delegating the Design Review Board's (DRB) advisory authority over the architectural design of those projects to two members who would participate in duly noticed Planning Commission meetings as representatives of the DRB at; and

WHEREAS, on January 21, 2022, the Planning Commission held a duly-noticed public hearing on staff's proposed amendment to SRMC Section 14.25.070 to establish a Design Review Advisory Committee (DRAC) and its authority. The Planning Commission accepted all public testimony and the written report of the Community Development Department, and recommended the City Council approve the municipal code amendment; and

WHEREAS, on April 18, 2022, the City Council held a duly-noticed public hearing on the ordinance and accepted all public testimony and the written report of the Community Development Department; and

WHEREAS, the City Council, pursuant to SRMC 14.27.060, finds the proposed amendment consistent in principle with the General Plan, and that the public health, safety and general welfare are served by adopting the amendment. The amendment aligns with the General Plan Housing Element Program H-17d for Efficient Project Review and the public health, safety and general welfare are served through exploring how the City can maintain the quality of project review while reducing time and the associated costs of doing so; and

WHEREAS, adoption of the amendment to SRMC Section 14.25.070(A) regulating the Design Review Board is not subject to the California Environmental Quality Act (CEQA) under Public Resources Code Section 15060(c)(2) which provides that CEQA does not apply if the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. The streamlined review of certain residential projects would allow a combined review of those projects in a duly noticed public meeting.

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

Division 1. Amendment of Municipal Code.

Section 14.25.070(A) of Title 14 of the San Rafael Municipal Code (SRMC) is hereby amended to read as follows.

14.25.070 Design review board.

A. Purpose and Authority.

1. The design review board shall serve as an advisory body to the city for the purpose of reviewing and formulating recommendations on all major physical improvements requiring environmental and design review permits, except that an alternate streamlined review process is allowed for certain eligible projects as described below. The design review board may also serve as an advisory body on other design matters, including minor physical improvements or administrative design permits, referred to the board by the community development director, planning commission or city council. The design review board shall provide professional design analysis, evaluation and judgment as to the completeness, competence and appropriateness of development proposals for the use and setting and to recommend approval, approval with conditions, redesign or denial based on design standards adopted by the city council.

2. Streamlined Review of Certain Residential projects. The following residential projects shall be eligible for a streamlined review process, as established by city council resolution under a pilot program known as the "Streamlined Review for Certain Residential Projects".

- a. Residential structures of 10 units or less (does not apply to projects subject to Minor Environmental Design Review).
- b. Additions to multifamily residential structures of between three (3) to ten (10) units, where the addition constitutes no more than forty percent (40%) of the total square footage of the building and would not increase the unit count by more than 3 units.

This streamlined review process allows for a joint meeting of the planning commission and two (2) representatives of the design review board. The framework, roles and membership of the design review board representatives for a streamlined review process shall be as established by City Council resolution.

Division 2. CEQA Determination.

Adoption of this ordinance and the accompanying pilot program resolution are not subject to the California Environmental Quality Act (CEQA) under Public Resources Code Section 15060(c)(2) which provides that CEQA does not apply if the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. The Pilot Program for Streamlined Review for Certain Residential Projects only affects administration of the design review program, which is advisory to the Planning Commission and does not take any action on entitlement applications. Further,

CEQA does not apply to the adoption of the Pilot Program for Streamlined Review for Certain Residential Projects because the action is not a Project under Section 15060(c)(3) and Section 15378(b) which includes continuing administrative activities.

Division 3. Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares it would have passed and adopted this Ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

Division 4. Publication; Effective Date.

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

KATE COLIN, Mayor

ATTEST:

LINDSAY LARA, City Clerk

The foregoing Ordinance No. _____ was introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 18th day of April, 2022 and ordered passed to print by the following vote, to wit:

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

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 2nd day of May, 2022.

LINDSAY LARA, City Clerk

RESOLUTION NO.**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ESTABLISHING A ONE YEAR PILOT PROGRAM FOR STREAMLINED REVIEW FOR CERTAIN RESIDENTIAL PROJECTS**

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

WHEREAS, over the past few years, the City Council has received informational reports related to housing and the challenges to housing development. The City Council directed staff to explore the issues related to the challenges to the approval and development of housing in San Rafael and to identify changes that could be made to facilitate housing development. Staff presented follow-up reports, met with community members and stakeholder groups, and prepared identified a list of recommended measures that, if implemented, could address challenges to housing production by providing clarity in and simplifying the review process, providing options for development of affordable housing and exploring other opportunities to increase housing production.

WHEREAS, one item identified was to establish a streamlined review process with advisory authority over the architectural design of certain projects. As envisioned, streamlined review would review certain housing development applications in-lieu of the full Design Review Board. The streamlined review would occur concurrently with the Planning Commission review, which would reduce the number of meetings necessary to approve the development application while maintaining design review of the project.

WHEREAS, on September 21, 2020, the City Council directed staff to explore a pilot program; and

WHEREAS, on November 4, 2020, staff presented the Design Review Board with a report on the concept streamlining review, at the time referred to as "Design Review Advisory Committee." Staff requested feedback from the board regarding structure, membership, noticing options, and types of projects to be reviewed. Members of the Design Review Board provided feedback to assure adequate public notice and process, allow projects to be referred to the full Board, and reduce the size of staff reports as a time savings measure. Staff used the comments received and prepared a draft document defining the structure of the one-year Pilot Program.

WHEREAS, on February 17, 2021, staff presented the Design Review Board with a report on the draft Pilot Program which incorporated the comments received from the Board on November 4, 2020. In summary, the streamlined review program would allow members of the Design Review Board to participate in the Planning Commission meeting for certain types of projects that would be defined in the Pilot Program. The meeting would be a fully noticed public meeting and all members of the public would be allowed to provide comment on the project prior to a decision. The proposed format was presented to the Design Review Board, the Board provided comments which were incorporated into the proposed pilot program, and

WHEREAS, on January 21, 2022, the Planning Commission held a duly noticed public hearing on the proposed streamlined review pilot program and proposed amendment to the municipal code, accepted all public testimony and the written report of the Community Development Department, and recommended the City Council approve the one-year pilot program; and

WHEREAS, on April 18, 2022, the City Council held a duly noticed public hearing on the ordinance and accepted all public testimony and the written report of the Community Development Department; and

NOW, THEREFORE IT IS HEREBY RESOLVED that the City Council establishes a streamlined review for certain residential projects one-year pilot program, as follows:

Streamlined Review of Certain Residential Projects
(1-Year Pilot Program)

- A. Purpose and Authority. Members of the Design Review board as described below shall participate in the streamlined review of certain residential development applications as established under San Rafael Municipal Code Section 14.25.070. The streamlined review will operate for a temporary one-year term. At the end of the term, a final report with recommendations shall be provided to the City Council with input and recommendations from the Planning Commission and Design Review Board to continue, continue with modifications, or to discontinue the program.

The streamlined review will be for the purpose of reviewing and formulating recommendations on the following development project applications which are subject to Major Environmental Design Review (requiring planning commission action):

- Residential structures of 10 units or less (does not apply to projects subject to Minor Environmental Design Review).
- Additions to multifamily residential structures of between three (3) to ten (10) units, where the addition constitutes more than forty percent (40%) of the total square footage of the building but would not increase the unit count by more than 3 units.

In addition, the appointed members may also advise on Minor Environmental and Design Review and Administrative Design Review items as well as other items referred by the community development director, zoning administrator, planning commission or city council.

The purpose is to provide professional design analysis and design guidance to the applicant and may include comments on the completeness, competence, and appropriateness of development proposals in regard to use and setting.

- B. Design Review Board Representatives. The Design Review Board Representatives shall consist of the Design Review Board Chair, and a board member who is a landscape architect. Both members shall serve for the one year term.
- C. Alternate Representatives. If one of the members is unable to attend a meeting or has a conflict, they will contact the Community Development Director ahead of time. The Community Development Director will select a replacement from the full board based on tenure. The Community Development Director may also appoint an alternative member in the event that a member leaves office prior to completion of the member's term.

- D. Attendance at Planning Commission Meetings. The Representative members shall participate at a public hearing by the Planning Commission as may be required from time to time to provide recommendations on the types of projects described in Section A above. The members shall be notified of such meetings by the Staff Liaison to the Design Review Board. The members may also be invited to provide consultation on projects subject to staff level review or Zoning Administrator level review and may be requested to attend meetings on such projects.
- E. Referral to the full Design Review Board. If at any time, it is determined that a project meeting the criteria in Section A above, would benefit from the full Design Review Board due to proposed design, size, or surroundings, the project may be referred to the full Design Review Board by an affirmative vote of the Planning Commission.
- F. No Action by Representatives. The Representative members represent the Design Review Board, which is an advisory board. No official action is taken. The members will be provided an opportunity to ask questions and provided an opportunity to comment as part of the Planning Commission meeting on the project. Recommendations from the members will be considered by the Planning Commission and may be incorporated as conditions of approval.
- J. Public Notice. Notice of projects subject to review shall be made in tandem with notifications for the Planning Commission meetings as required for such projects. In addition to other noticing requirements, notices shall include a statement that the project is subject to streamlined review which will occur at the same time the Planning Commission reviews the project.

I, **LINDSAY LARA**, City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City held on the 18th day of April 2022, by the following vote:

AYES: COUNCIL MEMBERS:

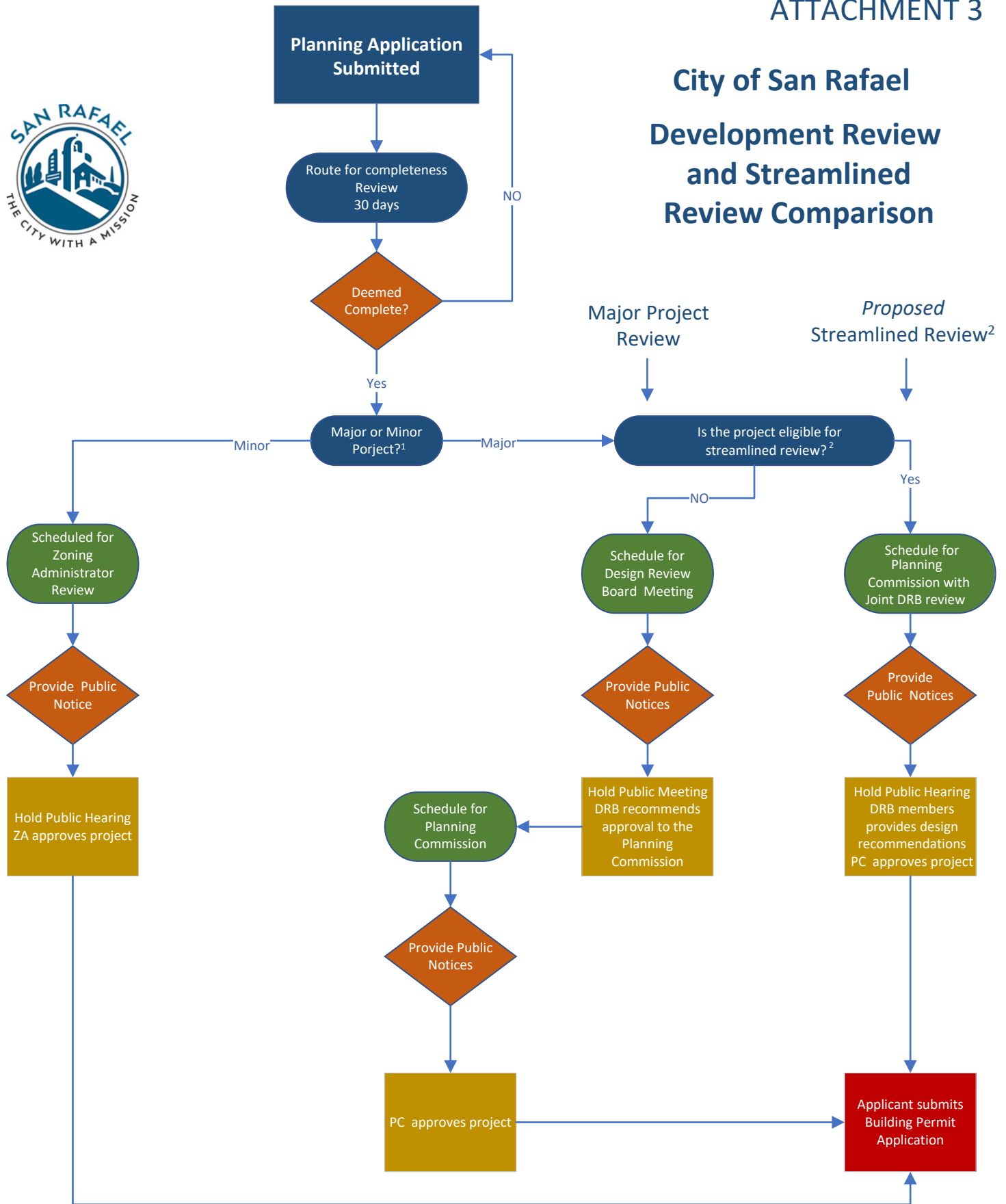
NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Lindsay Lara, City Clerk



City of San Rafael Development Review and Streamlined Review Comparison



1. Per SMRC 14.25.040

2. Eligible Projects include the following:

- a) Residential structures of 10 units or less (does not apply to projects subject to Minor Environmental Design Review).
- b) Additions to multifamily residential structures of between three (3) to ten (10) units, where the addition constitutes more than forty percent (40%) of the total square footage of the building but would not increase the unit count by more than 3 units.

RESOLUTION NO. 22-05**RESOLUTION OF THE CITY OF SAN RAFAEL PLANNING COMMISSION
RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN ORDINANCE OF THE
CITY OF SAN RAFAEL AMENDING TITLE 14.25.070 (DESIGN REVIEW BOARD) TO
ESTABLISH THE DESIGN REVIEW ADVOSORY COMMITTEE (DRAC); AND
ADOPTION OF A RESOLUTION OF THE CITY OF SAN RAFAEL TO ESTABLISH A
1-YEAR DRAC PILOT PROGRAM
(P22-01)**

WHEREAS, regulations relating to the Design Review Commission are located in Section 14.25 (Environmental and Design Review Permits) of the San Rafael Municipal Code (SRMC); and

WHEREAS, the City Council has received informational reports on the challenges to housing development in San Rafael on August 20, 2018, September 3, 2019, and January 19, 2020 and directed the exploration of solutions to encourage residential development and streamline development approval; and

WHEREAS, the draft amendment to Section 14.25.070 of the SRMC would establish the Design Review Advisory Committee (DRAC) to serve as environmental design review advisory body for certain development projects as defined in the 1-year DRAC Pilot Program; and

WHEREAS, establishing a 1-year DRAC Pilot Program would explore how the City might reduce process and streamline development approval while continuing to achieve environmental design and maintain opportunities for the public to comment on new development applications and participate in the approval process, and

WHEREAS, on February 4, 2021 and 17, 2021, the Design Review Board considered the proposed 1-year DRAC Pilot Program and provided feedback that was incorporated into the proposed program; and

WHEREAS, on January 25, 2022, the Planning Commission held a duly-noticed public hearing on the proposed amendments to Section 14.25.070 of the San Rafael Municipal Code and the proposed 1-year DRAC pilot program, accepted all public testimony and the written report of the Community Development Department; and

NOW, THEREFORE, BE IT RESOLVED, that:

The Planning Commission recommends to the City Council adoption of the amendments to the San Rafael Municipal Code provided in Attachment A of this resolution, based on the following findings as required under Section 14.27.060 of the SRMC:

1. The amendment to Section 14.25.070 of the SRMC is consistent in principle with the San Rafael General Plan and serves the public health, safety and general welfare in that:
 - a. As proposed, the amendment would establish the Design Review Advisory Committee as a subset of the Design Review Board to review

development applications for certain residential development projects and in so doing reduced and streamline approval processes which aligns with the requirement of the housing element of the general plan to identify and reduce governmental constraints and barriers to the development of housing, and

- b. As proposed, the amendment would serve the health, safety and general welfare of the public by establishing the advisory committee of the design review board as an exploratory means of reducing process and streamlining residential development approval while achieving environmental design and maintaining opportunity for public comment and participation.

The Planning Commission further recommends to the City Council adoption of a resolution establishing the 1-year Design Review Advisory Committee (DRAC) Pilot Program provided in Attachment B of this resolution.

The foregoing Resolution was adopted at the regular City of San Rafael Planning Commission meeting held on the 25th day of January 2022.

Moved by Commissioner Mercado and seconded by Commissioner Harris.

AYES: Commissioners: Harris, Haveman, Mercado, Samudzi & Chair Previtali

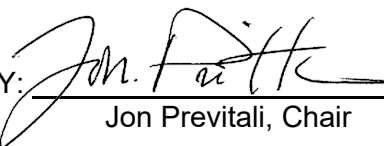
NOES: Commissioners: None

ABSENT: Commissioners: Saude

ABSTAIN: Commissioners: None

SAN RAFAEL PLANNING COMMISSION

ATTEST: 
Leslie Mendez, Secretary

BY: 
Jon Previtali, Chair

ATTACHMENTS:

- A. Draft amendment to Section 14.25.070 (Design Review Board) of the San Rafael Municipal Code.
- B. Draft 1-year Design Review Advisory Committee (DRAC) Pilot Program

Attachment A of Attachment 4

Proposed Amendments to San Rafael Municipal Code

Proposed amendments to the San Rafael Municipal Code establishing the Design Review Advisory Committee are provided below. Proposed new language is underlined.

14.25.070 Design review board & Design Review Advisory Committee.

- A. Purpose and Authority. The design review board and design review advisory committee (DRAC) shall serve as an advisory body to the city for the purpose of reviewing and formulating recommendations on all major physical improvements requiring environmental and design review permits and on other design matters, including minor physical improvements or administrative design permits, referred to the board by the community development director, planning commission or city council. The design review board shall provide professional design analysis, evaluation and judgment as to the completeness, competence and appropriateness of development proposals for their use and setting and to recommend approval, approval with conditions, redesign or denial based on design standards adopted by the city council. The DRAC shall serve as a subcommittee of the full design review board and shall provide recommendations on matters delegated to the DRAC by the City Council per City Council Resolution.

Attachment B of Attachment 4Design Review Advisory Committee
Pilot Program

- A. Purpose and Authority. The Design Review Advisory Committee (DRAC) shall serve as a subcommittee of the full Design Review Board established under San Rafael Municipal Code Section 14.25.070. The DRAC will operate for a temporary one-year term.

The DRAC will be an advisory body to the city for the purpose of reviewing and formulating recommendations on the following major physical improvements which are subject to Major Environmental Design Review (requiring planning commission action):

- Residential structures of 10 units or less (does not apply to projects subject to Minor Environmental Design Review).
- Additions to multifamily residential structures of between three (3) to ten (10) units, where the addition constitutes more than forty percent (40%) of the total square footage of the building but would not increase the unit count by more than 3 units.

The DRAC will serve as an advisory body on Minor Environmental and Design Review and Administrative Design Review items as well as other items referred to the DRAC by the community development director, zoning administrator, planning commission or city council.

The DRAC purpose is to provide professional design analysis, and design guidance to the applicant on behalf of staff and may comment on the completeness, competence, and appropriateness of development proposals for their use and setting. The DRAC is not a formal body and does not take formal action on a project. However, the DRAC may provide recommendation to the zoning administrator, planning commission or city council.

- B. Membership of the DRAC. The DRAC shall be made up of a total of two (3) active members of the full Design Review Board who shall serve on a one-year rotational basis. Members shall be made up of the following:

1. One (1) licensed architect,
2. One (1) licensed landscape architect, and
3. One (1) alternate member who shall be a licensed architect or licensed landscape architect

- C. Alternate Member. The alternate member may temporarily fill in in the event a regular DRAC member is unable to participate or if one of the following occurs:

- a regular member leaves office prior to completion of the member's term,
- a regular member cannot attend a meeting, or
- a regular member cannot otherwise participate on a particular matter due to a conflict of interest.

- D. Meetings. The DRAC members shall participate at a public hearing by the Planning Commission as may be required from time to time to provide recommendations on the types of projects described in Section A above. The DRAC members shall be notified of such meetings by the Staff Liaison to the Design Review Board. The DRAC may also be invited to provide consultation on projects subject to staff level review or Zoning Administrator level review and may be requested to attend meetings on such projects.

Attachment B of Attachment 4

- E. Referral to the full DRB. If at any time, it is determined that a project meeting the criteria in Section A above, would benefit from the full Design Review Board due to proposed design, size, or surroundings, the project may be referred to the full DRB.
- F. Action by the DRAC. The DRAC serves as an informal subcommittee. No official action is taken. The DRAC will be provided an opportunity to ask questions and provided an opportunity to comment as part of the Planning Commission deliberation during a public hearing on the project. Recommendations will be considered by the Planning Commission and may be incorporated as conditions of approval.
- J. Public Notice. Notice of projects subject to the DRAC review shall be made in tandem with notifications for the Planning Commission meetings as required for such projects. In addition to other noticing requirements, notices subject to DRAC recommendation shall include a statement that the project is subject to DRAC review which will occur at the same time the Planning Commission reviews the project.

DRAFT

Attachment 5 –

Report to the Planning Commission, January 25, 2022

Attachment 5-

<https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2022/01/3.-DRAC.pdf>



Responsible Growth in Marin

February 24, 2022

To: Jacob Noonan, Housing Manager

cc: Ali Giudice, Planning Commissioners, Leslie Mendez

Re: 1/25/22 Planning Commission: DRAC Pilot Evaluation Criteria – FOR PUBLIC RECORD

Dear Jacob,

We appreciated your PowerPoint presentation on the DRAC one-year pilot program at the January 25 Planning Commission meeting. The presentation clearly described the pilot program and answered several previously raised questions

During the presentation you clarified that at the end of the one-year pilot a report would be prepared for the City Council evaluating the effectiveness to “reduce process and timing while maintaining design review board program expectations”. In reply to Commissioners questions, you replied that the evaluation would be internal; the Planning Commissioners & Design Review Board Members would be invited to participate in the draft and then it would go to City Council with recommendation to continue, continue & amend, or discontinue.

There were several additional comments by Planning Commissioners and the public regarding detailing the evaluation criteria prior to commencement of Pilot. However, the resolution to initiate the Pilot was approved and you stated that the staff report would be amended to include detailed pilot evaluation criteria.

Several of us who attended the meeting took copious notes and later discussed the questions and data we think are needed to turn the stated evaluation goals into measurable observations. We recommend that the following items be included in your amended staff report as parameters for a full evaluation of the DRAC pilot project. (Note: Several of these items were included in Responsible Growth in Marin’s January 24, 2022, letter on the same subject.)

DRAC Pilot Evaluation Criteria:

1) Data on all the projects reviewed during the year should be summarized including:

- a) total number of projects reviewed,
- b) number of projects referred to Zoning Administrator (ZA) or staff without DRAC or DRB input
- c) number of projects referred to DRB for specific reasons (variance, zoning change, height increase, hillside, etc.),
- d) number (and basic description/location) of projects referred to DRAC and ZA
- e) number (and basic description/location) of projects referred to DRAC and PC

f) number of projects referred back to full DRB after being reviewed by DRAC (at ZA and at PC). Who referred the project back to DRB? What conditions were required for the projects moving forward? Did projects return to PC for approval after DRB?

4) Costs/Benefits to applicant: Number of planning meetings and total amount of time in planning approval process for projects referred to DRAC--what savings of time (for applicant), if any, were achieved? How will this be compared to time/number of meetings that would have been expended if the project went through the current process with DRB review? Did the prediction of 2 months saved prove true? Were there any other costs or benefits to the applicant?

5) Costs/Benefits to City: How much was staff time reduced or increased through administering the DRAC program? How will staff hours be measured? Were there additional costs or savings to the City?

6) Costs/Benefits to the Planning Commission and DRB: How will costs and benefits be measured? E.g., increased length of PC meetings with DRAC participation? Longer public hearing times? Increased workload by DRB members on DRAC? Decreased utilization of the full DRB? Change in quality of PC meetings (e.g., decreased discussion time/ Q&A) when the meeting expanded to 10 members (DRAC plus PC)?

7) Transparency--where were projects referred to DRAC listed on the City website? (They are not major planning projects, so are not on that list in the Community Development Department. At the 1/25 meeting, it was stated that the projects referred to DRAC would be listed on the website.)

a) Timeliness of posting of projects on website should be verified

b) notification of ZA/DRAC hearings should be verified--who was notified and when?

c) notification of PC/DRAC hearings should be verified--who was notified and when?

d) what public comments were received about DRAC projects and what actions, if any, resulted from public comments?

8) Quality of design review-- how will it be determined if "design review board program expectations" were maintained?

9) Criteria for success of the project-- What parameter and what threshold in that parameter will determine whether the project should be continued, amended, or discontinued?

Thank you for your attention to this matter. We believe that defining the criteria and measurement methods at the beginning of the pilot project are essential to ensuring that everyone will have a clear idea of how the pilot project will be evaluated and will make clear the basis for decisions at the end of the year.

Jacob, please don't hesitate to contact us if you have any questions or if we may be of help.


Thanks for your ongoing commitment and service to our community.

Respectfully submitted,
Responsible Growth in Marin
info@rgmarin.org

Shirley Fischer, Team Leader
 Grace Geraghty, Executive Director
 Claire Halenbeck, Team Leader
 Pamela Reaves, Team Leader



Agenda Item No: 6.b
Meeting Date: April 18, 2022

SAN RAFAEL CITY COUNCIL AGENDA REPORT
Department: Police Department
Prepared by: Scott Eberle, Lieutenant
City Manager Approval: 

TOPIC: ADOPTION OF A MILITARY EQUIPMENT FUNDING, ACQUISITION AND USE POLICY IN COMPLIANCE WITH ASSEMBLY BILL 481

SUBJECT: AN ORDINANCE OF THE CITY OF SAN RAFAEL CITY COUNCIL ADDING NEW CHAPTER 2.52 TO THE SAN RAFAEL MUNICIPAL CODE, ENTITLED "POLICE ACQUISITION AND USE OF 'MILITARY EQUIPMENT,'" AND APPROVING THE SAN RAFAEL POLICE DEPARTMENT'S POLICY §706 - "MILITARY EQUIPMENT FUNDING, ACQUISITION AND USE POLICY"

RECOMMENDATION:

Pass to print an ordinance adding new Chapter 2.52 to the San Rafael Municipal Code, entitled "Police Acquisition and Use of 'Military Equipment,'" and Approving the San Rafael Police Department's Policy §706 - "Military Equipment Funding, Acquisition and Use Policy."

BACKGROUND:

In 2021, the California Legislature passed Assembly Bill 481 (AB 481), adding new statutes to the Government Code requiring any state or local law enforcement agency wishing to acquire or use specifically-defined "military equipment" after January 1, 2022, to have in place a written policy governing their acquisition and use of such equipment that has been approved by ordinance of the agency's governing legislative body. AB 481 additionally provides that in order for the law enforcement agency to continue to use military equipment it had acquired before January 1, 2022, the law enforcement agency must begin the ordinance approval process prior to May 1, 2022.

Pursuant to AB 481, the San Rafael Police Department (SRPD) has prepared a written "Military Equipment Funding, Acquisition and Use Policy" and is bringing it to the City Council for consideration prior to the May 1, 2022 deadline.

ANALYSIS:

SRPD's Military Equipment Funding, Acquisition and Use Policy:
SRPD's Policy § 706 - "Military Equipment Funding, Acquisition and Use Policy", attached to this report (Attachments 2a and b) consists of both the policy document and a separate, required, inventory of the

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

equipment currently owned by the Police Department that is defined by the statute as “military equipment”. For each item of equipment specified within the inventory, the following details are included:

- Equipment Description
- Quantity
- Capabilities
- Expected Lifespan
- Manufacturer’s Description
- Purpose and Authorized Use
- Fiscal Impact
- Legal and Procedural Rules that govern each use
- Required Training
- Compliance Mechanisms

The policy provides for the establishment of a concern or complaint process on the City of San Rafael SRPD website for members of the public to register complaints, concerns or submit questions about the use of each specific type of military equipment included in the inventory list.

Additionally, the policy requires that each year, SRPD will prepare an annual report to include the use of military equipment, any complaints received, any internal audits or other information about violations of SRPD Policy § 706, the cost of such use, and other similar information. The annual report will be presented to the City Council for approval and a determination whether the report has complied with the standards set forth in the law. The report will also be made available on the SRPD’s webpage. The first Annual Report will be distributed in Spring of 2023

The San Rafael Police Department has not obtained, nor does it utilize, any equipment procured from the United States Department of Defense or any of our U.S Armed Forces.

Proposed Ordinance:

Staff has prepared the ordinance attached as Attachment 1 to this report to implement the requirements of AB 481 in two parts:

Division 2 of the ordinance would add new Chapter 2.52 to the San Rafael Municipal Code to establish a procedure for annual compliance with the requirements of AB 481. Chapter 2.52 imposes on the Police Department the requirement to prepare a military equipment use policy and specifies the contents of that policy. Chapter 2.52 also establishes a process for the City Council to review the policy annually and sets forth the findings required for approval of the policy. Finally, Chapter 2.52 requires that annually after the City Council’s initial approval of the policy, the Police Department must provide a public military equipment use report with information about SRPD’s use of its military equipment the prior year, and the City Council must make findings based on that report and then vote whether to renew the ordinance approving or amending the policy.

Division 3 of the ordinance contains the findings required for approval of SRPD Policy §706 - “Military Equipment Funding, Acquisition and Use Policy,” and formally approves the policy. The City Council’s approval of the policy will permit the Police department to continue to use the military equipment currently owned by the department.

Annual Report and Review by City Council:

Under the procedures established in new SRMC Chapter 2.52, the City Council will be required to review the SRPD's military equipment use policy again next year after the Police Department provides its annual report, and then will adopt an ordinance again approving the policy or an amended policy. The first annual report will be issued in the Spring of 2023.

COMMUNITY ENGAGEMENT:

On March 28th, we held a well-publicized community engagement presentation on AB-481. During the presentation we discussed AB-481 and spoke in detail about our funding, acquisition, and use of our military equipment. We received one comment in support of our policy and no comments opposing its use. We uploaded the presentation to the police departments transparency page on our website. A Spanish transcription of the presentation is also available on the website.

FISCAL IMPACT:

There is no new fiscal impact as a result of this policy. As outlined in this policy, each request for a new purchase and use of a defined military equipment will be brought before the City Council for review and approval.

OPTIONS:

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

1. Pass the ordinance to print to add new Chapter 2.52 to the San Rafael Municipal code and to Approve the SRPD's Policy §706 – "Military Equipment Funding, Acquisition and Use Policy."
2. Do not pass the ordinance to print, and provide further direction to staff.

RECOMMENDED ACTION:

Pass the ordinance to print.

ATTACHMENTS:

1. Ordinance Adding New Chapter 2.52 to the San Rafael Municipal Code, Entitled "Police Acquisition and Use of 'Military Equipment,'" and Approving the San Rafael Police Department's Policy §706 "Military Equipment Funding, Acquisition And Use Policy"
2. Exhibit A to Ordinance:
 - a. SRPD Policy § 706
 - b. SRPD inventory of military equipment

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN RAFAEL CITY COUNCIL
ADDING NEW CHAPTER 2.52 TO THE SAN RAFAEL MUNICIPAL CODE,
ENTITLED "POLICE ACQUISITION AND USE OF 'MILITARY EQUIPMENT,'" AND
APPROVING THE SAN RAFAEL POLICE DEPARTMENTS POLICY §706 - "MILITARY
EQUIPMENT FUNDING, ACQUISITION AND USE POLICY"**

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1. FINDINGS.

WHEREAS, in 2021, California Assembly Bill 481 was authored by Assembly Member David Chiu (D-San Francisco) to address the funding, acquisition, and use of military equipment by California law enforcement agencies; and

WHEREAS, on September 30, 2021, Governor Newsom signed Assembly Bill 481 into law, adding new Sections 7070, 7071, and 7072 to the California Government effective January 1, 2022, mandating law enforcement agencies, after January 1, 2022, to obtain approval by ordinance of the applicable governing body of a military equipment use policy governing the acquisition and continued use of defined military equipment within its jurisdiction; and

WHEREAS, the new statutes also require law enforcement agencies using military equipment acquired prior to January 1, 2022 to obtain approval by ordinance of the applicable governing body to continued use of that equipment. The law enforcement agency must commence the ordinance approval process no later than May 1, 2022; and

WHEREAS, this ordinance would add to the San Rafael Municipal Code a new chapter to establish the requirements for approval and annual review of a military equipment use policy for the San Rafael Police Department, so as to increase transparency and oversight for use of military equipment by the San Rafael Police Department, while providing safeguards to protect the public's welfare, safety, civil rights, and liberties; and

WHEREAS, as of January 1, 2022 the San Rafael Police Department owned military equipment that is regulated by the new statutes; and

WHEREAS, to be able to continue to use that equipment, or acquire and use any new military equipment, the Police Department has developed a military equipment use policy designated as "Policy 706 - Military Equipment Funding, Acquisition and Use Policy", including the Military Equipment Inventory List dated March 7, 2022, which policy is attached hereto marked "Exhibit A" and incorporated herein by reference;

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

DIVISION 2. AMENDMENT OF MUNICIPAL CODE.

Title 2 of the San Rafael Municipal Code, entitled "Administration" is hereby amended by adding new Chapter 2.52 entitled "Police Acquisition and Use of 'Military Equipment'" to read in its entirety as follows:

2.52.010 Definitions

For the purpose of this Chapter and any ordinance or policy adopted pursuant hereto, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section shall have the meanings given them in this section:

- A. "Military Equipment" includes all of the following (Per Gov. Code §7070):
1. Unmanned, remotely piloted, powered aerial or ground vehicles.
 2. Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.
 3. High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this subdivision.
 4. Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
 5. Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
 6. Weaponized aircraft, vessels, or vehicles of any kind.
 7. Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.
 8. Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.
 9. Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.
 10. Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.
 11. Any firearm or firearm accessory that is designed to launch explosive projectiles.
 12. "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.
 13. Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).

14. The following projectile launch platforms and their associated munitions:
40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons.
 15. Any other equipment as determined by a governing body or a state agency to require additional oversight.
 16. Notwithstanding paragraphs (1) through (15), "Military Equipment" does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.
- B. "Police Department" means any division, section, bureau, employee, volunteer and/or contractor of the San Rafael Police Department.
- C. "Military Equipment Use Policy" means a publicly released, written document that includes, at a minimum, all of the following:
1. A description of each type of Military Equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the Military Equipment.
 2. The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of Military Equipment.
 3. The fiscal impact of each type of Military Equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.
 4. The legal and procedural rules that govern each authorized use.
 5. The training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer, agent, or employee of the law enforcement agency or the state agency is allowed to use each specific type of Military Equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the Military Equipment Use Policy.
 6. The mechanisms to ensure compliance with the Military Equipment Use Policy, including which independent persons or entities have oversight authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.
 7. For a law enforcement agency, the procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of Military Equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.
- D. "Type" means each item that shares the same manufacturer model number.

2.52.020 Military Equipment Use Policy Approval Requirement

- A. The Police Department shall obtain approval of the City Council, by an ordinance adopting a Military Equipment Use Policy at a regular meeting of the City Council, prior to engaging in any of the following:

1. Requesting Military Equipment made available pursuant to Section 2576a of Title 10 of the United States Code.
 2. Seeking funds for Military Equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
 3. Acquiring Military Equipment either permanently or temporarily, including by borrowing or leasing.
 4. Collaborating with another law enforcement agency in the deployment or other use of Military Equipment within the territorial jurisdiction of the City of San Rafael.
 5. Using any new or existing Military Equipment for a purpose, in a manner, or by a person not previously approved by the City Council body pursuant to this chapter.
 6. Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, Military Equipment.
 7. Acquiring Military Equipment through any means not provided by this section.
- B. The City Council shall hold a public hearing at a regular City Council meeting prior to approval of a proposed new or amended Military Equipment Use Policy.
- C. At least 30 days prior to the City Council's public hearing on the approval of a new or amended Military Equipment Use Policy, the Police Department shall submit the proposed Military Equipment Use Policy to the City Council and make those documents available on the Police Department's internet website.
- D. The City Council shall only approve a Military Equipment Use Policy pursuant to this chapter if it determines all of the following:
1. The Military Equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
 2. The proposed Military Equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
 3. If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
 4. Prior Military Equipment use complied with the Military Equipment Use Policy that was in effect at the time, or if prior uses did not comply with the accompanying Military Equipment Use Policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.
- E. In order to facilitate public participation, any proposed or final Military Equipment Use Policy shall be made publicly available on the internet website of the Police Department for as long as the Military Equipment is available for use.

2.52.030 Annual Reports on the Use of Military Equipment.

- A. The Police Department shall submit to the City Council an annual Military Equipment Report for each type of Military Equipment approved by the City Council within one year of approval, and annually thereafter for as long as the Military Equipment is available for use.
- B. The Police Department shall also make each annual Military Equipment Report required by this section publicly available on its internet website for as long as the Military Equipment is available for use.
- C. The annual Military Equipment Report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of Military Equipment:
 - 1. A summary of how the Military Equipment was used and the purpose of its use.
 - 2. A summary of any complaints or concerns received concerning the Military Equipment.
 - 3. The results of any internal audits, any information about violations of the Military Equipment Use Policy, and any actions taken in response.
 - 4. The total annual cost for each type of Military Equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the Military Equipment in the calendar year following submission of the annual Military Equipment Report.
 - 5. The quantity possessed for each type of Military Equipment.
 - 6. If the Police Department intends to acquire additional Military Equipment in the next year, the quantity sought for each type of Military Equipment.
- D. Within 30 days of submitting and publicly releasing an annual Military Equipment Report pursuant to this section, the Police Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual Military Equipment report and the Police Department's funding, acquisition, or use of Military Equipment.

2.52.040 Annual Review and Renewal of Ordinance Approving Military Equipment Use Policy.

- A. Following receipt of the annual Military Equipment Report required by Section 2.52.030, the City Council shall hold a public hearing at a regular City Council meeting to review any ordinance it has adopted pursuant to this Chapter approving the funding, acquisition, or use of Military Equipment, and shall vote on whether to renew the ordinance.

- B. In considering whether to renew the ordinance, the City Council shall consider the Police Department's current annual Military Equipment Report and find and determine whether each type of Military Equipment identified in that report has complied with the standards for approval set forth in Section 2.52.020(D) of this code and the Military Equipment Use Policy. If the City Council determines that a type of Military Equipment identified in the annual Military Equipment Report has not complied with the standards required for approval, the City Council shall either disapprove a renewal of the authorization for that type of Military Equipment or require modifications to the Military Equipment Use Policy in a manner that will resolve the lack of compliance.

DIVISION 3. APPROVAL OF MILITARY EQUIPMENT USE POLICY.

- 1. The City Council has reviewed the San Rafael Police Department's "Policy §706 – Military Equipment Funding, Acquisition and Use Policy" and the Military Equipment Inventory List dated March 7, 2022 (together, the "Policy") attached as Exhibit A, and held a noticed public hearing thereon at its regular City Council meeting on April 18, 2022 as required by Government Code section 7071.
- 2. The City Council hereby finds and determines that:
 - a. In compliance with Government Code Section 7071(b), the San Rafael Police Department submitted a copy of the Policy attached as Exhibit A to the City Council, and posted it on the Police Department's website, at least 30 days prior to the public hearing held by the City Council;
 - b. Within 30 days of submitting and publicly releasing an annual Military Equipment Report pursuant to this section, the Police Department held a well-publicized and teleconferenced community engagement meeting, at which the general public was invited to discuss and ask questions regarding the Police Department's proposed policy for funding, acquisition, or use of Military Equipment.
 - c. The Policy meets the requirements of California Government Code section 7070 et seq.;
 - d. The Military Equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety;
 - e. The Policy will safeguard the public's welfare, safety, civil rights, and civil liberties;
 - d. All Military Equipment that has been purchased by the San Rafael Police Department is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety;
 - g. Military Equipment use prior to the adoption of this ordinance complied with the applicable equipment use policy (which included equipment now defined as military equipment) that was in effect at the time, or if prior uses did not comply with the

Policy attached as Exhibit A, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

3. Based upon the findings, the City Council approves and adopts “Policy 706 – Military Equipment Funding, Acquisition and Use Policy” and the Military Equipment Inventory List dated March 7, 2022, attached as Exhibit A.

DIVISION 4. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such holding or holdings shall not affect the validity of the remaining portions of this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

DIVISION 5. PUBLICATION; EFFECTIVE DATE.

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

Kate Colin, Mayor

ATTEST:

LINDSAY LARA, City Clerk

The foregoing Ordinance No. _____ was introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 18th day of April, 2022 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers
NOES: Councilmembers
ABSENT: Councilmembers

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 2nd day of May, 2022.

LINDSAY LARA, City Clerk

Exhibit A: “Policy 706 – Military Equipment Funding, Acquisition and Use Policy” and the Military Equipment Inventory List dated March 7, 2022

Military Equipment Funding, Acquisition and Use Policy

706.1 PURPOSE AND SCOPE

State

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

706.1.1 DEFINITIONS

State MODIFIED

Definitions related to this policy include (Government Code § 7070):

Governing body – The elected or appointed body that oversees the Department.

Military equipment categories– Includes but is not limited to the following:

- (1) Unmanned, remotely piloted, powered aerial or ground vehicles.
- (2) Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- (3) High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- (4) Tracked armored vehicles that provide ballistic protection to their occupants.
- (5) Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- (6) Weaponized aircraft, vessels, or vehicles of any kind.
- (7) Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- (8 and 9) Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- (10) Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue handguns and ammunition of less than .50 caliber that are issued to officers, agents, or employees of the Police Department.
- (11) Any firearm or firearm accessory that is designed to launch explosive projectiles.
- (12) Noise-flash diversionary devices and explosive breaching tools. Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- (13) TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- (14) Kinetic energy weapons and munitions.

San Rafael Police Department

SRPD Policy Manual

Military Equipment Funding, Acquisition and Use Policy

(15) Any other equipment as determined by a governing body or a state agency to require additional oversight.

706.2 POLICY

State

It is the policy of the San Rafael Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

706.3 MILITARY EQUIPMENT COORDINATOR

Best Practice

The Chief of Police may designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of San Rafael Police Department (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 1. Publicizing the details of the meeting.
 2. Preparing for public questions regarding the department's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

706.4 MILITARY EQUIPMENT INVENTORY

State **MODIFIED**

The following constitutes a list of qualifying equipment for the Department:

A current inventory of the Military Equipment is listed on the department's website; SRPD.ORG

706.5 APPROVAL

State

San Rafael Police Department

SRPD Policy Manual

Military Equipment Funding, Acquisition and Use Policy

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting, or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

706.6 COORDINATION WITH OTHER JURISDICTIONS

State

Military equipment used by any member of this jurisdiction shall be approved for use and in accordance with this Department policy. Military equipment used by other jurisdictions that are providing mutual aid to this jurisdiction shall comply with their respective military equipment use policies in rendering mutual aid.

706.7 ANNUAL REPORT

State

Upon approval of a military equipment policy, the Chief of Police or the authorized designee shall submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee shall also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

706.8 COMMUNITY ENGAGEMENT

State

The San Rafael Police Department will update on its website any changes to its military equipment so that it is available to members of the public. Along with updating the website, the department will provide a link to which the community can address any comments or concerns relating to funding, acquisition, or use of military equipment.

Type	Description	Quantity	Capabilities	Expected lifespan	Manufacturer's description	Purpose and authorized uses	Fiscal impact	Legal and procedural rules	Required training	Compliance mechanisms
Category 1										
Tactical Robot	ROBOTEX remote controlled tactical robot, track driven, attachable arm and trailers	1	Remote intelligence gathering device	10 years	The AVATAR® enhances the capabilities of SWAT and tactical response teams by allowing them to quickly and safely inspect dangerous situations, there is no longer a need to send personnel in before you've had a chance to assess the situation	Emergency incidents above normal patrol operations.	\$27,627.68 initial cost in 2010. \$500 average yearly maintenance costs	Refer to SRPD policy 300.	Agency authorized orientation course	Operational use under the review of the SWAT Commander or appropriate team supervisor.
Tactical Robot	Northern Lights Tactical remote controlled, armored tactical robot	1	Larger and heavier robot capable of delivering items in high risk situations and range training	10 years	Northern Lights Tactical TRACS robot target system. Features 10-inch foam-filled tires and has a top speed of 7 miles per hour.	Range training for moving targets. And exceptional high risk situations.	\$10,025 initial cost in 2008. \$100 average yearly maintenance costs	Refer to SRPD policy 300 and range procedures	None	Operational use under the review of the SWAT Commander or appropriate team supervisor.
Unmanned Aerial Vehicles (Shared with Novato PD)	Small unmanned aerial system	4	28 minute flight time per battery, maximum transmission distance 3-10 km based on surroundings	3 years	Grey DJI unmanned aerial system, <249 g weight, four rotor remotely operated airframe with video and photo capability	All-hazard and incidents which would benefit from an aerial perspective.	\$2,000 initial cost; \$500 annual maintenance	Refer to Novato PD policies 613.	Agency-authored orientation course; Monthly individual training; Quarterly team training.	Requires Watch Commander authorization
Category 2										
Armored Rescue Vehicle: Ford Transit-Van 350 HD (Shared with Novato PD)	Armored, wheeled vehicle. White, reflective San Rafael / Novato PD markings and red/blue lights. Equipped with a siren. Can hold a driver, equipment, and seven passengers.	1	Range 100 mi. Armor rated to .50 cal.	10 years	Four-wheeled, five-speed automatic transmission, gas engine-powered personnel carrier with ballistic glass and armor rated to .50 cal.	To provide for the safe transport, security, and rescue of agency personnel and citizens in high-risk incidents.	Shared resource with Novato PD, \$150,272.50 initial cost, \$1000 annual maintenance costs	Refer to policies 702, 703.	Agency-authored orientation course	Operational use under the review of the SWAT Commander or appropriate team supervisor.
Category 5										
Command Trailer: 2006 Sundowner	30 foot wheeled trailer, bathroom, towable, white, reflective San Rafael Mobile Command markings	1	equipment movement, command and control mobile location	10 years	Towable, wheeled-trailer	Equipment movement / mobile dispatch, command meeting location at emergency incidents.	Purchased in 2006. \$18,727. \$500 annually maintenance cost	Refer to policies 702, 703	Class A drivers license required to tow	None
Category 7										
Breaching Projectiles: Remington TB-12BK	12 Gauge breaching rounds	100	Operational range 0-1 foot	5 years	Ballistic breaching round used to defeat a variety of structures to include exterior and interior doors.	To breach entrances beyond the capabilities of hand held / impact methods.	\$150 initial purchase for duty projectiles, less than \$50 per year for on going cost	Refer to policies 300, 303, 303.9, 303.9.1, 303.9.2, 303.9.3.	Agency-authored orientation course; annual refresher.	Operational use under the review of the SWAT Commander or appropriate team supervisor.
Category 10										
Patrol Rifle (COLT, Olympic Arms & Knights Armament)	.223 caliber AR-15 rifle, semi automatic [Standard Issue Firearm - Patrol Application]	84	Single round	10 years	M4/AR15 semi-automatic rifle, gas operated, 16.1 inch barrel	Officers may use deadly force to protect themselves or others from what they reasonably believe is an imminent threat of death or serious bodily injury.	\$884 each for initial purchase \$5,00 ongoing for maintained costs.	Refer to SRPD policies 300, 303, 303.9, 303.9.1, 303.9.2, 303.9.3.	Agency-authored orientation course; annual refresher.	Use is subject to the applicable policies (300.5, 300.5.1, 301, 303.11).
Rifle: COLT (SWAT Operator)	.223 caliber M-4 semi-automatic rifle, short barrel	15	Single or multiple round option	10 years	M-4 semi-automatic rifle, 11.4 inch barrel	Officers may use deadly force to protect themselves or others from what they reasonably believe is an imminent threat of death or serious bodily injury.	\$1,200 each, \$500 yearly maintenance costs.	Refer to SRPD policies 300, 303, 303.9, 303.9.1, 303.9.2, 303.9.3.	Agency-authored orientation course; annual refresher.	Operational use under the review of the SWAT Commander or appropriate team supervisor. Use is subject to the applicable policies (300.5, 300.5.1, 301, 303.11)

Rifle : Knights Armament SR-25	.308 Caliber semi-automatic rifle with suppressor	4	Single round only	10 years	Precision .308 caliber, gas-operated rifle	Precision Rifle team use. Officers may use deadly force to protect themselves or others from what they reasonably believe is an imminent threat of death or serious bodily injury.	\$4,460 each initial cost, \$500 yearly maintenance	Refer to SRPD policies 300, 303, 303.9, 303.9.1, 303.9.2, 303.9.3.	Agency-authored orientation course; monthly refresher.	Operational use under the review of the SWAT Commander or appropriate team supervisor.
.223 caliber rounds	.223 caliber rounds (Patrol Rifle Rounds)	\$10,000+	operational range 0-1000 yards	N/A	.223 caliber rounds	Officers may use deadly force to protect themselves or others from what they reasonably believe is an imminent threat of death or serious bodily injury.	\$358 per 1000 rounds, \$10,000 a year for ongoing replacement costs	Refer to SRPD policies 300, 303, 303.9, 303.9.1, 303.9.2, 303.9.3, 306.	Initial orientation course including qualification; annual recertification including qualification.	Use is subject to the applicable policies (300.5, 300.5.1, 301, 303.11).
.308 caliber rounds	.308 caliber rounds (Precision Rifle Rounds)	500+	Operational range 0-1000 yards	N/A	.308 caliber rounds	Officers may use deadly force to protect themselves or others from what they reasonably believe is an imminent threat of death or serious bodily injury.	\$450 per 500 rounds, \$450 a year for replacement rounds	Refer to SRPD policies 300, 303, 303.9, 303.9.1, 303.9.2, 303.9.3, 306.	Initial orientation course including qualification; annual recertification including qualification.	Use is subject to the applicable policies (300.5, 300.5.1, 301, 303.11).
Category 12										
Diversionary Device - Def-Tec	Diversionary Device with reloads	45	Approx. 162db at 5 feet	5 years	A reloadable unit that can be used up to 30 times.	Distraction / diversionary device to be used in high risk situations in accordance to policy.	\$35 each, no ongoing costs.	Refer to SRPD policy 300.	Agency-authored orientation course; annual refresher.	Operational use under the review of the SWAT Commander or appropriate team supervisor.
Diversionary Device - ALS-TRMR	Reloadable Diversionary Device (Housing unit only)	10	Approx. 172db and 1.2 PSI at 5 feet	5 years	The reloadable diversionary device can be reloaded up to 250 times. The body incorporates a safety button. Upon deployment the device's kinetic energy causes the top to move the firing pin into the primer to function.	Distraction / diversionary device to be used in high risk situations in accordance to policy.	\$250 each, replacements cost when needed.	Refer to SRPD policy 300.	Agency-authored orientation course; annual refresher.	Operational use under the review of the SWAT Commander or appropriate team supervisor.
Reloadable Distraction Rounds	Reloads for the ALS-TRMR distraction device, 12 Gauge muzzle bang	50	N/A	5 years	12 ga muzzle bang that produces 175dB at 5 feet	Distraction / diversionary device to be used in high risk situations in accordance to policy.	\$7.50 per box of 5. \$100 a year ongoing costs for replacements	Refer to policies 300, 303,303.9, 303.9.1, 303.9.2, 303.9.3.	Initial orientation course including qualification; annual recertification including qualification.	Operational use under the review of the SWAT Commander or appropriate team supervisor.
Tear Gas: Chemical CS / Chemical OC	Combination CS and OC irritants (Can be "thrown" or discharged via department approved delivery system)	41	Capable of deployed up to 450 feet	5 years	When utilized, the submunition will discharge the agent for approximately 20-30 seconds, on average, providing a wide area of coverage.	Agency approved less lethal and chemical rounds to be used in accordance to policy in high risk and volatile situations.	\$944.20 initial purchase and average \$500/year maintenance costs	Refer to SRPD policies 300, 303, 303.6, 303.9, 303.9.1, 303.9.2, 303.9.3, 306.	Initial Orientation course including qualification; annual ongoing training	Operational use under the review of the Watch Commander or appropriate team supervisor.
Custom Air-Powered Less Lethal Delivery System (pepper ball) - Tippman 98	Semi-automatic, single shot, compressed air powered delivery system (paint ball gun)	4	Effective range 150 Ft	10 years	.68 caliber, semi-automatic, 3000 PSI HPA (paint ball gun that is meant to discharge chemical irritant projectiles)	Agency approved less lethal and chemical rounds to be used in accordance to policy in high risk situations	\$600 Initial cost, \$150 every two years for more projectiles.	Refer to SRPD policies 300, 303, 303.9, 303.9.1, 303.9.2, 303.9.3.	Agency-authored orientation course; annual refresher.	Operational use under the review of the SWAT Commander or appropriate team supervisor. Use is subject to the applicable policies (300.5, 300.5.1, 301, 303.11)
Category 14										
Less than Lethal Impact Device (Multi-Use) - ALSTAC -40mm	Double action multi-shot 40 mm less than lethal weapon	1	Up to 40 yards	10 years	A double-action, multi-shot, 40mm delivery system. Designed to discharge 40mm less-than-lethal ammunition	Agency approved less lethal and chemical rounds to be used in accordance to policy in high risk situations.	\$3200 initial purchase, no anticipated ongoing costs	Refer to SRPD policies 300, 303, 303.9, 303.9.1, 303.9.2, 303.9.3. Refer to SWAT procedures	Agency-authored orientation course; annual refresher.	Operational use under the review of the SWAT Commander or appropriate team supervisor. Use is subject to the applicable policies (300.5, 300.5.1, 301, 303.11)

Less Lethal Impact Device (Single-Use) - ALSTAC -40mm	Double action, single shot, 40mm less than lethal weapon	12	Up to 40 yards	10 years	A double-action, single shot, 40mm delivery system. Designed to discharge 40mm less-than-lethal ammunition	Agency approved less lethal and chemical rounds to be used in accordance to policy in high risk situations.	\$740 initial purchase each, no anticipated ongoing costs	Refer to SRPD policies 300, 303, 303.9, 303.9.1, 303.9.2, 303.9.3.	Agency-authored orientation course; annual refresher.	Operational use under the review of the SWAT Commander or appropriate team supervisor. Use is subject to the applicable policies (300.5, 300.5.1, 301, 303.11)
Kinetic Energy Projectiles: 40mm (ALS 4006D)	40mm, foam-tipped kinetic energy discharged from an agency-authorized 40mm delivery device.	100+	Operational range 5-120 ft.	5 years	40mm foam-tipped projectile capable of traveling 325 fps to a maximum range of 120 feet.	To compel an individual to cease his/her actions when such munitions present a reasonable option. A verbal warning of the intended use of the device should precede its application.	\$25.00 each and approximately \$1000 yearly for training projectiles	Refer to SRPD policies 300, 303, 303.9, 303.9.1, 303.9.2, 303.9.3.	Initial orientation course including qualification; annual recertification including qualification.	Use is subject to the applicable policies (300.5, 300.5.1, 301, 303.11).
Shotgun: Remington 870	12 Gauge pump-action Shotgun (Orange Stock / Utilized as Less Lethal Delivery System)	51	Single round	10 years	Single shot pump-action.	To be used with Less-lethal bean bag rounds. To compel an individual to cease his/her actions when such munitions present a reasonable option. A verbal warning of the intended use of the device should precede its application.	\$424 each, \$500-ongoing for maintenance costs	Refer to SRPD policies 300, 303, 303.9, 303.9.1, 303.9.2, 303.9.3.	Agency-authored orientation course; annual refresher.	Use is subject to the applicable policies (300.5, 300.5.1, 301, 303.11).
Kinetic Energy Projectiles: 12 Gauge "bean bag" rounds	12 Gauge cotton sock discharged from an agency-authorized 12 Gauge deliver device	100+	21 feet	N/A	12ga cotton sock round capable of traveling 525 fps.	To compel an individual to cease his/her actions when such munitions present a reasonable option. A verbal warning of the intended use of the device should precede its application.	\$535.00 per 100, \$500 annual replacement cost	Refer to SRPD policies 300, 303, 303.9, 303.9.1, 303.9.2, 303.9.3.	Agency-authored orientation course; annual refresher.	Use is subject to the applicable policies (300.5, 300.5.1, 301, 303.11).



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: Bill Guerin,
Director of Public Works

City Manager Approval: 

TOPIC: THIRD STREET SAFETY IMPROVEMENTS PROJECT

SUBJECT: ADOPT RESOLUTIONS RELATED TO THE THIRD STREET SAFETY IMPROVEMENTS PROJECT HSIPL 5043(043), CITY PROJECT NO. 11362

1. **ADOPT A RESOLUTION AWARDED AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONSTRUCTION AGREEMENT FOR THE THIRD STREET SAFETY IMPROVEMENTS PROJECT, HSIPL 5043(043) TO GHILOTTI BROS., INC., IN THE AMOUNT OF \$2,236,926, AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$263,074, FOR A TOTAL APPROPRIATED AMOUNT OF \$2,500,000.**

2. **ADOPT A RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH PARK ENGINEERING, INC. FOR CONSTRUCTION MANAGEMENT, MATERIALS TESTING, AND INSPECTION SERVICES ASSOCIATED WITH THE THIRD STREET SAFETY IMPROVEMENTS PROJECT, HSIPL 5043(043), IN THE AMOUNT OF \$258,499, IN A FORM APPROVED BY THE CITY ATTORNEY.**

3. **ADOPT A RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR CONSTRUCTION SUPPORT SERVICES ASSOCIATED WITH THE THIRD STREET SAFETY IMPROVEMENTS PROJECT, HSIPL 5043(043), IN THE AMOUNT OF \$40,000 FOR A NEW TOTAL PROFESSIONAL SERVICES AGREEMENT OF \$320,000, IN A FORM APPROVED BY THE CITY ATTORNEY.**

RECOMMENDATION: Staff recommends that the City Council:

1. Adopt a resolution awarding and authorizing the City Manager to execute the Construction Agreement for the Third Street Safety Improvements Project, HSIPL 5043(043) to Ghilotti Bros., Inc. in the Amount of \$2,236,926 and authorizing contingency funds in the amount of \$263,074 for a total appropriated amount of \$2,500,000.

2. Adopt a resolution approving and authorizing the City Manager to execute a professional services agreement with Park Engineering for construction management, materials

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

testing, and inspection services with the Third Street Safety Improvements Project, HSIPL 5043(043), in the amount of \$258,499.

3. Adopt a resolution approving and authorizing the City Manager to execute an amendment to the professional services agreement with Kimley Horn for construction support services associated with the Third Street Safety Improvements Project, HSIPL 5043(043), in the amount of \$40,000 for a new total professional services agreement of \$320,000.

BACKGROUND:

In 2004, the Transportation Authority of Marin (TAM) established a Measure A Expenditure Plan (Plan) for a voter-approved sales tax providing funds for major roadway projects in Marin County. Plan projects were prioritized based on roadway condition, traffic volumes, transit frequency, and existing bicycle and pedestrian access. In 2016, San Rafael received a commitment from TAM for \$11 million from Measure A and an additional \$1.5 million from the State Local Partnership Program for the purpose of making significant infrastructure improvements along Third Street.

In 2018, the City applied for federal funding through the Highway Safety Improvement Program (HSIP) administered by Caltrans. Upon favorable review, the City was awarded \$1,575,000 in funding for Third Street between Lindaro Street and Union Street. As project delivery utilizing federal funds can be complex and impact timelines, staff subdivided the entire Third Street corridor into the following two projects:

1. Third Street Rehabilitation Project – Miracle Mile to Lindaro Street; and
2. Third Street Safety Improvements Project – Lindaro Street to Union Street.

The City Council approved the design and environmental work for the Third Street Rehabilitation Project at their November 18, 2019 meeting.

The Third Street Safety Improvements project consists of roadway and pedestrian improvements, including but not limited to, street resurfacing, curb ramps, sidewalk, storm drain, and traffic signal upgrades. Project intersections on Third Street include Lindaro Street, Lincoln Avenue, Tamalpais Avenue, Irwin Street, and Grand Avenue. These intersections constitute one of the most heavily congested areas in both San Rafael and Marin County. This is due in part to their proximity to major traffic generators, such as the northbound and southbound on/off-ramps for US 101, San Rafael Transit Center, SMART station, Caltrans Park-and-Ride lots, Downtown San Rafael, Montecito Shopping Center, and San Rafael High School.

City staff developed conceptual design drawings for the proposed safety improvements and subsequently, on May 24, 2019, issued a request for proposals (RFP). The conceptual design provided a basic framework to potential consultants of the City's objectives for this project, and the plans were also utilized to solicit feedback from the City's Bicycle and Pedestrian Advisory Committee at their August 7, 2019 meeting. Staff intends to combine the HSIP Grant funding of \$1,575,000 with Traffic Mitigation and Gas Tax funding to construct the traffic safety improvements and other roadway upgrades between Lindaro and Union Streets.

On March 2, 2020 the City Council Awarded a Professional Services Agreement to Kimley Horn for the design and environmental clearance services associated with the Third Street Safety Improvements project.

On February 7, 2022 the City council awarded the construction of the Third Street Rehabilitation Project to Ghilotti Bros. The Third Street Rehabilitation Project is currently under construction and overlaps the limits of the Third Street Safety Improvements Project. City staff intend to have

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 3

both projects work concurrently and coordination between the two projects will be needed to provide the best finished product. On January 14, 2022 City solicited Construction Management, Materials Testing, and Inspection Services.

On March 4, 2022 the project was advertised in accordance with San Rafael's Municipal Code.

ANALYSIS: On March 30, 2022, the following bids were received and read aloud:

<u>NAME OF BIDDER</u>	<u>BASE BID</u>	<u>Notes</u>
CF Contracting, Inc.	\$2,079,538.00	Nonresponsive, Material Errors in Proposal
Ghilotti Bros., Inc.	\$2,236,926.00	
Ghilotti Construction Company, Inc.	\$2,674,650.90	
St. Francis Electric, LLC.	\$2,687,000.00	
Michael Paul Company, Inc.	\$3,010,778.00	

The construction bids have been reviewed by City staff. The low bid from CF Contracting, Inc. has been found to be nonresponsive.

The second low bid from Ghilotti Bros., Inc. in the amount of \$2,236,926 was found to be both responsive and responsible. City staff recommends awarding the construction contract to Ghilotti Bros., Inc. for the bid amount and recommends the City Council authorize a construction contingency of approximately twelve percent in an amount of \$263,074 for a total authorized amount of \$2,500,000.

Resolution (Agreement with Park Engineering for Construction Management, Materials Testing, and Inspection Services)

To ensure the best finished product, this project will require full-time inspection. Public Works proposes to retain a field inspector for this purpose. As such, Public Works solicited Statements of Qualifications, including billing rate schedules. Four proposals were received on February 3, 2022. The Proposal was evaluated by City staff based on criteria specified in the Request for Qualifications including, but not limited to, understanding of the work to be done, previous experience with similar projects, qualified personnel, and familiarity with City standards. Staff has reviewed the proposal and has found it to be complete and within industry standards.

The recommended Resolution authorizes the City Manager to execute a professional services agreement with Park Engineering for the required construction management, materials testing, and inspection services, in an amount not to exceed \$258,499.

Resolution (Amendment to Agreement with Kimley-Horn and Associates, Inc. for Construction Support Services)

To ensure the best finished product, this project will require construction support services by the designer. Public Works proposes to retain Kimley-Horn and Associates, Inc. for this purpose. As such, Public Works solicited a proposal for the necessary construction support services. The Proposal was evaluated by City staff based on criteria specified in the Request for Qualifications including, but not limited to, understanding of the work to be done, previous experience with similar projects, qualified personnel, and familiarity with City standards. Staff has reviewed the proposal and has found it to be complete and within industry standards.

The original contract with Kimley-Horn and Associates in the amount of \$28,000 was for environmental and design services. The recommended Resolution authorizes the City Manager

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 4

to execute an amendment to the professional services agreement with Kimley-Horn and Associates, Inc. for the required construction support services, in an amount \$40,000 for a new total professional services agreement of \$320,000.

Table 1 summarizes the project construction expenses.

Table 1: Construction Expense Summary

Project Element	Expense Amount
Construction contract w/ contingency	\$2,500,000
Construction Management & Inspection	\$258,499
PSA Amendment	\$40,000
Total	\$2,798,499

PUBLIC OUTREACH: Public Works has engaged the community and key stakeholders over the last four years to receive feedback as summarized below:

- July 2017: Technical Working Group Meeting
- October 2017: Community Working Group Meeting
- November 2017: Community Meeting #1 - Feasibility Study
- February 2018: Community and Technical Working Group Meeting
- March 2018: Community Meeting #2 - Feasibility Study
- June 3, 2019: Feasibility Study Report Presentation at City Council
- July 15, 2020: Technical Working Group Meeting
- August 5, 2020: City's Bicycle and Pedestrian Advisory Committee (BPAC)
- August 23, 2020: Community Working Group Meeting
- September 23, 2020: Community Meeting #3
- October 8, 2020: Economic Development Subcommittee Meeting
- October 21, 2020: Association of Neighborhoods Meeting
- November 2, 2020: City Council Informational Report
- December 2, 2020: City's Bicycle and Pedestrian Advisory Committee (BPAC)
- February 3, 2021: City's Bicycle and Pedestrian Advisory Committee (BPAC)
- March 24, 2021: Community Meeting #4
- May 3, 2021: City Council Presentation
- May 10, 2021: Presentation to TAM Executive Committee

In addition to these meetings, Public Works has maintained an updated project website and met with residents and business owners virtually and onsite to discuss key issues.

FISCAL IMPACT: Staff proposes to fund construction of this project utilizing \$1,295,000 in federal Highway Safety Improvement Program grant funds supplemented by \$523,000 of Traffic Mitigation Fund (No. 246) and \$980,499 of Gas Tax Funds (No. 206). The proposed Resolutions would appropriate \$2,500,000 for construction/contingency and \$258,499 for inspection services and \$40,000 for the amendment to Kimley-Horn and Associates, Inc. professional services agreement for construction support services. Table 2 below summarizes the project's construction funding sources and staff recommended appropriations for this project.

Table 2: Construction Funding Summary

Project Element	Expense Amount
Gas Tax Fund #206	\$980,499
Traffic Mitigation Fund #246	\$523,000
HSIP	\$1,295,000
Total	\$2,798,499

OPTIONS:

1. Adopt resolutions as presented.
2. Council may choose to authorize the construction contract and construct support services, and instruct staff to perform the inspections, which may impact the delivery of other City projects.
3. Council may reject all bids and direct staff to rebid both the inspection and construction for this project. If this option is chosen, soliciting new proposals or rebidding the project will delay construction and postpone the project until the spring of 2023 and inhibit the Third Street Rehabilitation Project from finishing work including the repaving of Third Street within the Third Street Safety Improvements Projects boundary.
4. The Council may reject all bids and direct staff to stop work on the project.
5. Do not adopt the resolutions and provide further direction to staff.

RECOMMENDED ACTION: Staff recommends that the City Council:

1. Adopt a resolution awarding and authorizing the City Manager to execute the construction agreement for the Third Street Safety Improvements Project, HSIPL 5043(043) to Ghilotti Bros., Inc., in the amount of \$2,236,926 and authorizing contingency funds in the amount of \$263,074 for a total appropriated amount of \$2,500,000.
2. Adopt a resolution approving and authorizing the City Manager to execute a professional services agreement with Park Engineering for construction management, materials testing, and inspection services associated with the Third Street Safety Improvements Project, HSIPL 5043(043), in the amount of \$258,499, in a form approved by the City Attorney.
3. Adopt a resolution approving and authorizing the City Manager to execute an amendment to the professional services agreement with Kimley-Horn and Associates, Inc. for construction support services associated with the Third Street Safety Improvements Project, HSIPL 5043(043), in the amount of \$40,000 for a new total professional services agreement of \$320,000.

ATTACHMENT:

1. Resolution awarding the construction agreement Ghilotti Bros., Inc.
2. Resolution authorizing the City Manager to execute a professional services agreement with Park Engineering, Inc. for construction management, materials testing, and inspection services
3. Resolution authorizing the City Manager to execute an amendment to the professional services agreement with Kimley-Horn and Associates, Inc. for construction support services
4. Agreements
 - a) Park Engineering
 - b) Kimley-Horn and Associates, Inc.

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONSTRUCTION AGREEMENT FOR THE THIRD STREET SAFETY IMPROVEMENTS PROJECT, HSIPL 5043(043) TO GHILOTTI BROS. INC., IN THE AMOUNT OF \$2,236,926.00, AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$263,074.00 FOR A TOTAL APPROPRIATED AMOUNT OF \$2,500,000.

WHEREAS, the City desires to implement safety improvements along the Third Street corridor from Lindaro Street to Grand Avenue; and

WHEREAS, on the 29th day of March 2022, pursuant to due and legal notice published in the manner provided by law, inviting sealed bids or proposals for the work hereinafter mentioned, as more fully appears from the Affidavit of Publication thereof on file in the office of the City Clerk of the City of San Rafael, California, the City Clerk of said City did publicly open, examine, and declare all sealed bids or proposals for doing the following work in said City, to wit:

“Third Street Safety Improvements Project”

HSIPL 5043 (043) City Project No. 11362

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

WHEREAS, the bid of \$2,236,926.00 from Ghilotti Bros. Inc., at the unit prices stated in its bid, was and is the lowest bid for said work and said bidder is the lowest responsible bidder; and

WHEREAS, staff has recommended an additional 12% of the bid price for a contingency in the amount of \$263,074.00;

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

1. The plans and specifications for the “Third Street Safety Improvements Project”, City Project No. 11362 on file in the Department of Public Works, are hereby approved.
2. The bid of Ghilotti Bros., Inc. is hereby accepted at the unit prices stated in its bid, and the contract for said work and improvements is hereby awarded to Ghilotti Bros., Inc., at the stated unit prices.

3. The City Manager is authorized and directed to execute a contract with Ghilotti Bros. Inc., for the bid amount, subject to final approval as to form by the City Attorney, and to return the bidder's bond upon the execution of the contract.
4. Funds totaling \$2,500,000.00, which includes the construction award amount and contingency, will be appropriated for City Project No. 11362, as follows: \$1,295,000 in federal Highway Safety Improvement Program grant funds supplemented by \$523,000 of Traffic Mitigation Fund #246 and \$582,000 of Gas Tax Funds (No. 206).
5. The Director of Public Works is hereby authorized to take any and all such actions and make changes as may be necessary to accomplish the purpose of this resolution.

I, **Lindsay Lara**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 18th of April 2022 by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

File No.: 18.01.87

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH PARK ENGINEERING, INC. FOR CONSTRUCTION MANAGEMENT, MATERIALS TESTING, AND INSPECTION SERVICES ASSOCIATED WITH THE THIRD STREET SAFETY IMPROVEMENTS PROJECT, HSIPL 5043(043), IN THE AMOUNT OF \$258,499.

WHEREAS, the City has advertised and received contractor bids for Third Street Safety Improvements Project, HSIPL 5043(043), City Project 11362; and

WHEREAS, the City requires outside professional assistance to provide the construction management, materials testing, and inspection services for the aforementioned project; and

WHEREAS, staff received a proposal for the required construction inspection services dated February 3, 2022 from Park Engineering, Inc.; and

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

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

1. The Council hereby approves and authorizes the City Manager to execute a Professional Services Agreement with Park Engineering, Inc., as set forth in the accompanying staff report, for construction management, materials testing, and inspection services for the Third Street Safety Improvements Project, HSIPL 5043(043), in the amount of \$258,499, in the form included with the staff report supporting this resolution, subject to final approval as to form by the City Attorney
2. Funds totaling \$258,499 shall be appropriated from the Gas Tax Fund (#206) to the Third Street Safety Improvements Project, HSIPL 5043(043) (Project No. 11362) to accommodate this amendment to the agreement.

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

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City on Monday, the 18th day of April 2022, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

File No.: 18.01.87

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST
AMENDMENT TO THE AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES,
INC. FOR ADDITIONAL CONSTRUCTION SUPPORT SERVICES, IN AN
ADDITIONAL CONTRACT AMOUNT NOT TO EXCEED \$40,000**

WHEREAS, pursuant to City Council Resolution No. 14767, the City of San Rafael and Kimley Horn entered into a Professional Services Agreement dated March 3, 2020 for engineering design and environmental clearance services associated with the Third Street Safety Improvements Project, HSIPL 5043 (043) in the amount not to exceed \$280,000 (the "Agreement"); and

WHEREAS, the City requires additional construction support services from Kimley-Horn and Associates, Inc. to cover the engineering and design construction support needed during the construction phase of the project; and

WHEREAS, staff received a proposal from Kimley-Horn and Associates, Inc. for the additional required services in a total amount not to exceed \$40,000; and

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

WHEREAS, \$40,000 will be appropriated from the Gas Tax Fund (#206);

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

RESOLVES as follows:

1. The Council hereby approves and authorizes the City Manager to execute a First Amendment to the Professional Services Agreement with Kimley-Horn and Associates, Inc. for additional construction support services in connection with the associated with the Third Street Safety Improvements Project, HSIPL 5043 (043) in the amount of \$40,000 and a revised total contract value not to exceed \$320,000, in the form included with the staff report supporting this resolution, subject to final approval as to form by the City Attorney.

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

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on Monday, the 18th day of April 2022 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

**AGREEMENT FOR PROFESSIONAL SERVICES WITH PARK ENGINEERING, INC.
FOR CONSTRUCTION MANAGEMENT & MATERIAL TESTING SERVICES
FOR THE THIRD STREET SAFETY IMPROVEMENTS PROJECT**

ARTICLE I INTRODUCTION

- A. This AGREEMENT is entered into as of the _____ day of _____, 2022 by and between the following named, hereinafter referred to as CONSULTANT, and the following named, hereinafter referred to as LOCAL AGENCY:

The name of the "CONSULTANT" is as follows: Park Engineering, Inc., incorporated in or authorized to do business in the State of California.

The Project Manager for the "CONSULTANT" will be Steve Patterson

The name of the "LOCAL AGENCY" is as follows: City of San Rafael

The Contract Administrator for LOCAL AGENCY will be Bill Guerin, Public Works Director

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal ("Cost Proposal") dated March 7, 2022. The approved CONSULTANT's Cost Proposal is included in Exhibit A and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, agents, and employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorney's and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except CONSULTANT will not reimburse LOCAL AGENCY for any such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONSULTANT in the performance of this AGREEMENT shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT'S employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT'S assigned personnel shall not be entitled to any benefits payable to employees of LOCAL AGENCY.
- E. LOCAL AGENCY is not required to make deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT'S assigned personnel. CONSULTANT in the performance of its obligation hereunder, is only subject to the control of direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished,
- F. Any third-party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against LOCAL AGENCY based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the LOCAL AGENCY. However, claims for money due or which become due to CONSULTANT from LOCAL AGENCY under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY's Contract Administrator to determine if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

ARTICLE III STATEMENT OF WORK

The CONSULTANT shall perform the services specified in the Scope of Work, dated March 7, 2022, attached hereto as Exhibit A and incorporated herein by reference. If there is any conflict between the terms of the Cost Proposal, included in Exhibit A, and the terms of this AGREEMENT, the terms of this AGREEMENT shall take precedence.

ARTICLE IV PERFORMANCE PERIOD

- A. This AGREEMENT shall go into effect on the date first hereinabove written, contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end upon completion of the work to the satisfaction of the LOCAL AGENCY'S Contract Administrator.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will

be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate.

- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal.
- C. Reserved.
- D. Reserved.
- E. Reserved.
- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Progress payments will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- J. Reserved.
- K. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

City of San Rafael Department of Public Works
Bill Guerin
111 Morphew Street
San Rafael, CA 94901

- L. Reserved.
- M. The total amount payable by LOCAL AGENCY shall not exceed the amount agreed to in this AGREEMENT, unless authorized by amendment.
- N. Reserved.

O. Reserved.

P. The total amount payable by LOCAL AGENCY for all work resulting from this AGREEMENT shall not exceed \$ 258,498.65. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT.

ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Article XXVI, Ownership of Data.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this section.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by LOCAL AGENCY by virtue of any breach of this AGREEMENT by CONSULTANT, and LOCAL AGENCY may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due LOCAL AGENCY from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Article XI, section C. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Article XXVI, Ownership of Data.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual items of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200, are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VIII RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Gov. Code §8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records,

Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by agreement, shall be reviewed by LOCAL AGENCY'S Finance Director.
- B. Not later than thirty (30) days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Finance Director of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by Caltrans Audits and Investigation (A&I). Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
 - 1. During Caltrans A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT

at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by A&I.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
 4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) Caltrans A&I has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between LOCAL AGENCY and any Subconsultants, and no sub-agreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from LOCAL AGENCY'S obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any sub-agreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.

- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.
- E. Any substitution of Subconsultants must be approved in writing by LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.

ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing, by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following:
 - 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
 - 2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer
http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf.

These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its

subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.

D. Payroll Records

1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above.

In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.

- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
 - 1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
 - 2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
 - 3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
 - 4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem

wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.

5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the sub-agreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST (Verbatim)

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT, or any ensuing LOCAL AGENCY construction project, which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this

AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.

- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from the AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
 - 1. No state, federal or local agency appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
 - 2. If any funds other than Federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier sub-agreements, which exceed one hundred thousand dollars (\$100,000) and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI NON-DISCRIMINATION AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR §8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 3. Does not have a proposed debarment pending; and
 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award but will be considered in determining responsibility. Disclosures must indicate to whom exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.
- B. The goal for DBE participation for this AGREEMENT is **6.0%**. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-01: Consultant Proposal DBE Commitment](#), or in [Exhibit 10-02: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: *DBE Information – Good Faith Efforts* to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- D. DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of AGREEMENTs financed in whole or in part with federal funds. The LOCAL AGENCY, CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the LOCAL AGENCY deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
 2. Assessing sanctions;
 3. Liquidated damages; and/or
 4. Disqualifying the contractor from future bidding as non-responsible
- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR §26.53(f). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- F. Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the LOCAL AGENCY's Contract Administrator.
- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. Upon completion of the AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, [Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise \(DBE\) First-Tier Subconsultants](#), certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- L. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in

writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.

- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX INSURANCE

- A. **Scope of Coverage.** During the term of this Agreement, CONSULTANT shall maintain, at no expense to LOCAL AGENCY, 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, LOCAL AGENCY 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 LOCAL AGENCY.

- 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 LOCAL AGENCY, 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 LOCAL AGENCY and shall not call upon LOCAL AGENCY'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 LOCAL AGENCY a waiver of any right to subrogation which any insurer of CONSULTANT may acquire against LOCAL AGENCY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not LOCAL AGENCY 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 LOCAL AGENCY (if agreed to in a written contract or agreement) before LOCAL AGENCY'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 LOCAL AGENCY 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 LOCAL AGENCY or other additional insured party. At LOCAL AGENCY's option, the deductibles or self-insured retentions with respect to LOCAL AGENCY shall be reduced or eliminated to LOCAL AGENCY'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 LOCAL AGENCY'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. LOCAL AGENCY 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.

ARTICLE XX FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI CHANGE IN TERMS

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY's Contract Administrator.

ARTICLE XXII CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and other LOCAL AGENCY representatives who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) days after completion of all work under the AGREEMENT, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

ARTICLE XXVI OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of LOCAL AGENCY, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, LOCAL AGENCY shall be entitled to, and CONSULTANT shall deliver to LOCAL AGENCY, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to LOCAL AGENCY which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by LOCAL AGENCY.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of LOCAL AGENCY without restriction or limitation upon its use or dissemination by LOCAL AGENCY.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this AGREEMENT. Any reuse by LOCAL AGENCY for another project or project location shall be at LOCAL AGENCY's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. All information related to the construction estimate is confidential and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this AGREEMENT are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of LOCAL AGENCY or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this AGREEMENT, LOCAL AGENCY has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, LOCAL AGENCY's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT’s performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXXI RETENTION OF FUNDS

No retainage will be held by the LOCAL AGENCY from progress payments due the CONSULTANT. Any retainage held by the CONSULTANT or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within thirty (30) days after the subconsultant’s work is satisfactorily completed. Federal law (49 CFR §26.29) requires that any delay or postponement of payment over thirty (30) calendar days may take place only for good cause and with the LOCAL AGENCY’s prior written approval. Any violation of this provision shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Business and Professions Code §7108.5. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.

ARTICLE XXXII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT: Park Engineering, Inc.
Steve Patterson, Vice President
372 Village Square
Orinda, CA 94563



LOCAL AGENCY: City of San Rafael
Bill Guerin, Contract Administrator
111 Morphew Street
San Rafael, CA 94901

ARTICLE XXXIII CONTRACT

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXIV NO THIRD PARTY BENEFICIARIES

LOCAL AGENCY and CONSULTANT do not intend, by any provision of this contract, 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.

ARTICLE XXXV 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.

ARTICLE XXXVI LOCAL AGENCY BUSINESS LICENSE / OTHER TAXES

CONSULTANT shall obtain and maintain during the duration of this contract, a LOCAL AGENCY 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. LOCAL AGENCY shall not be required to pay for any work performed under this contract, until CONSULTANT has provided LOCAL AGENCY with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

ARTICLE XXXVII 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 contract or any applicable law, ordinance or regulation.

ARTICLE XXXVIII APPLICABLE LAW

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

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 LOCAL AGENCY, 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.

ARTICLE XXXIX SIGNATURES

CITY OF SAN RAFAEL

PARK ENGINEERING, INC.

JIM SCHUTZ
City Manager

By: _____

Title: _____

and

ATTEST:

LINDSAY LARA
City Clerk

By: _____

Title: _____

APPROVED AS TO FORM:

ROBERT F. EPSTEIN
City Attorney

DRAFT

**FIRST AMENDMENT TO THE FEDERAL PROFESSIONAL SERVICES
AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR THIRD
STREET SAFETY IMPROVEMENTS PROJECT**

THIS FIRST AMENDMENT to the Federal Professional Services Agreement by and between the **CITY OF SAN RAFAEL** (hereinafter “**CITY**”), and **KIMLEY-HORN AND ASSOCIATES, INC.** (hereinafter “**CONSULTANT**”), is made and entered into as of the _____ day of _____, 202_.

RECITALS

WHEREAS, the **CITY** and **CONSULTANT** entered into a Federal Professional Services Agreement dated March 3, 2020 to perform professional services in connection with **CITY’S** Third Street Safety Improvements Project, for an amount not to exceed \$280,000 (the “Agreement”); and

WHEREAS, **CITY** requires additional professional services from the **CONSULTANT**, and the **CONSULTANT** is willing to provide such services.

AMENDMENT TO AGREEMENT

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

1. Article III of the Agreement, entitled “STATEMENT OF WORK” is hereby amended to include the additional services set forth in **CONSULTANT’S** proposal dated April 8, 2022, attached to this First Amendment as Exhibit A and incorporated herein by reference.
2. Article V of the Agreement, entitled “ALLOWABLE COSTS AND PAYMENTS” is hereby amended to include additional compensation payable to **CONSULTANT** for the services described in Exhibit A to this first Amendment, on a Time and Materials basis in accordance with Exhibit A, in a not-to-exceed amount of \$40,000, and to change the total not-to-exceed amount under the Agreement to \$320,000.
3. Except as specifically amended herein, all of the other provisions, terms and obligations of the Agreement between the parties shall remain valid and shall be in full force.

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

CITY OF SAN RAFAEL

CONSULTANT

JIM SCHUTZ, City Manager

By: _____

Name: _____

Title: _____

ATTEST:

[If Contractor 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



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: Bill Guerin,
Director of Public Works

City Manager Approval: _____

A handwritten signature in black ink, appearing to be 'AS'.

TOPIC: MERRYDALE ROAD MULTI-USE PATH CONNECTION ALTERNATIVES

SUBJECT: INFORMATIONAL REPORT ON MULTI-USE PATH CONNECTION ALTERNATIVES FROM LAS GALLINAS AVENUE TO THE CIVIC CENTER SMART STATION VIA MERRYDALE ROAD

RECOMMENDATION: Accept the report and provide direction to staff.

BACKGROUND: The Terra Linda community has long advocated for a multimodal connection between the Northgate mall multi-use path and the SMART Civic Center SMART station using the existing Merrydale Road right-of-way. Connecting the Terra Linda residential and retail land uses to the heavy rail SMART station is also included in the 2040 General Plan and the Pedestrian and Bicycle Master Plan.

An informal advisory committee made up of area residents and various interest groups and City staff led the way to the development of alternatives to connect the area to the SMART Station. The committee developed several options to connect Northgate to the SMART station via a 12-foot multi-use path. The options vary based on the amount of parking spaces provided on Merrydale Avenue in each.

Funds have not been available to date to pursue the design and construction of this path but, with the upcoming development of the Northgate Mall and the potential for Federal and State stimulus funding, staff recommends that the design of the pathway be advanced to create a more “shovel-ready” project and improve the City’s chances to procure grant funding. In order to advance the design, staff is seeking input from the Council on the pathway design and the amount of parking that should be included.

ANALYSIS: The 2018 Pedestrian and Bicycle Master Plan identified the need for a (Class I) bicycle and pedestrian facility to connect the promenade on Las Gallinas Avenue to the SMART Civic Center Station via Merrydale Road. The community represented by a committee worked with City staff to develop four different alternatives for the southern section of the road between the landing of Merrydale Road Bridge and the Civic Center SMART Station. The section of the road between Las Gallinas

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

Avenue and the bend in the road can accommodate a Class I facility on the northside for two-way bicycle and pedestrian traffic, two travel lanes for both directions, and a separated Class I bike lane on the south side of the road.

Four alternatives were developed for the section between the bend in the road and the entrance to the Civic Center Station. All alternatives provide a 12-foot promenade for pedestrian and bicycle traffic and maintain one lane for each direction for vehicular traffic. All alternatives provide drainage solutions towards the end of the road and a crosswalk at the end of the road with proper turnaround for emergency vehicles and one ADA parking space adjacent to the SMART station. The options vary in the location and the number of on-street parallel parking spaces.

OPTION A – Partial Parking: This option includes eight parallel on-street parking spaces on the east side of Merrydale and one disabled parking space

OPTION B – Partial Parking: This option includes eight parallel on-street parking spaces on the west side of Merrydale and one disabled parking space

OPTION C – Full Parking Option: This option provides 15 parallel on-street parking spaces on both sides of Merrydale and one disabled parking space.

OPTION D – No Parking Option: This option provides no on-street parking.

PUBLIC OUTREACH: Staff has met with the informal advisory committee multiple times while developing the four options. The ideas have been shared with the Bicycle Pedestrian Advisory Committee (BPAC) at two separate meetings, including on April 6, 2022. The BPAC Master Plan includes the path and it was discussed and included in the General Plan 2040.

FISCAL IMPACT: There is no fiscal impact associated with accepting the report.

OPTIONS:

- Accept the report.
- Do not accept the report.

RECOMMENDED ACTION: Accept the informational report and provide direction to staff.

ATTACHMENTS:

1. [Partial Parking Option A Plan Sheet](#)
2. [Partial Parking Option B Plan Sheet](#)
3. [Full Parking Option C Plan Sheet](#)
4. [No Parking Option D Plan Sheet](#)
5. [North Improvements Plan Sheet](#)
6. Public Comment

Attachments 1 - 5

Attachment 1 - Partial Parking Option A Plan Sheet

https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2022/04/Concept-Plan_Partial-A.pdf

Attachment 2 - Partial Parking Option B Plan Sheet

https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2022/04/Concept-Plan_Partial-B.pdf

Attachment 3 - Full Parking Option C Plan Sheet

https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2022/04/Concept-Plan_Full.pdf

Attachment 4 - No Parking Option D Plan Sheet

https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2022/04/Concept-Plan_NoParking.pdf

Attachment 5 - North Improvements Plan Sheet

https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2022/04/Concept-Plan_North.pdf

The Merrydale Segment of the North San Rafael Promenade



Prepared by the Merrydale Promenade Citizens Advisory Group and WTB-TAM
April 12, 2022

Table of Contents

1. Cover Letter
2. Appendix
 - Exhibit A: History of the Merrydale Promenade Segment
 - Exhibit B: Project Map (Circulation Diagram)
 - Exhibit C: Regional Connections Map
 - Exhibit D: Northgate Path Dimensions
 - Exhibit E: Civic Center Path Dimensions
 - Exhibit F: Alternatives Drawings
 - Exhibit G: Cross Sections
 - Exhibit H: Area Parking Inventory

April 12, 2022

San Rafael City Council
1400 Fifth Avenue
San Rafael, California 94901

RE: Merrydale Road segment of the North San Rafael Promenade

Dear San Rafael Councilmember,

Thank you for taking time to focus on the Merrydale segment of the North San Rafael Promenade, one of the most important unbuilt projects in San Rafael and Marin County. This project is part of a larger system of pathways intended to connect the two halves of North San Rafael that are divided by US 101. It was first conceived in 1997 (see **Appendix Exhibit A**) and has been in planning for over two decades. The segments immediately to the north (Northgate) and south (Civic Center Drive) of the Merrydale Promenade segment are already complete. The Merrydale Road segment is the key gap remaining to be closed (see **Appendix Exhibit B**).

Not only will this segment connect future Northgate Town Square residents to SMART and the Civic Center, but it will also connect the neighborhoods, schools, and civic and recreational facilities east and west of US 101 to each other, to the rest of San Rafael, and to all of Marin and Sonoma Counties via SMART and the regional pathway network. The Merrydale Promenade segment is at the heart of Marin's Multi-Modal Sustainability Grid, and connects three different regional pathways: the North - South Greenway, the North - South Bikeway, and the Bay Trail (see **Appendix Exhibit C**).

From the very beginning, the Promenade was conceived as more than just a utilitarian path. It was envisioned as a conduit for social connectivity and for connectivity between humans and nature. We continue to strive for that vision, and for a pathway that people will actually enjoy using because it's attractive and fits in with the surrounding terrain, vegetation, and creeks both tidal and ephemeral.

With this commitment to environmental stewardship in mind, we ask that the project avoid the removal of any of the native California oak trees or redwood trees that grow along the western shoulder of Merrydale Road. Merrydale Road is unnecessarily wide (as much as 48 feet in places) given its function, causing excessive run-off during rain events. Here lies an opportunity to reduce overall impermeable surface area and redirect water into more ecologically beneficial bioswales which manage storm water, mitigate flooding, and filter runoff before it reaches Gallinas Creek.

Best practices for multi-use pathway design call for spatial separation of modes and sufficient space for cyclists and pedestrians to safely share the pathway despite their traveling at disparate speeds. The completed pathway segments immediately to the north and the south of the Merrydale segment follow best practices, with striping and different colored pavement demarcating separate zones for cyclists and pedestrians. The pathway to the north (around the perimeter of Northgate) includes an 8-foot bikeway alongside a 5.5-foot walkway for a total width of 13.5 feet (see **Appendix Exhibit D**). The pathway segment to the south (parallel to Civic Center Drive) includes a 10-foot bikeway alongside a 7-foot walkway for a total width of 17 feet (see **Appendix Exhibit E**). To



ensure continuity between these three Promenade segments, we recommend that the Merrydale segment likewise provide clearly signed and demarcated zones for bikes and pedestrians as well as strive for dimensions as close as possible to those on the Civic Center Drive segment.

Of the four alternatives that the City's consultants designed, we recommend advancing the No Parking alternative as the preferred alternative (see **Appendix Exhibit F**). In the other three alternatives, on-street parking would take up valuable space that could otherwise be used to widen the pathway to Civic Center Drive standards (17 feet) and to reduce the overall impermeable surface area and create new bioswales or areas for planting trees for summer shade (see **Appendix Exhibit G**). Recycled water is available along Merrydale Road. Two of the with-parking alternatives would require encroachment of new asphalt into the existing bioswale on the western side of Merrydale Road, as well as the removal of two native California oaks. Removing these trees is unnecessary and conflicts with the tree protection language found in San Rafael's General Plan and Community Climate Action Plan.

In the future, the Merrydale Promenade segment will play an increasingly prominent role as a hub of activity and movement in North San Rafael. It is the key connection linking Marin County's most significant new housing development to the County's regional multi-modal sustainability grid. The Promenade will plug future Northgate Town Square residents (as well as all of Terra Linda's existing residents) directly into SMART, the Bay Trail, and the regional active transportation network. Fewer trips originating and ending at Northgate, Civic Center, and other Terra Linda destinations will require cars. More residents, consumers, and visitors of all ages and abilities will be able to walk or ride bikes safely and conveniently to their destinations or to buses, trains, and ferries that will bring them to their destinations.

We envision the Merrydale Promenade segment as the future gateway to a North San Rafael increasingly oriented around people, community, and the environment rather than cars, highways, and parking. The Promenade is the City's welcome mat for those arriving by SMART train or North - South Greenway. This walkability and bicycle-friendliness will improve the vitality and health of North San Rafael's millennials, families, and retirees.

We envision low vehicular volumes on this dead-end segment of Merrydale Road, mainly consisting of visitors to the storage and Guide Dogs properties, and shuttle bus and ADA access to the SMART station. If the project must include on-street parking, we recommend that parking spaces "bump out" around the two oak trees marked for "removal" in the alternatives drawings, and that parking be time-limited. Parking and passenger drop-off for regular (non-ADA) SMART riders should occur on the east side of the station on Civic Center Drive, McInnis Parkway, and in existing parking lots.

There is ample parking within a short walk of Merrydale Road for all other parking needs (see **Appendix Exhibit H**). Insisting on parking in this area conflicts with the City's Climate Change goals and does not serve the community. This area is the premier opportunity to demonstrate real change in how things can be done in San Rafael by emphasizing safe, lovely, livable pedestrian walkways and bikeways.

By providing a safe, direct connection between where people live and where they want to go, the Merrydale Promenade segment will generate new multi-modal trips both locally and regionally, taking cars off the roads and reducing congestion and greenhouse gas emissions. When this project is complete, it will be a Safe Route to Schools, a Safe Route to Transit, a Safe Route to the Civic Center, Farmer's Market, and Fairgrounds, and for future residents of Northgate Town Square, a Safe Route Home.

We urge the City Council to direct staff to give high priority to pathway continuity, user safety, user experience, and minimizing environmental impacts (including preserving native trees, reducing overall permeable surface area, and preserving and enhancing bioswales). We urge Council to direct staff to place low priority on parking or to recommend the No-Parking alternative. Finally, we recommend Council to direct staff to devise a strategy to complete this vital project contemporaneously with the Northgate Town Square project and to seek funding for its construction as soon as possible.

Respectfully submitted,

Merrydale Promenade Citizens Advisory Group

Shirley Fischer
Judy Schriebman
Cathy Manovi
Heidi Howerton
Margaret Johnston
Patrick Seidler

WTB-TAM

Patrick Seidler
Matthew Hartzell

CC: Bill Guerin, Director of Public Works
Rafat Raie, Deputy Director of Public Works
Lindsay Lara, City Clerk
Brenna Nurmi, Deputy City Clerk

Appendix Exhibit A

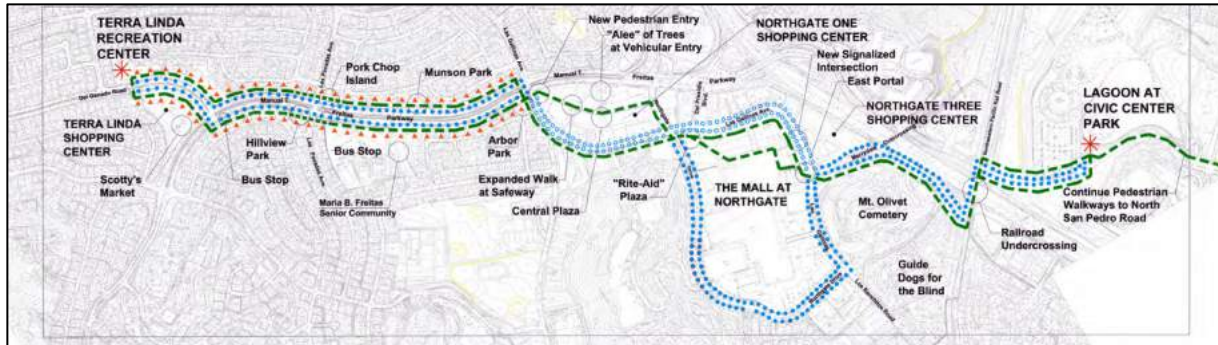
History of the Merrydale Promenade Segment

1996

North San Rafael Vision: Community visioning process specifically identified desire to complete a bicycle and pedestrian pathway through the area and connecting major destinations.

2002

North San Rafael Vision Promenade Conceptual Plan: Adopted plan proposes improved bicycle and pedestrian connections between Terra Linda Recreation Center and Lagoon Park at the Marin Civic Center, and forming a connecting between the east and west sides of North San Rafael. The planning process included extensive public outreach and according to the City of San Rafael represented a community consensus.



2011 (and 2018 update)

San Rafael Bicycle and Pedestrian Master Plan: In 2011, the Merrydale Promenade was identified as a mid-term project to be built within 1-10 years. The 2018 Master Plan update listed the Merrydale Promenade project as a Group A highest priority project.



Appendix Exhibit A

2012

San Rafael Civic Center Station Area Plan: “During the course of developing this Station Area Plan, this section of the Promenade became a key design concern. Merrydale Road North may experience some traffic increases from residents dropping off and picking up passengers at the SMART station on the west side. Similarly, this section of the Promenade will provide an important link to the station from the west, including the Northgate Shopping Center, for cyclists and pedestrians...[T]he new facility would be a shared bicycle/pedestrian path similar to portions of the Promenade already constructed...Although the Merrydale Road right-of-way appears adequate to accommodate this higher-quality connection, in some portions of the roadway it may require on-street parking prohibitions to achieve the benefit associated with separating bicycles and pedestrians from auto traffic.” (excerpt, page 20)

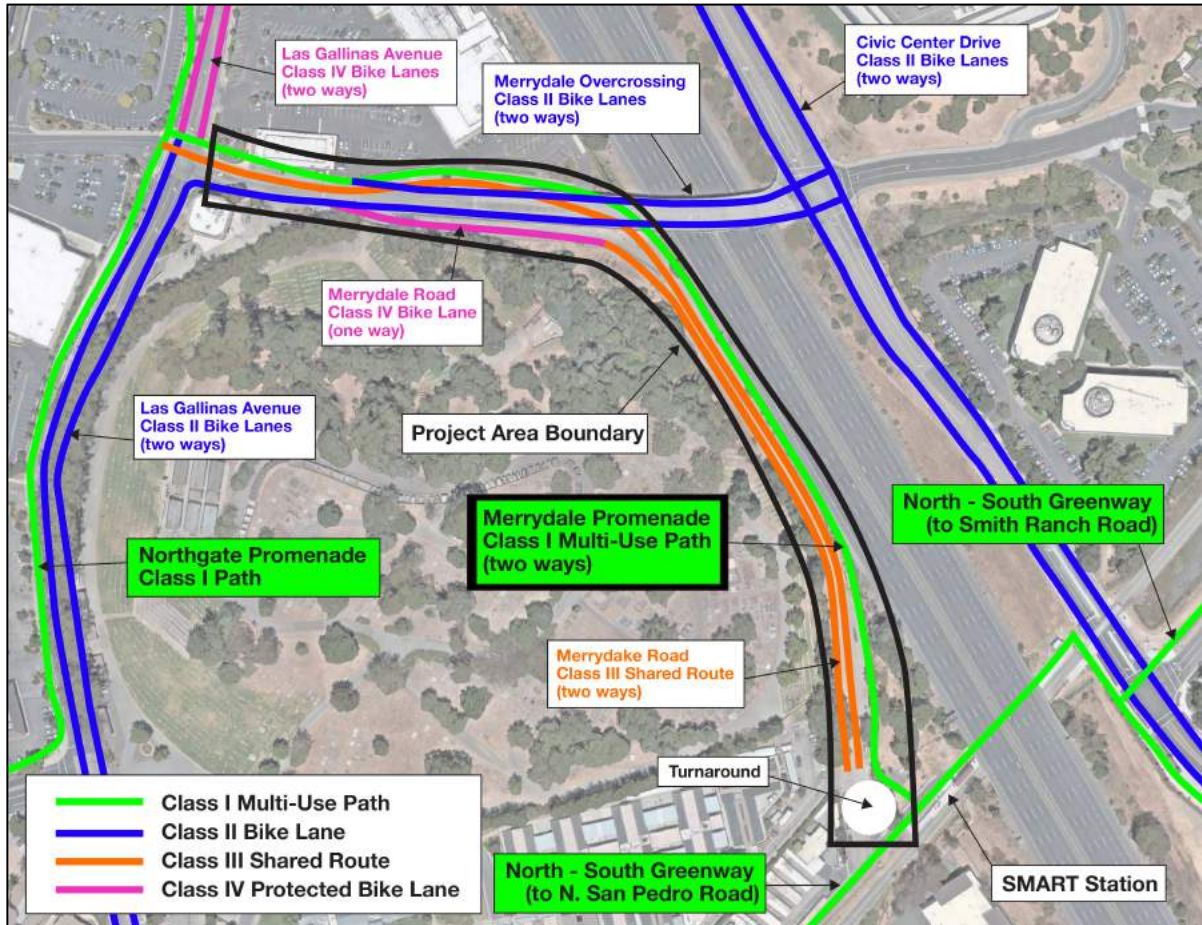


2016

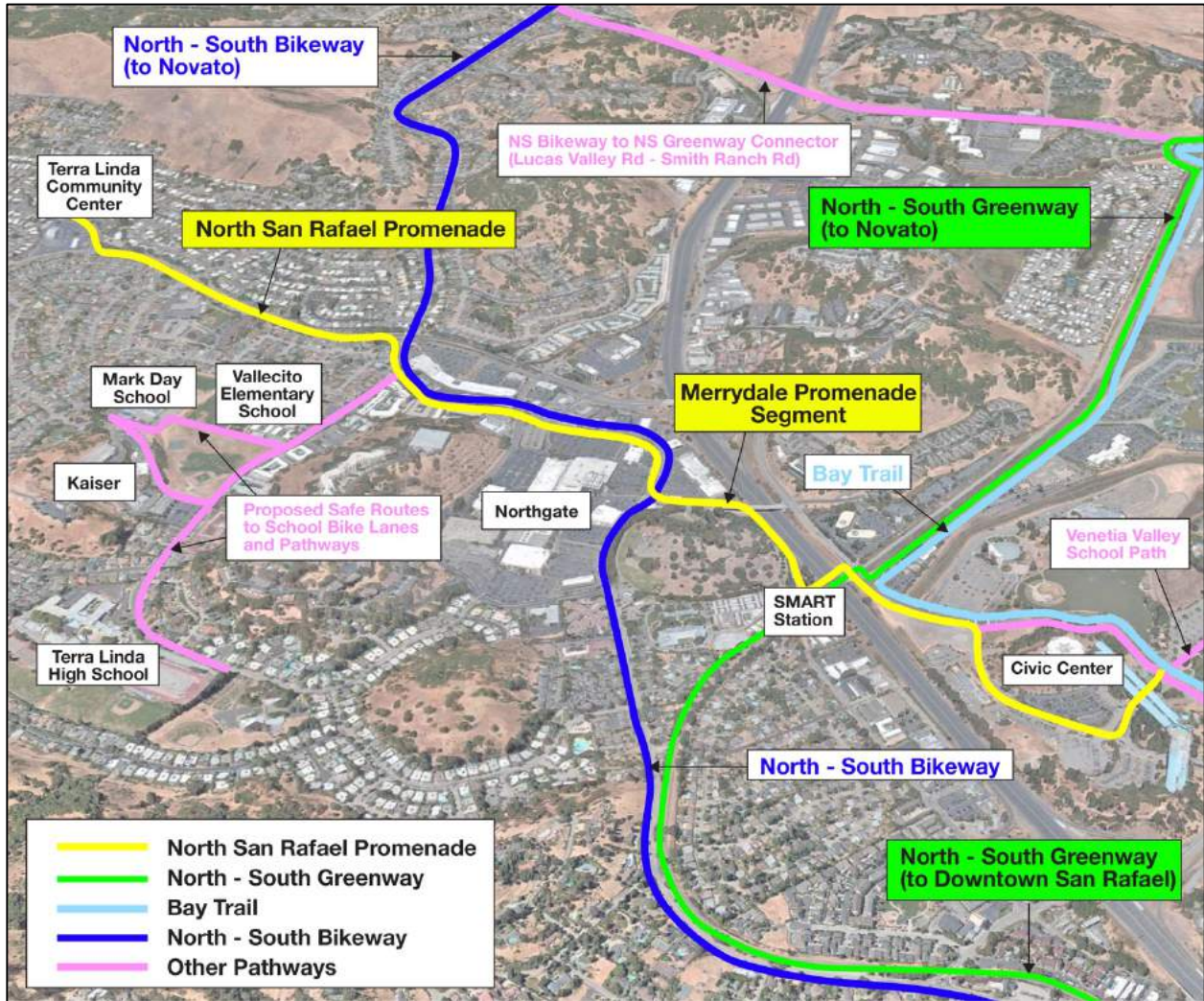
San Rafael General Plan: Calls for implementation of the Bicycle Pedestrian Master Plan and specifically calls for “an excellent network of bikeways and pedestrian paths.” General Plan also calls for adoption of design criteria “to support alternative transportation modes to better meet user needs and minimize conflicts between competing modes.”

Appendix Exhibit B

Project Area Diagram



Regional Connections Map



Appendix Exhibit D

Northgate Pathway Dimensions

Northgate Promenade

Runs along perimeter of Northgate Shopping Center, parallel to Las Gallinas Ave.

Total pathway width: 13.5 feet

Bikeway component: 8 feet (4 feet in each direction)

Walkway component: 5.5 feet



Appendix Exhibit E

Civic Center Drive Pathway Dimensions

Promenade at Civic Center Drive/Avenue of the Flags

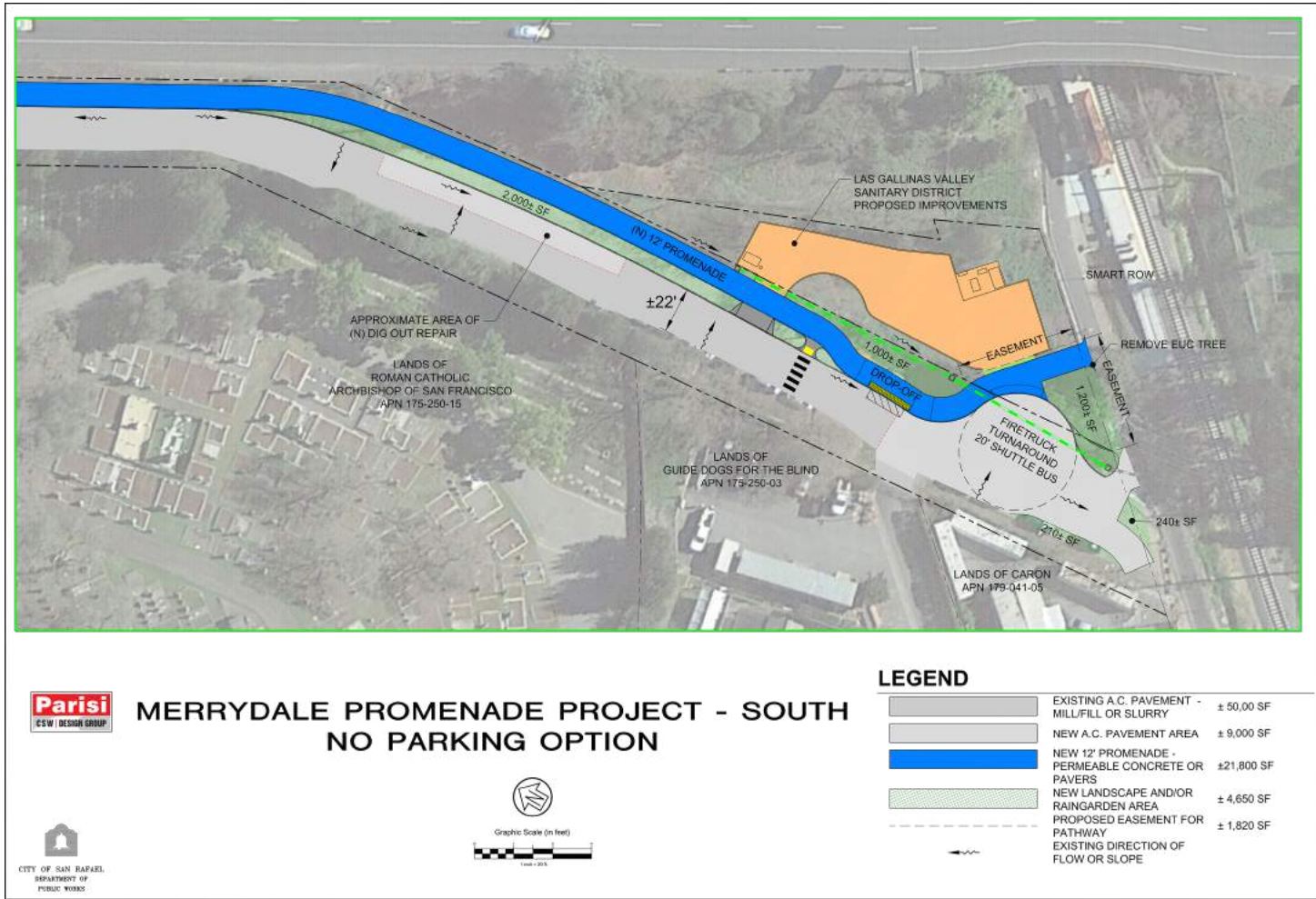
Runs parallel to Civic Center Drive from the SMART station to the Lagoon Park roundabout.

Total pathway width: 17 feet

Bikeway component: 10 feet (5 feet in each direction)

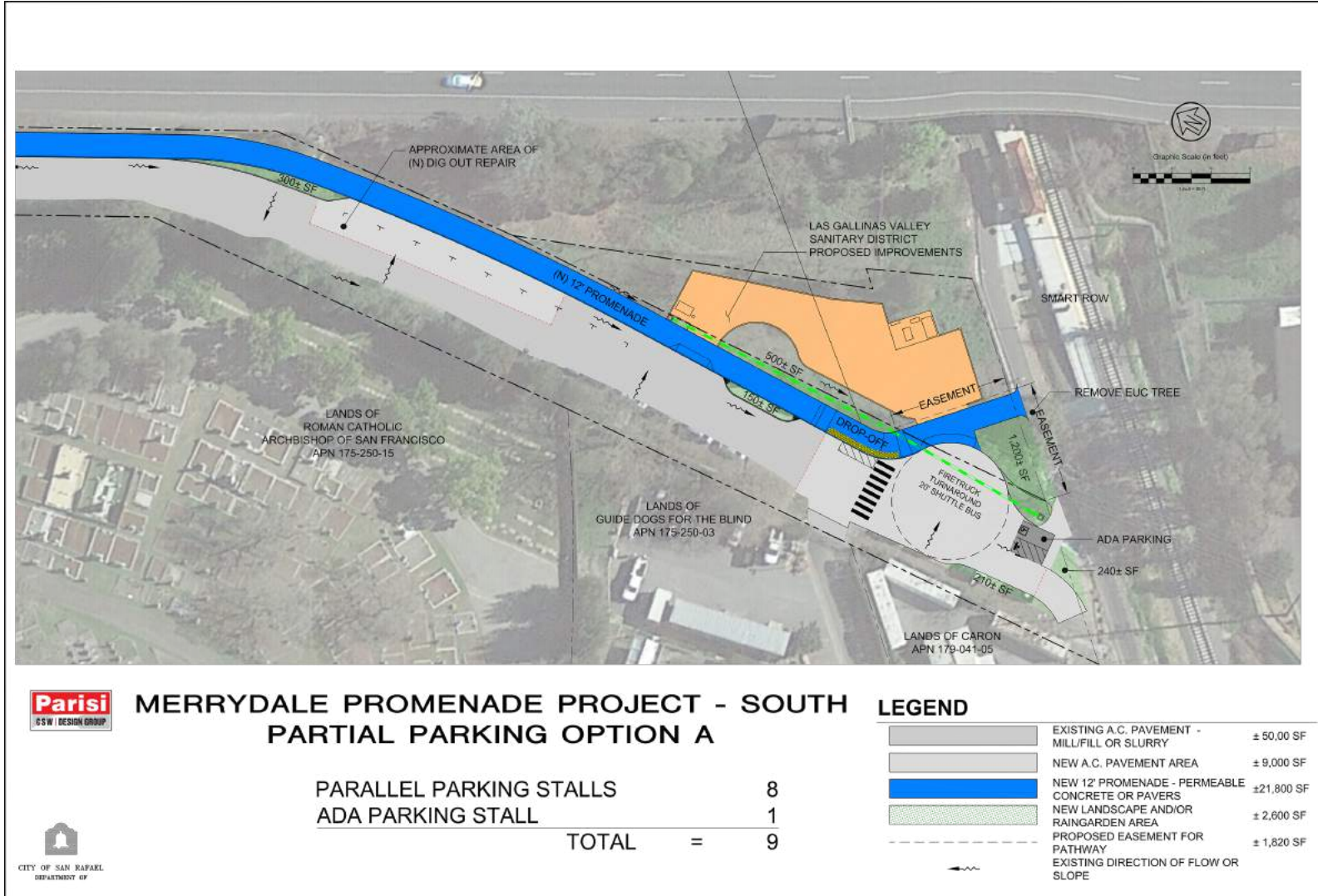
Walkway component: 7 feet







Appendix Exhibit F
 Partial Parking Alternative A
 Parking on the eastern side of Merrydale Road, adjacent the planned pathway.

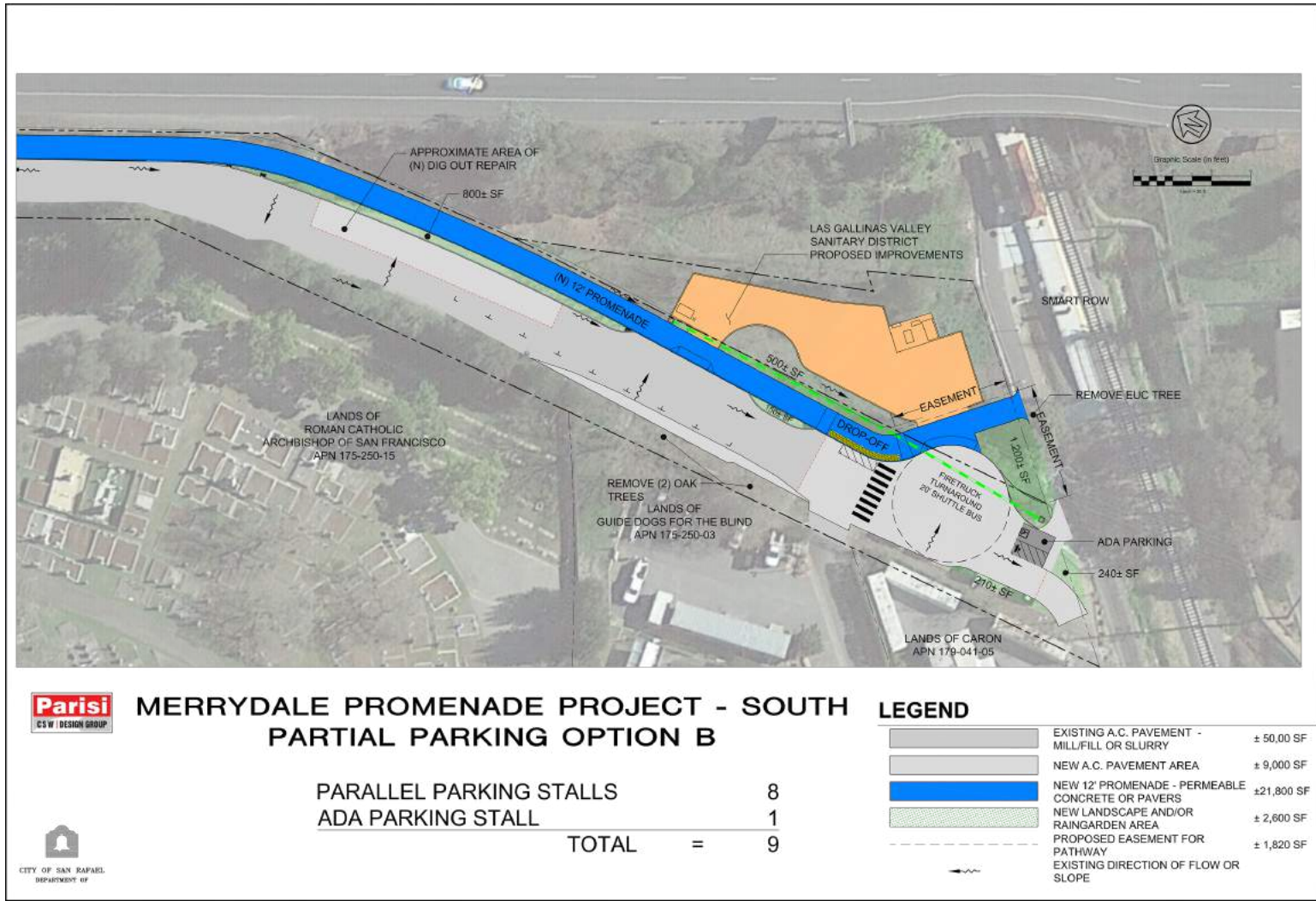




Appendix Exhibit F

Partial Parking Alternative B

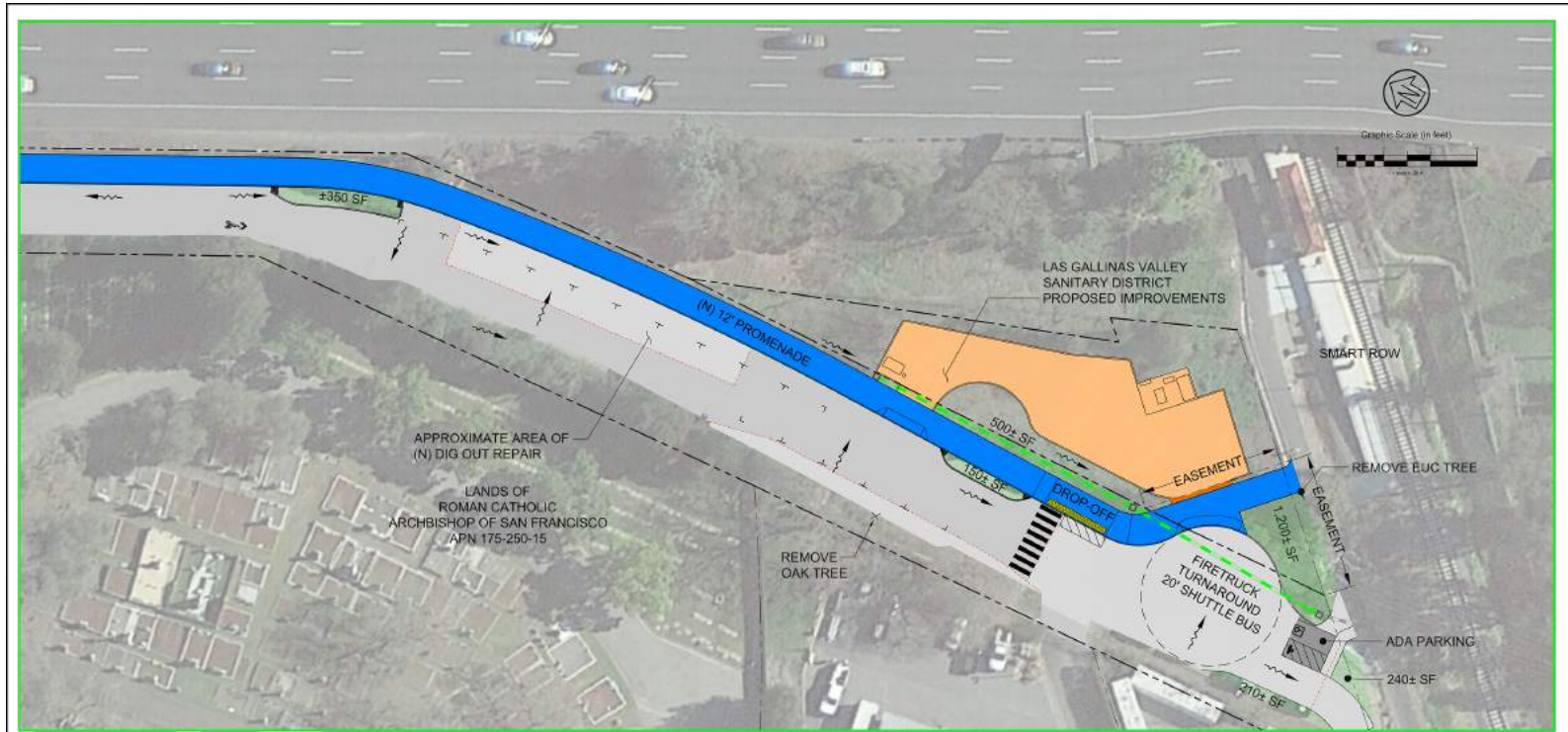
Parking on the western side of Merrydale Road, on the opposite side of the street from the planned pathway.





Appendix Exhibit F

Full Parking Alternative
Parking on both sides of Merrydale Road



MERRYDALE PROMENADE PROJECT - SOUTH LEGEND
FULL PARKING OPTION

PARALLEL PARKING STALLS	15
ADA PARKING STALL	1
TOTAL	= 16

	EXISTING A.C. PAVEMENT - MILL/FILL OR SLURRY	± 50,00 SF
	NEW A.C. PAVEMENT AREA	± 10,000 SF
	NEW 12" PROMENADE - PERMEABLE CONCRETE OR PAVERS	± 21,800 SF
	NEW LANDSCAPE AND/OR RAINGARDEN AREA	± 2,650 SF
	PROPOSED EASEMENT FOR PATHWAY	± 1,820 SF
	EXISTING DIRECTION OF FLOW OR SLOPE	

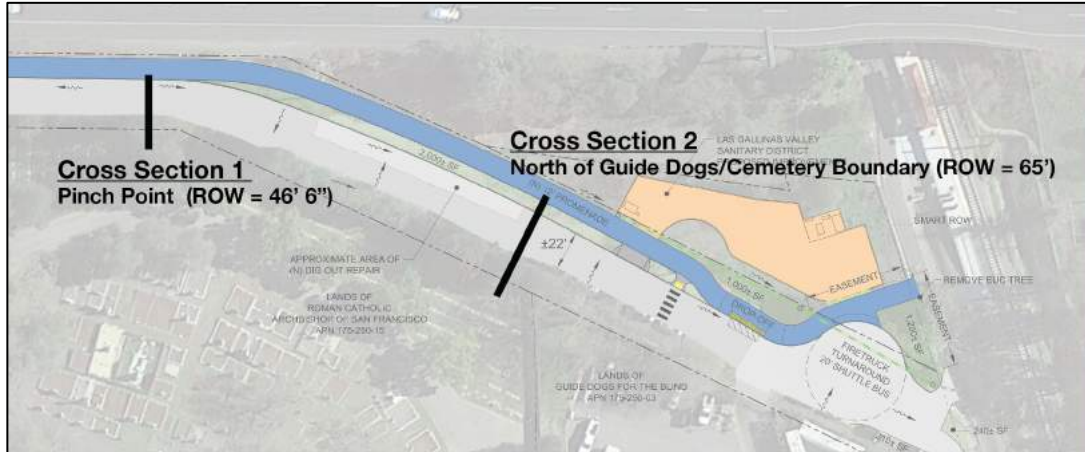


Appendix Exhibit G

Cross Sections

Based on CSW/Parisi plans (WTB-TAM, 2022)

Cross Section Locations



Cross Section 1
Pinch Point boundary (ROW = 46.6')

EXISTING CONDITIONS



ALL ALTERNATIVES



Appendix Exhibit G

Cross Section 2

North of Cemetery/Guide Dogs property boundary (ROW = 65')

EXISTING CONDITIONS



NO PARKING OPTION



PARTIAL PARKING OPTION A



PARTIAL PARKING OPTION B



FULL PARKING OPTION



Appendix Exhibit H

Area Parking Inventory

Map shows existing (2022) parking in the vicinity of the Merrydale Promenade project.

Even after some of the existing parking lots at Northgate are transformed into housing, there will still be ample parking in the area.

