



## AGENDA

SAN RAFAEL CITY COUNCIL – MONDAY, AUGUST 1, 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 Zoom Webinar: <https://tinyurl.com/cc-2022-08-01>

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

Listen by phone: (669) 900-9128

ID: 817-3692-0337#

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

### **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](http://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](mailto:city.clerk@cityofsanrafael.org).
- Join the Zoom webinar and use the 'raise hand' feature to provide verbal public comment.
- Dial-in to Zoom's telephone number using the meeting ID and provide verbal public comment.

Any member of the public who needs accommodations should contact the City Clerk (email [city.clerk@cityofsanrafael.org](mailto:city.clerk@cityofsanrafael.org) or phone at 415-485-3066) who will use their best efforts to provide reasonable accommodations to provide as much accessibility as possible while also maintaining public safety in accordance with the City procedure for resolving reasonable accommodation requests.

### **OPEN SESSION**

1. None.

### **CLOSED SESSION**

2. 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 AND COUNCILMEMBER REPORTS:**

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

3. City Manager and 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.

4. Consent Calendar Items:

a. **Approval of Minutes**

Approve Minutes of City Council Regular Meeting of July 18, 2022 (CC)

*Recommended Action - Approve minutes as submitted*

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

Resolution Pursuant to Assembly Bill 361 Making Findings and Confirming the Need for the Use or Continued Use of Teleconferencing to Hold Public Meetings of the City's Legislative Bodies During the Continuing State of Emergency Relating to the Covid-19 Pandemic (CA)

*Recommended Action - Adopt Resolution*

c. **SB 9 Housing Development and Urban Lot Split Regulations**

Final Adoption of Ordinance 2013: An Ordinance of the City of San Rafael Amending Title 14 (Zoning Ordinance) and Title 15 (Subdivisions) of the San Rafael Municipal Code Related to Regulations to Implement Provisions of SB 9 (CC)

*Recommended Action - Final adoption of Ordinance 2013*

d. **Leaf Blower Ordinance**

Final Adoption of Ordinance 2014: An Ordinance of the City of San Rafael Adding Chapter 8.40 to the San Rafael Municipal Code Entitled "Regulation of Small Off-Road Engines", Related to Regulating Operation of Leaf Blowers (CC)

*Recommended Action - Final adoption of Ordinance 2014*

e. **Legal Services Contract**

Resolution Authorizing the City Manager to Approve and Execute an Agreement with Burke, Williams & Sorensen, LLP for Essential Legal Services to Supplement Staff in the City Attorney's Office, in an Amount Not to Exceed \$150,000 (CA)

*Recommended Action - Adopt Resolution*

f. **Microsoft Licensing Renewal**

Resolution Authorizing the City Manager to Execute the Required Forms to Renew the City's Enrollment with Microsoft Corporation as Part of a Joint Microsoft Enterprise Agreement,

and Issue Purchase Orders to Software One, Inc., for Microsoft Software Licenses at a Cost Not to Exceed \$240,000 Per Year for the Next Three Years (DS)

*Recommended Action - Adopt Resolution*

g. **Spinnaker Point Parking Modifications Project**

Resolution Authorizing the City Manager to Award and Execute a Construction Agreement for the Spinnaker Point Parking Modifications Project, City Project No. 11363, to Michael Paul Company, Inc. in the Amount of \$844,693, and Authorizing Contingency Funds of \$125,307 for a Total Appropriated Amount of \$970,000 (PW)

*Recommended Action - Adopt Resolution*

h. **2022/23 Slurry Seal Project**

Resolution Authorizing the City Manager to Award and Execute a Construction Agreement for the 2022/23 Slurry Seal Project, City Project No. 11415, to American Asphalt Repair Resurfacing Co., Inc. in the Amount of \$737,600, and Authorizing Contingency Funds of \$82,400, for a Total Appropriated Amount of \$820,000 (PW)

*Recommended Action - Adopt Resolution*

i. **Community Development Block Grant (CDBG) Agreement**

Resolution Authorizing the City Manager to Execute an Agreement with the County of Marin for the Use of \$184,008 of Community Development Block Grant Funds for the City's Canal Area Pump Station Improvements Project (PW)

*Recommended Action - Adopt Resolution*

j. **Manuel T. Freitas/101 North Ramps Roundabout**

Resolution Authorizing the City Manager to Approve and Execute a Cooperative Agreement with Caltrans to Contribute Funds for Professional Engineering Services Associated with the Manuel T. Freitas Roundabout Project in an Amount Not to Exceed \$400,000 (PW)

*Recommended Action - Adopt Resolution*

k. **Third Street Rehabilitation Project**

Resolution Authorizing the City Manager to Execute a Contract Change Order for the Third Street Rehabilitation Project to Ghilotti Bros. Inc. in the Amount of \$298,795 From the Project Contingency (PW)

*Recommended Action - Adopt Resolution*

**PUBLIC HEARING**

5. Public Hearing:

a. **Amendment to Zoning Ordinance to Allow Animal Care Facilities as a Conditionally Permitted Use in the Office (O) Zoning District**

Introduction of an Ordinance Amending the Text of the San Rafael Municipal Code, Table 14.05.020 Under Section 14.05.020, Land Use Regulations (GC, NC, O, C/O, R/O, FBWC) to Allow Animal Care Facilities as a Conditionally Permitted Use in the Office (O) District Subject to Performance Standards; Amending the Text of Table 14.06.020 Under Section 14.06.020, Land Use Regulations (I, LI/O, CCI/O, LMU) to Subject Animal Care Facilities to Performance Standards; and Amending Text of Chapter 14.17 to Establish Performance Standards for Animal Care Facilities (CD)

*Recommended Action - Waive further reading and Introduce the Ordinance*

**OTHER AGENDA ITEMS:**

6. Other Agenda Items:

- a. **San Rafael 2023-2031 Housing Element**  
Report on 2023-2031 Housing Element Opportunity Sites Inventory (CD)  
*Recommended Action - Accept report*
  
- b. **Grand Jury Report on Electrifying Marin's Buildings**  
Resolution Approving and Authorizing the Mayor to Execute the City of San Rafael's Response to the 2021-2022 Marin County Civil Grand Jury Report Entitled "Electrifying Marin's Buildings: A Countywide Approach" (CM)  
*Recommended Action - Adopt Resolution*
  
- c. **Hearing on Resolution of Necessity Initiating Eminent Domain Process to Acquire a Portion of 700/740 Francisco Boulevard West, San Rafael, California in Connection with Phase 1 of the Francisco Boulevard West Multi-Use Pathway Project**  
Resolution to Determine the Necessity to Acquire a Portion of Property by Eminent Domain in Connection with Phase 1 of the Francisco Boulevard West Multi-Use Pathway Project; To Authorize Commencement of Litigation to Acquire Property by Eminent Domain; And to Seek an Order of Possession (Code of Civil Procedure Section 1245.220) (CA/PW)  
*Recommended Action - Adopt Resolution*

**SAN RAFAEL SUCCESSOR AGENCY:**

- 1. Consent Calendar: - None.

**ADJOURNMENT:**

Any records relating to an agenda item, received by a majority or more of the Council less than 72 hours before the meeting, shall be available for inspection online, 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](mailto: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, JULY 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 Zoom Webinar: <https://tinyurl.com/cc-2022-07-18>

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Listen by phone: (669) 900-9128

ID: 899-2635-9885#

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Present: Mayor Kate  
Vice Mayor Kertz  
Councilmember Hill

Absent: Councilmember Bushey  
Councilmember Llorens Gulati

Also Present: City Manager Jim Schutz  
City Attorney Robert Epstein

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

Mayor Kate provided opening remarks, which included the hybrid City Council meeting, gratitude to City Staff, and a shout out to the Business Improvement District for organizing events such as Dine Under the Lights, Friday Night block party, Sunset Criterium, the 2<sup>nd</sup> Friday Art Walk and other events.

City Clerk Lindsay Lara informed the community that the in-person meeting would also 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, through Zoom and in-person.

### **OPEN SESSION**

1. None.

### **CLOSED SESSION**

2. None.

### **OPEN TIME FOR PUBLIC EXPRESSION**

- Jonathan Frieman addressed the City Council regarding hearing loss accommodations.
- Eva Chrysanthe addressed the City Council regarding the last City Council meeting and services at the Service Support Area.
- Bill Carney, Sustainable San Rafael, addressed the City Council regarding a Marin Grand Jury report calling for electrification of Marin's buildings.
- Cece Osborn Marin Sunrise Hub addressed the City Council regarding the global climate crisis and creating better standards for buildings, such as that all new buildings be all electric.

### **CITY MANAGER AND COUNCILMEMBER REPORTS:**

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

3. City Manager and Councilmember Reports:

City Manager Jim Schutz announced:

- Public Safety Alternative Response Team Update, including the new, national 988 mental health hotline
- National Night Out to be held on Tuesday, August 2 (6-8:30 pm)

Councilmember Reports:

- Mayor Kate reported on San Rafael's Housing Element Community meeting. She announced the next meeting would be on August 16. She also presented to the Marin Healthcare District Board about the Marin Gun Buy Back Program.

Mayor Kate invited public comment.

**Speaker:** Eva Chrysanthe

## CONSENT CALENDAR:

Mayor Kate invited public comment.

**Speaker:** Eva Chrysanthe

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

### 4. Consent Calendar Items:

a. **Approval of Minutes**

Approve Minutes of City Council Regular Meeting of June 21, 2022 and July 5, 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 the Use or Continued Use of Teleconferencing to Hold Public Meetings of the City's Legislative Bodies During the Continuing State of Emergency Relating to the Covid-19 Pandemic (CA)**

*Resolution 15105 - Resolution Pursuant to Assembly Bill 361 Making Findings and Confirming the Need for the Use or Continued Use of Teleconferencing to Hold Public Meetings of the City's Legislative Bodies During the Continuing State of Emergency Relating to the Covid-19 Pandemic*

c. **Designation of Voting Delegate for the League of California Cities Annual Conference**

**Designation of Councilmember Maika Llorens Gulati as Voting Delegate for the 2022 League of California Cities Annual Conference & Expo in Long Beach - September 7-9, 2022 (CC)**

*Approved the designation of Councilmember Maika Llorens Gulati as voting delegate*

d. **City Quarterly Investment Report**

**Acceptance of City of San Rafael Quarterly Investment Report for the Quarter Ending June 30, 2022 (Fin)**

*Accepted report*

AYES: Councilmembers: Hill, Kertz & Mayor Kate

NOES: Councilmembers: None

ABSENT: Councilmembers: Bushey & Llorens Gulati

## PUBLIC HEARING

### 5. Public Hearing:

a. **[SB 9 Housing Development and Urban Lot Split Regulations](#)**

**Consideration of An Ordinance of the City of San Rafael Amending Title 14 (Zoning Ordinance) and Title 15 (Subdivisions) of the San Rafael Municipal Code Related to Regulations to Implement Provisions of SB 9 (CD)**

Jeff Ballantine, Senior Planner presented the Staff Report.

Staff recommended the following revisions to the Ordinance to clean up the language to make it clear:

Revision – Section 14.16.282.C.1.f.iii (pg. 5)

A single-family home with an ADU and JADU that was issued a building permit prior to July 18, 2022, shall not otherwise preclude an applicant from developing ~~an additional primary~~ two dwelling units pursuant to the provisions of this Section on a vacant lot created through an Urban Lot Split (Chapter 15.155).

Revision – Section 2

**BE IT ORDAINED** by the City of San Rafael as follows:

**Section 1.** The above findings are adopted and incorporated herein.

**Section 2.** Section 14.16.282 (SB 9 Housing Developments) is added to Chapter 14.16 (Site and Use Regulations) of Division IV (Regulations Applying in All or Several Districts) of Title ~~16~~ 14 (Zoning) of the San Rafael Municipal Code as set forth below.

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment.

**Speakers:** Name withheld, Richard Falk, Matt Butler, Aaron Burnett, Canal Alliance, Victoria DeWitt, Arlin Benavides, Sustainable San Rafael, Gregory Andrew, Bill Carney, Sustainable San Rafael, Amy Likover, Steve Thomson

Staff responded to public comment.

Councilmembers provided comments.

Councilmember Hill moved and Councilmember Kertz seconded to pass Ordinance No. 2013 to print, with modifications presented by Staff, as well as modifying the hierarchy of development standards such that we would opt to the more restrictive of lot coverage and natural state at the front.

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

*Passed Ordinance No. 2013 to Print Amending Title 14 (Zoning Ordinance) and Title 15 (Subdivisions) of the San Rafael Municipal Code Related to Regulations to Implement Provisions of SB 9*

b. [Leaf Blower Ordinance](#)

**Consideration of an Ordinance of the City of San Rafael Adding Chapter 8.40 to the San Rafael Municipal Code Entitled “Regulation of Small Off-Road Engines”, Related to Regulating Operation of Leaf Blowers (CM)**

Walter Gonzalez, Management Analyst (City Manager’s Office) presented the Staff Report.

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment.

**Speakers:** Jonathan Frieman, Annika Osborn, Sustainable San Rafael, Esther Wanning

Staff responded to public comment.

Councilmembers provided comments.

Councilmember Kertz moved and Councilmember Hill seconded to pass Ordinance No. 2014 to print.

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

*Passed Ordinance No. 2014 to Print Adding Chapter 8.40 to the San Rafael Municipal Code Entitled "Regulation of Small Off-Road Engines", Related to Regulating Operation of Leaf Blowers*

**c. Tree Ordinance**

**Consideration of An Ordinance of the City of San Rafael Amending Title 11 (Public Works) of the San Rafael Municipal Code "Trees", Regulating Trees Affecting the Public Right-of-Way (PW)**

*Item being finalized and will be continued to a date uncertain this summer*

**SAN RAFAEL SUCCESSOR AGENCY:**

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

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

**1. Consent Calendar:**

**a. Successor Agency Quarterly Investment Report**

**Acceptance of Successor Agency Quarterly Investment Report for the Quarter Ending June 30, 2022 (Fin)**

*Accepted report*

AYES: Members: Hill, Kertz & Chair Kate  
NOES: Members: None  
ABSENT: Members: Bushey & Llorens Gulati

**ADJOURNMENT:**

Mayor Kate adjourned the meeting at 9:01 p.m.

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LINDSAY LARA, City Clerk

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2022

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KATE COLIN, Mayor



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: City Attorney

Prepared by: Genevieve Coyle,  
Assistant City Attorney

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

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

**SUBJECT: RESOLUTION PURSUANT TO ASSEMBLY BILL 361 MAKING FINDINGS AND CONFIRMING THE NEED FOR THE USE OR CONTINUED USE OF TELECONFERENCING TO HOLD PUBLIC MEETINGS OF THE CITY'S LEGISLATIVE BODIES DURING THE CONTINUING STATE OF EMERGENCY RELATING TO THE COVID-19 PANDEMIC**

**RECOMMENDATION:**

Adopt the resolution pursuant to Assembly Bill 361 making findings and confirming the need for the use or continued use of teleconferencing to hold public meetings of the City's legislative bodies during the continuing state of emergency relating to the COVID-19 pandemic.

**BACKGROUND:**

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

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

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

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

September 30, 2021. On September 16, 2021 Governor Newsom signed into law as an urgency measure Assembly Bill (AB) 361. [AB 361](#) amended the Brown Act provisions governing the use of teleconferencing for public meetings of a local agency's legislative bodies, allowing more liberal teleconferencing requirements to continue during the current and future state-declared emergencies. Therefore, since October 1, 2021, the City has relied on the amendments enacted by AB 361 as its authority to continue to hold meetings using teleconferencing technologies.

Government Code section 54953, as amended by AB 361, now provides in new subsection (e)(1), that during the current and any future state-declared state of emergency, the legislative body of a local agency may use teleconferencing without complying with the procedural requirements of Government Code section 54953(b)(3) in any of three circumstances:

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

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

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

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

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



**ANALYSIS:**

The City Council has determined that it is now safe to hold in person meetings in the City Council Chambers, and the Council held its first such meeting on April 18, 2022. Other boards and commissions that meet in the City Council Chambers will also be able to meet in person. The City Council Chambers are roomy enough to allow for social distancing in most cases and are now equipped with teleconferencing equipment that also allows participation in public meetings from other locations. This hybrid meeting model provides an alternative means to attend for those persons who feel they cannot safely attend in person, as well as for those persons who may find it more convenient to participate in the meetings through teleconferencing.

However, the City Council also holds special meetings at locations not in the City Council Chambers and staff has determined that the hybrid meeting model set up for these meetings has not provided sufficient space for social distancing and negatively impacts public participation through virtual means. Additionally, not all City boards and commissions meet in the City Council Chambers. Staff has not yet been able to make comparable arrangements for hybrid meetings in those other meeting locations. Therefore, staff recommends that the City Council continue to adopt the resolution required by AB 361, so that the City's legislative bodies meeting outside the City Council Chambers can meet or continue to meet using teleconferencing technology. These include special meetings of the City Council and meetings of the City's boards and commissions.

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

**FISCAL IMPACT:**

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

**OPTIONS:**

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

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

**RECOMMENDED ACTION:**

Adopt the resolution pursuant to Assembly Bill 361 making findings and confirming the need for use or continued use of teleconferencing to hold public meetings of the City's legislative bodies during the continuing state of emergency relating to the COVID-19 pandemic.

**ATTACHMENTS:**

1. Resolution



## RESOLUTION NO.

### RESOLUTION OF THE SAN RAFAEL CITY COUNCIL PURSUANT TO ASSEMBLY BILL 361 MAKING FINDINGS AND CONFIRMING THE NEED FOR THE USE OR CONTINUED USE OF TELECONFERENCING TO HOLD PUBLIC MEETINGS OF THE CITY'S LEGISLATIVE BODIES DURING THE CONTINUING STATE OF EMERGENCY RELATING TO THE COVID-19 PANDEMIC

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

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

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

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

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

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

**WHEREAS**, the City Council finds that state and/or local officials continue to impose or recommend measures to promote social distancing, including masking in certain indoor public settings; and

**WHEREAS**, the City Council finds that the state of emergency directly impacts or continues to directly impact the ability of the City's legislative bodies to meet safely in person,

including special meetings of the City Council and meetings of the City's boards and commissions.

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

I, **Lindsay Lara**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 1<sup>st</sup> day of August 2022 by the following vote, to wit:

AYES:            Councilmembers:

NOES:           Councilmembers:

ABSENT:        Councilmembers:

Lindsay Lara, City Clerk

## Agenda Item 4.c

### ORDINANCE NO. 2013

**AN ORDINANCE OF THE CITY OF SAN RAFAEL ADDING SECTION 14.16.282 (SB 9 HOUSING DEVELOPMENTS) TO CHAPTER 14.16 (SITE AND USE REGULATIONS) OF DIVISION IV (REGULATIONS APPLYING IN ALL OR SEVERAL DISTRICTS) OF TITLE 14 (ZONING) AND CHAPTER 15.155 (URBAN LOT SPLITS) TO TITLE 15 (SUBDIVISIONS) OF THE SAN RAFAEL MUNICIPAL CODE, TO IMPLEMENT GOVERNMENT CODE SECTIONS 66411.7 AND 65852.21 (SENATE BILL 9) RELATED TO SB 9 HOUSING DEVELOPMENTS AND URBAN LOT SPLITS**

WHEREAS, SB-9 (Chapter 162, Statutes of 2021) enacted Sections 66411.7 and 65852.21 to the Government Code, effective January 1, 2022; and

WHEREAS, these provisions require the City to provide ministerial approval of urban lot splits (“Urban Lot Splits”) and the construction of up to two residential dwelling units (“SB 9 Housing Developments”) on each single-family residential zoned lot within the City, subject to certain limitations; and

WHEREAS, Government Code Section 66411.7(a) limits eligibility of Urban Lot Splits by size and proportionality; and

WHEREAS, Government Code Sections 66411.7(a)(3)(C) and 65852.21(a)(2) limit Urban Lot Splits and SB 9 Housing Developments, respectively, to sites that are not located on or within certain farmland, wetlands, very high fire hazard severity zones, hazardous waste sites, earthquake fault zones, special flood hazard areas, regulatory floodways, lands identified for conservation, habitats for protected species, and historic properties, unless projects on such sites meet specified conditions; and

WHEREAS, Government Code Sections 66411.7(a)(3)(D) and 65852.21(a)(3) through (a)(5) limit eligibility of an Urban Lot Split and an SB 9 Development, respectively, that proposes to demolish or alter housing subject to affordability restrictions, housing subject to rent or price controls, housing that has been occupied by a tenant in the last three years, housing that has been withdrawn from rent or lease within the past 15 years, and housing that requires demolition of existing structural walls unless authorized by local ordinance or has not been tenant-occupied within the past 3 years; and

WHEREAS, Government Code Sections 65852.21(a)(6) and 66411.7(a)(3)(E) allow a city to deny an Urban Lot Split for properties within a historic district or listed on the State’s Historic Resource Inventory or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance; and

WHEREAS, Government Code Sections 66411.7(c) and 65852.21(b) allow a city to establish objective zoning standards, objective subdivision standards, and objective design review standards for Urban Lot Splits and SB 9 Housing Developments, respectively, subject to limits within state law; and

WHEREAS, such objective zoning standards, objective subdivision standards, and objective design review standards may not have the effect of “precluding the construction of two units on either of the resulting parcels from an Urban Lot Split or that would result in a unit size of less than 800 square feet” for an SB 9 Development; and

WHEREAS, Government Code Sections 66411.7 and 65852.21 allow a city to deny a proposed SB 9 Development or Urban Lot Split, respectively, if the project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact; and

WHEREAS, pursuant to Government Code Sections 65852.21(j) and 66411.7(n), the City may adopt an ordinance to implement the provisions of Government Code Sections 65852.21 and 66411.7, and such an ordinance shall not be considered a project under the California Environmental Quality Act (“CEQA”); and

WHEREAS, the City Council desires to implement objective standards and an application process for projects undertaken pursuant to Government Code Sections 65852.21 and 66411.7 by the adoption of such an ordinance.

**BE IT ORDAINED** by the City of San Rafael as follows:

**Section 1.** The above findings are adopted and incorporated herein.

**Section 2.** Section 14.16.282 (SB 9 Housing Developments) is added to Chapter 14.16 (Site and Use Regulations) of Division IV (Regulations Applying in All or Several Districts) of Title 14 (Zoning) of the San Rafael Municipal Code as set forth below.

**14.16.282 – SB 9 Housing Developments.**

- A. Purpose. The purpose of this section is to provide procedures and development standards for the establishment of SB 9 Housing Developments pursuant to Government Code Section 65852.21. To accomplish this purpose, the regulations outlined herein are determined to be necessary for the preservation of the public health, safety and general welfare, and for the promotion of orderly growth and development.

## B. Filing, Processing and Action.

1. Ministerial Review. An SB 9 Housing Development shall be ministerially approved, without discretionary review or hearing, if the proposed housing development meets all provisions of this chapter. Review shall be done through submittal of a building permit application.
2. The City shall act on an application for an SB 9 Housing Development within 60 days of receipt of a complete application. If the applicant requests a delay in writing, the sixty-day time period shall be tolled for the period of the delay. The City has acted on the application if it:
  - a. Approves or denies the building permit for the SB 9 Development;  
or
  - b. Informs the applicant in writing that changes to the proposed project are necessary to comply with this chapter or other applicable laws and regulations.
3. Adverse Impact Upon Health and Safety. A proposed SB 9 Housing Development shall be denied if the Building Official makes a written finding, based upon a preponderance of the evidence, that the proposed SB 9 Housing Development would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5 of the Government Code, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.
4. Limitations on Approval. A proposed SB 9 Housing Development shall not be eligible for approval pursuant to this Chapter if any of the following circumstances apply:
  - a. The SB 9 Housing Development would require demolition or alteration of “protected housing.” Protected housing includes:
    - Housing that is subject to a recorded covenant, ordinance or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
    - Housing that is subject to rent control through valid local rent control provisions.
    - Housing that has been occupied by a tenant in the last 3 years.
  - b. The SB 9 Housing Development would be located on a parcel on which the owner has withdrawn it from renting or leasing under Section 7060 of the Government Code within 15 years preceding the development application (i.e., an exit of the rental housing business pursuant to the Ellis Act).

- c. The SB 9 Housing Development would be located within a historic district, would be included on the State Historic Resources Inventory, or would be within a site that is legally designated or listed as a city or county landmark or historic property or district.
- d. The SB 9 Housing Development would be located in any of the specified designated areas set forth in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4 of the California Government Code, unless requirements therein are met.

C. Development Standards. The following objective development standards shall apply to SB 9 Housing Developments. In addition to these standards, all provisions of the California Building Code shall apply to SB 9 Housing Developments.

1. General Standards.

- a. SB 9 Housing Developments may either be detached or attached, as long as attached structures meet building code safety standards and are sufficient to allow separate conveyance.
- b. SB 9 Housing Developments shall be permitted in all single-family residential zones including R2a, R1a, R20, R10, R7.5, and R5.
- c. Short Term Rentals Prohibited. The rental of any unit in an SB 9 Housing Development shall be for a term of longer than thirty (30) days.
- d. Utility Connections. Each primary unit in an SB 9 Housing Development shall be served by separate water, sewer and electrical utility connections which connect each unit directly to the utility.
- e. Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) shall be permitted as set forth in Section 14.16.285 – Accessory Dwelling Units on parcels not created through an Urban Lot Split (Chapter 15.155).
- f. On parcels created through an Urban Lot Split (Chapter 15.155) that also contain an SB 9 Housing Development, accessory dwelling units (ADUs) shall be permitted as set forth below:
  - i. An SB 9 Housing Development proposing one primary dwelling unit shall be permitted either one ADU or one JADU as set forth in Section 14.16.285 – Accessory Dwelling Units on the parcel. All other provisions and development standards of Section 14.16.285 shall apply.
  - ii. An SB 9 Housing Development proposing a total of two primary dwelling units (where either of the two primary dwelling units are existing or proposed) shall not be permitted any ADU/JADU on the same parcel.

- iii. A single-family home with an ADU and JADU that was issued a building permit prior to July 18, 2022, shall not otherwise preclude an applicant from developing two dwelling units pursuant to the provisions of this Section on a vacant lot created through an Urban Lot Split (Chapter 15.155).
  - iv. The rental of any ADU/JADU shall be for a term of longer than thirty (30) days. This applies retroactively to any existing ADU/JADU on a parcel that subsequently utilizes the provisions of an SB 9 Development or an Urban Lot Split (Chapter 15.155).
2. Objective Development Standards. All applicable objective development standards set forth in Title 14 – Zoning of the San Rafael Municipal Code apply to an SB 9 Housing Development. However, where the following standards conflict or are inconsistent with objective development standards in Title 14, the following standards shall prevail:
- a. Four-foot rear and side yard setbacks are required.
  - b. Sixteen-foot height limit for portions of new development located outside the minimum rear and side yard setbacks of the parcel's zoning district. This height limit shall not be imposed for an SB 9 Housing Development constructed in the same location and to the same dimensions as an existing structure.
  - c. One off-street parking space is required per dwelling. No parking shall be required if:
    - i. The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code; or
    - ii. There is a designated area where a car share vehicle may be accessed within one block of the parcel.
3. Exceptions to Development Standards.
- a. Notwithstanding subsection 2 of this section, all development standards shall be subject to the following exceptions:
    - i. Any standards that would have the effect of physically precluding the construction of two units of at least 800 square feet shall not be imposed.
    - ii. Election of development standards. If necessary, objective zoning, subdivision, or design standards will be set aside in the following order until the site can contain two, 800-square-foot units:

- a) Natural State (where applicable) or Lot Coverage, whichever is more restrictive on the subject parcel;
- b) Natural State (where applicable) or Lot Coverage, whichever is less restrictive on the subject parcel;
- c) Front Setbacks
- d) Second Floor Area limitations
- iii. No setback shall be imposed for an SB 9 Housing Development constructed in the same location and to the same dimensions as an existing structure.
- b. SB 9 Housing Developments are not eligible for any additional Exceptions, Variances, or other deviations from the objective development standards.

**Section 3.** Chapter 15.155 (Urban Lot Splits) is added to Title 15 (Subdivisions) of the San Rafael Municipal Code to read as follows:

**CHAPTER 15.155  
URBAN LOT SPLITS**

**15.155.010 Purpose and Intent**

It is the purpose of this Chapter to provide procedures necessary for the implementation of Section 66411.7 of the Government Code pertaining to Urban Lot Splits. To accomplish this purpose, the regulations outlined herein are determined to be necessary for the preservation of the public health, safety and general welfare, and for the promotion of orderly growth and development.

**15.155.020 Filing, Processing, and Action**

- A. Ministerial Review. An Urban Lot Split shall be ministerially approved, without discretionary review or hearing, if the proposed subdivision meets all provisions of this chapter and conforms to all applicable objective requirements of the Subdivision Map Act (Division 2) commencing with Section 66410 of the Government Code.
- B. Parcel Map. Applicants for Urban Lot Splits shall submit a Parcel Map application.
- C. The City shall act on a Parcel Map application for an Urban Lot Split within 60 days of receipt of a complete application. If the applicant requests a delay in writing, the 60-day time period shall be tolled for the period of the delay. The City has acted on the application if it:
  - 1. Approves or denies a Parcel Map application for an Urban Lot Split; or



2. Informs the applicant in writing that changes to the proposed project are necessary to comply with this Chapter or other applicable laws and regulations.
- D. Parcel maps for Urban Lot Splits shall not be conditioned on dedication of right of way or construction of offsite improvements.
- E. Adverse Impact Upon Health and Safety. A proposed Urban Lot Split shall be denied if the Building Official makes a written finding, based upon a preponderance of the evidence, that the proposed Urban Lot Split would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5 of the Government Code, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.
- F. Limitations on Approval. A proposed Urban Lot Split shall not be eligible for approval pursuant to this Chapter if any of the following circumstances apply:
1. The proposed Urban Lot Split would require demolition or alteration of "protected housing." Protected housing includes:
    - a. Housing that is subject to a recorded covenant, ordinance or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
    - b. Housing that is subject to rent control through valid local rent control provisions.
    - c. A parcel on which the owner of residential real property has withdrawn accommodations from rent or lease pursuant to Section 7060 of the Government Code within 15 years preceding the development application (i.e., an exit of the rental housing business pursuant to the Ellis Act).
    - d. Housing that has been occupied by a tenant in the last three years.
  2. The parcel to be subdivided is located within a historic district, is included on the State Historic Resources Inventory, or is within a site that is legally designated or listed as a city or county landmark or historic property or district.
  3. The parcel to be subdivided is located in any of the specified designated areas set forth in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4 of the California Government Code and does not satisfy the eligibility requirements therein.
  4. The parcel to be subdivided has been established through prior exercise of an Urban Lot Split pursuant to this Chapter.

5. Either the owner of the parcel to be subdivided or any person acting in concert with the owner has previously subdivided an adjacent parcel using an Urban Lot Split pursuant to this Chapter. "Acting in concert" means the owner, or a person acting as an agent or representative of the owner, knowingly participated with another person in joint activity or parallel action toward a common goal of subdividing the adjacent parcel.

### **15.155.030 Development Standards**

The following objective development standards shall apply to Urban Lot Splits. In addition to these standards, all provisions of the California Building Code shall apply to Urban Lot Splits.

#### **A. General Standards**

1. Urban Lot Splits shall be permitted in all single-family residential zones including R2a, R1a, R20, R10, R7.5, and R5.
2. Uses created through an Urban Lot Split shall be limited to residential uses.
3. Short Term Rentals Prohibited. The rental of any unit created through an Urban Lot Split, either primary or accessory, shall be for a term of longer than thirty (30) days.
4. Accessory Dwelling Units. On parcels created through Urban Lot Splits pursuant to this chapter, accessory dwelling units and junior accessory dwelling units shall be permitted as follows:
  - a. An SB 9 Housing Development proposing one primary dwelling unit shall be permitted either one ADU or one JADU as set forth in Section 14.16.285 – Accessory Dwelling Units on the parcel. All other provisions and development standards of Section 14.16.285 shall apply.
  - b. Lots with two SB 9 Housing Developments (where either of the two primary dwelling units are existing or proposed) shall not be permitted any ADU/JADU on the same parcel.
  - c. A single-family home with an ADU and JADU that was issued a building permit prior to July 18, 2022, shall not otherwise preclude an applicant from developing two dwelling units pursuant to the provisions of SRMC 14.16.282 on a vacant lot created through an Urban Lot Split (Chapter 15.155).
  - d. The rental of any ADU/JADU shall be for a term of longer than thirty (30) days. This applies retroactively to any existing ADU/JADU on a parcel that subsequently utilizes the provisions of an SB 9 Development or an Urban Lot Split (Chapter 15.155).

5. Objective Development Standards. All applicable objective development standards set forth in Title 14 – Zoning and Title 15 – Subdivisions of the San Rafael Municipal Code apply to an Urban Lot Split in addition to, or except as qualified, below.
6. Parcels created through Urban Lot Splits shall conform to the following:
  - a. One of the two parcels shall not be smaller than 40% of the lot area of the original parcel area of the subdivision.
  - b. Each of the two parcels shall have a minimum lot size of 1,200 square feet.
  - c. Each parcel shall have access to, provide access to, or adjoin the public right-of-way.
  - d. Each parcel shall possess easements and/or other necessary property rights required for the provision of public services and facilities.

B. Exceptions to Development Standards. Notwithstanding subsection A of this section, all development standards shall be subject to the following:

1. Any standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet, shall not be imposed.
2. No setback shall be imposed for an existing structure, or a structure constructed in the same location and to the same dimensions as an existing structure.
3. Correction of any legal nonconforming zoning condition shall not be required as a condition of approval of an Urban Lot Split.
4. Urban Lot Splits are not eligible for any additional Exceptions, Variances, or other deviations from the objective development standards.

**Section 4:** The following sections of Title 14 – Zoning of the San Rafael Municipal Code are amended to read as follows. New wording is shown in underline and deletions are shown in ~~strikethrough~~.

- Section 14.03.030 – Definitions. The following definition is added to this Section:  
“SB 9 Housing Development” means a development in compliance with the provisions of SB 9 HOME Act of SRMC Section 14.16.282 that contains no more than two primary dwelling units.

- Table 14.04.020 in Section 14.04.020 – Land Use Regulations (R, DR, MR, HR, PD) is amended as follows:

Type of Land Use	R	DR	MR	HR	PD	Additional Use Regulations
<b>Residential Uses</b>						
Duplex residential	<u>P*</u>	P	P	P	C	<u>*Pursuant to regulations and restrictions outlined in Section 14.16.282</u>

- Table 14.04.030 - Property development standards (R) with footnotes is amended as follows:

	R2a	R1a	R20	R10	R7.5	R5	Additional Standards
Minimum lot area (sq. ft.)	2 acres	1 acre	20,000	10,000	7,500	5,000/6,000 (corner)	(I)
Minimum lot width (ft.)	150	150	100	75	60	50/60 (corner)	(I)
Minimum yards							
Front (ft.)	20	20	20	20	15	15	(A), (B)
Side/street side (ft.)	15	15	12'6"	10	6	10% of lot width, min. 3', max. 5'	(C), (D), (H)
Rear (ft.)	25	25	10	10	10	10	(H)
Maximum height of structure	30	30	30	30	30	30	(E), (H)

	R2a	R1a	R20	R10	R7.5	R5	Additional Standards
(ft.)							
Maximum lot coverage	20%	25%	30%	40%	40%	40%	
Maximum upper story floor size	50%/75% of lot coverage calculation	50%/75% of lot coverage calculation	50%/75% of lot coverage calculation	50%/75% of lot coverage calculation	50%/75% of lot coverage calculation	50%/75% of lot coverage calculation	(E), (F), (G)
Private yard area	NR	NR	NR	NR	NR	NR	
Parking	*	*	*	*	*	*	* Based on use. See 14.18.040., (H)

(H) See Section 14.16.282.C. for property development standard applicable to SB 9 Housing Developments.

(I) Parcels created through Chapter 15.155 (Urban Lot Splits) are exempt from these standards.

- Section 14.12.030 – Property development standards (-H) is amended as follows:

Development standards shall be those of the underlying zoning district with which a hillside development overlay district is combined, provided that the following shall be in addition and shall govern where conflicts arise, except for subsection G, Lot Standards, where the lot size standard of the underlying zoning district applies when more restrictive than the subdivision ordinance. Subsections B, F, G, and I shall not apply to SB 9 Housing Developments (regulated by section 14.15.282) or Urban Lot Splits (regulated by Chapter 15.155 – Urban Lot Splits).

- Section 14.12.040 – Exceptions to property development standards is amended as follows:

City Council Exception Required. Exceptions to the property development standards of this chapter may be approved by the city council, upon the recommendation of the design review board and the planning commission, when the applicant has

demonstrated that alternative design concepts carry out the objectives of this chapter and are consistent with the general plan based on the following criteria:

- A. The project design alternative meets the stated objectives of the hillside design guidelines to preserve the inherent characteristics of hillside sites, display sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods, and maintain a strong relationship to the natural setting; and
- B. Alternative design solutions which minimize grading, retain more of the project site in its natural state, minimize visual impacts, protect significant trees, or protect natural resources result in a demonstrably superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures.

This section shall not apply to SB 9 Housing Developments (regulated by section 14.15.282) or Urban Lot Splits (regulated by Chapter 15.155 – Urban Lot Splits).

- Section 14.16.285. – Accessory Dwelling Units (ADUs) is amended to read as follows:

B. Applicability. An ADU as defined in Chapter 14.03 is permitted in any zoning district that allows the development of single-family or multifamily dwelling residential uses. ADUs may be permitted on any lot with a legal nonconforming residential structure. See exceptions in Section 14.16.282.C.1.f for limitations on parcels created by an Urban Lot Split (Chapter 15.155). The following are the four (4) types of accessory dwelling units permitted within the city:

- Table 14.18.040 – Parking requirements is amended as follows:

Use Classification	Off-Street Parking Required	<u>Additional Standards</u>
<b>Residential</b>		
Single-family residential	2 covered spaces per unit.	
Single-family residential, hillside	On streets less than 26 feet wide, a minimum of two additional on-site parking spaces shall be provided (not on the driveway apron) per unit. These spaces should be conveniently placed relative to the dwelling unit which they serve. This requirement may be waived or reduced by the hearing body when the size or shape of the lot or the need for excessive grading or tree removal make the requirement infeasible.	<u>See Section 14.16.282.C.2. for parking requirements for SB 9 Housing Developments</u>
Studios (multifamily)	1 covered space per unit.	

Use Classification	Off-Street Parking Required	<u>Additional Standards</u>
unit)		
Studio (duplex unit), 500 sq. ft. or less in size	1 space per unit	
Studio (duplex unit), Greater than 500 sq. ft.	1.5 spaces per unit (including 1 covered space).	<u>See Section 14.16.282.C.2 for parking requirements for SB 9 Housing Developments</u>
1 bedroom unit	1.5 spaces per unit (including 1 covered space).	
Two-bedroom units	2 spaces (1 covered)	
Three or more bedroom units	2 spaces per unit (including 1 covered space).	

- Section 15.07.020 – Lot design standards - is amended to read as follows:

**15.07.020 – Lot design standards.**

Subsections (a)-(d) shall not apply to SB 9 Housing Developments (regulated by section 14.15.282) or Urban Lot Splits (regulated by Chapter 15.155 – Urban Lot Splits).

- Section 15.07.030 – Street, driveway and parking standards is amended as follows:

**15.07.030 – Street, driveway and parking standards.**

Subsection (c) shall not apply to SB 9 Housing Developments (regulated by section 14.15.282) or Urban Lot Splits (regulated by Chapter 15.155 – Urban Lot Splits).

- Chapter 15.18 – Definitions. The following definition is added to this Chapter:

**15.18.375 - Urban Lot Split.**

The subdivision of a parcel within a residential single-family zone into no more than two parcels pursuant to the authority set forth in Section 66411.7 of the Government Code.

**Section 5: Environmental Review.**

The City Council finds and determines that enactment of this Ordinance is statutorily exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Government Code Sections 65852.21(j) and 66411.7(n), as this action is to adopt an ordinance to implement the requirements of Sections 65852.21 and 66411.7 of the Government Code.

**Section 5:** Effective Date.

This Ordinance shall be in full force and effect thirty (30) days from its passage and adoption.

**Section 6:** Severability.

The City Council hereby declares every section, paragraph, sentence, cause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

**Section 7:** Certification.

The City Clerk shall cause this ordinance to be posted and/or published in the manner required by law.

  
\_\_\_\_\_  
Kate Colin, Mayor

ATTEST:

  
\_\_\_\_\_

LINDSAY LARA, City Clerk

The foregoing Ordinance No. 2013 was introduced at a regular meeting of the City Council of the City of San Rafael on the 18<sup>th</sup> day of July 2022 and was ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Hill, Kertz & Mayor Kate

NOES: Councilmembers: None

ABSENT: Councilmembers: Bushey & Llorens Gulati

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 1<sup>st</sup> day of August 2022.

  
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LINDSAY LARA, City Clerk



## **SUMMARY OF ORDINANCE NO. 2013**

**AN ORDINANCE OF THE CITY OF SAN RAFAEL ADDING SECTION 14.16.282 (SB 9 HOUSING DEVELOPMENTS) TO CHAPTER 14.16 (SITE AND USE REGULATIONS) OF DIVISION IV (REGULATIONS APPLYING IN ALL OR SEVERAL DISTRICTS) OF TITLE 14 (ZONING) AND CHAPTER 15.155 (URBAN LOT SPLITS) TO TITLE 15 (SUBDIVISIONS) OF THE SAN RAFAEL MUNICIPAL CODE, TO IMPLEMENT GOVERNMENT CODE SECTIONS 66411.7 AND 65852.21 (SENATE BILL 9) RELATED TO SB 9 HOUSING DEVELOPMENTS AND URBAN LOT SPLITS**

This Summary concerns a proposed ordinance of the City Council of the City of San Rafael, designated as Ordinance No. 2013, which will amend the San Rafael Municipal Code to establish local regulations consistent with changes in state law regarding SB 9 Housing Developments and Urban Lot Splits. Ordinance No. 2013 is scheduled for adoption by the San Rafael City Council at its regular meeting of August 1, 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 AMENDMENT TO MUNICIPAL CODE**

SB 9, the California Home Act, which took effect on January 1, 2022, is part of the legislature's multi-year efforts to address the state's housing crisis by streamlining approval and encouraging production of certain residential developments. The bill requires municipalities to allow additional housing development on single-family zoned parcels through subdivisions ("Urban Lot Splits") and additional residential units ("SB 9 Housing Development").

To establish standards and review procedures for implementation and ministerial review of SB 9 Housing Developments and Urban Lot Splits, the San Rafael City Council has adopted amendments to Titles 14 (Zoning) and 15 (Subdivisions) of the San Rafael Municipal Code. The amendments include standards for SB 9 Developments including height limits, density standards for SB 9 Developments that utilize an Urban Lot Split, as well as consistency amendments to both Titles to comply with State law.

Copies of Ordinance No. 2013 will be available for public review as of Wednesday, July 20, 2022 at the San Rafael City Clerk's Office, 1400 Fifth Avenue, Room 209 during regular business hours, 9:00 a.m. to 4:00 p.m., and on the City's website: <https://www.cityofsanrafael.org>. You may also contact Leslie Mendez, Planning Manager, at 415-485-3095 or [leslie.mendez@cityofsanrafael.org](mailto:leslie.mendez@cityofsanrafael.org) for information.

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LINDSAY LARA  
San Rafael City Clerk  
Dated:07/22/2022

## Agenda Item 4.d

### ORDINANCE NO. 2014

#### AN ORDINANCE OF THE CITY OF SAN RAFAEL ADDING CHAPTER 8.40 TO THE SAN RAFAEL MUNICIPAL CODE ENTITLED “REGULATION OF SMALL OFF-ROAD ENGINES”

**WHEREAS** the City Council aims to reduce noise impacts from the use of leaf blowers within city limits by establishing reasonable hours for their use; and

**WHEREAS** the City of San Rafael’s 2030 Climate Action Plan includes section LCT- C10, titled “Electric Landscape Equipment”, that encourages the reduction of emissions through reducing the usage of small gas-powered engines; and

**WHEREAS** research by the California Air Resources Board has identified the use of gas-powered small off-road engines, including leaf blowers, as detrimental to the environment as they emit high levels of air pollutants like oxides of nitrogen and other reactive organic gases; and

**WHEREAS** the City Council seeks to reduce greenhouse emissions by prohibiting the operation of gasoline-powered leaf blowers; and

**WHEREAS** the City Council seeks to reduce the waste caused by the depositing of debris from the use of leaf blowers onto other neighboring properties or the public right-of-way; and

**WHEREAS** the State of California recently passed AB 1346, that requires the California Air Resources Board to adopt regulations to restrict the sale of new gas-powered small off-road engines, including gas-powered leaf blowers, in order to prohibit engine exhaust and evaporative emissions from these engines, which is intended to be implemented by January 1, 2024; and

**WHEREAS**, the City Council desires to regulate the operation of leaf blowers by the adoption of such an ordinance.

**BE IT ORDAINED** by the City of San Rafael as follows:

**Section 1.** The above findings are adopted and incorporated herein.

**Section 2.** Chapter 8.40 (Regulation of Small Off-Road Engines) is added to Title 8 (Morals and Conduct) of the San Rafael Municipal Code as set forth below.

#### **8.40 – REGULATION OF SMALL OFF-ROAD ENGINES**

##### **8.40.010 Purpose.**

The purpose of this chapter is to establish restrictions on the operation of small off-road engines, including leaf blowers, within city limits to protect the peace, health, safety and general welfare of the public from excessive, unnecessary and unreasonable noises and pollutant and other emissions from small off-road engines. The provisions of this chapter and the remedies contained in this code shall be cumulative and are not intended to replace any otherwise available remedies for public or private nuisances, nor any other civil or criminal remedies otherwise available. In addition, the regulations contained herein are not intended to substitute for any noise analysis conducted as a part of the city's environmental review process for discretionary permit approvals, nor is

it intended to limit more strict noise control requirements for discretionary permit approvals should more strict measures be found to be necessary in order to maintain noise levels that are not detrimental to the health and welfare of the public.

**8.40.020 Definitions.**

The following words and phrases shall, whenever used in this Chapter, be construed as set forth in this section:

- a. "Electrically-powered leaf blower" means any leaf blower powered by electric means, including but not limited to battery-powered leaf blowers and cordless rechargeable leaf blowers.
- b. "Gas-powered leaf blower" means any leaf blower directly powered by an internal combustion engine using gasoline, alcohol or other liquid or gaseous fluid.
- c. "Holidays" shall have the same meaning as provided in Chapter 8.13 of the San Rafael Municipal Code.
- d. "Leaf blower" means a machine, powered by a gasoline engine or electric motor, used to blow, displace, or vacuum leaves, dirt and/or debris.
- e. "Small off-road engines" means any device that utilizes a gas-powered, spark-ignition engine rated at or below 19 kilowatts (25 horsepower), including but not limited to a leaf blower. Engines in this category are used in lawn and garden equipment as well as other outdoor power equipment and specialty vehicles.

**8.40.030 Permitted days and times for operation of leaf blowers.**

Effective October 1, 2022, it shall be unlawful for any person to operate or authorize, permit, or direct another who engages in the operation of any leaf blower within city limits except during the following hours:

<b>Property type</b>	<b>Monday to Friday</b>	<b>Weekends and Holidays</b>
Residential	8:00 a.m. to 5:00 p.m.	10:00 a.m. to 4:00 p.m.
Non-residential	7:30 a.m. to 5:00 p.m.	8:00 a.m. to 5:00 p.m.

This ordinance does not supersede, alter or in any way affect the noise levels of current city noise ordinances.

**8.40.040 Prohibition of gas-powered leaf blowers.**

Effective October 1, 2022, it shall be unlawful for any person to operate or authorize, permit, or direct another who engages in the operation of any gas-powered leaf blower within city limits.

**8.40.050 Use of leaf blowers.**

No person may deposit dirt, dust, leaves, grass clippings, trimmings, green waste, solid waste, or debris onto a neighboring property or into streets, gutters, or storm drains within city limits.

**8.40.060 Violations a public nuisance; penalties, nuisance abatement, and other remedies.**

Any leaf blower operated in violation of the provisions of this chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance, and the city attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement thereof, in the manner provided by law. Such remedies shall be in addition to any other judicial and administrative penalties and remedies available to the city under chapters 1.40, 1.42, 1.44, or 1.46 of this code, or under state law.

**Section 3. Environmental Review.**

The City Council finds and determines that enactment of this Ordinance, which is intended to restrict the hours of operation for leaf blowers and prohibit the use of gasoline powered leaf blowers is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061 because it can be seen with certainty that there is no possibility that adoption of the Ordinance may have a significant effect on the environment. (14 Cal. Code Regs. § 15061(3)).

**Section 4. Severability.**

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

**Section 5. Publication; Effective Date.**

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

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

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for and against the Ordinance.



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Kate Colin, Mayor

ATTEST:



LINDSAY LARA, City Clerk

The foregoing Ordinance No. 2014 was introduced at a regular meeting of the City Council of the City of San Rafael on the 18<sup>th</sup> day of July 2022 and was ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Hill, Kertz & Mayor Kate

NOES: Councilmembers: None

ABSENT: Councilmembers: Bushey & Llorens Gulati

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 1<sup>st</sup> day of August 2022.



LINDSAY LARA, City Clerk

## **SUMMARY OF ORDINANCE NO. 2014**

### **AN ORDINANCE OF THE CITY OF SAN RAFAEL ADDING CHAPTER 8.40 TO THE SAN RAFAEL MUNICIPAL CODE ENTITLED “REGULATION OF SMALL OFF-ROAD ENGINES”**

This Summary concerns a proposed ordinance of the City Council of the City of San Rafael, designated as Ordinance No. 2014. This ordinance will limit the hours of operation of leaf blowers within city limits, make it illegal to deposit debris on adjacent private and public property, and ban the use of gas-powered leaf blowers within the City beginning October 1, 2022. Ordinance No. 2014 is scheduled for adoption by the San Rafael City Council at its regular meeting on August 1, 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**

Ordinance No. 2014 adds Chapter 8.40, “Regulation of Small Off-Road Engines” to Title 8, Morals and Conduct of the San Rafael Municipal Code. This new chapter will set up standards to regulate use of leaf blowers within city limits. Operation of a leaf blower on any residential property will only be permitted Monday to Friday 8:00 a.m. to 5:00 p.m., and Saturday to Sunday, and holidays 10:00 a.m. to 4:00 p.m. Operation of a leaf blower on any non-residential property will only be permitted Monday to Friday 7:30 a.m. to 5:00 p.m., and Saturday to Sunday and holidays 8:00 a.m. to 5:00 p.m. The ordinance will also make it illegal for a person to deposit dirt, solid waste, and debris onto neighboring public and private property. In addition, the ordinance will further the city’s 2030 Climate Plan by banning the use of gas-powered leaf blowers within city limits. The restrictions on use of leaf blowers will take effect October 1, 2022.

For a complete copy of the text of the Ordinance, please contact the City Clerk Lindsay Lara at 415-485-3065 or [Lindsay.lara@cityofsanrafael.org](mailto:Lindsay.lara@cityofsanrafael.org). Copies of the Ordinance are also available for public review by contacting the City Clerk’s office by email to [city.clerk@cityofsanrafael.org](mailto:city.clerk@cityofsanrafael.org).

/s/ Lindsay Lara  
LINDSAY LARA  
San Rafael City Clerk  
Dated: 07/20/2022



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: City Attorney

Prepared by: Genevieve Coyle,  
Assistant City Attorney

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

**TOPIC: LEGAL SERVICES CONTRACT**

**SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE AND EXECUTE AN AGREEMENT WITH BURKE, WILLIAMS & SORENSEN, LLP FOR ESSENTIAL LEGAL SERVICES TO SUPPLEMENT STAFF IN THE CITY ATTORNEY’S OFFICE, IN AN AMOUNT NOT TO EXCEED \$150,000**

**RECOMMENDATION:**

Adopt resolution authorizing the City Manager to approve and execute an agreement with Burke, Williams & Sorensen, LLP for essential legal services to supplement staff in the City Attorney’s office, in an amount not to exceed \$150,000.

**BACKGROUND:**

The Deputy City Attorney II essential position was vacated at the end of May 2019. Since June 2019 the City Attorney’s office has had an agreement to obtain “on-call” legal services from the firm of Burke, Williams & Sorensen, LLP, mainly from partner Nira Doherty. The part-time services that Nira and her firm have provided have enabled the office to function without a full-time deputy city attorney. The current agreement for services expired on June 30, 2022. Staff now wishes to enter into a new agreement for these legal services covering fiscal year 2022-2023.

**ANALYSIS:**

Nira Doherty is an experienced city attorney, litigator, and land use expert. Her litigation and transactional practices emphasize general municipal law, land use and development, CEQA, and code enforcement issues. She serves as General Counsel for the Tahoe Transportation District, City Attorney for the City of Menlo Park and Assistant City Attorney for the cities of Benicia, Ross and Capitola. Nira advises city councils and staff in all areas of municipal law including complex land use, zoning, and development matters, open meeting laws, the Public Records Act, conflicts of interest, CEQA, elections, initiatives, contracts and torts, and conflicts of interest. She also advises municipal clients throughout the state on issues related to cannabis. Nira has spoken extensively on cannabis issues and has successfully represented municipalities in cannabis-related litigation.

Staff recommends entering into an agreement with Burke, Williams & Sorensen for general municipal law services during fiscal year 2022-2023. Payment would be made at the firm’s standard public entity hourly rates, in a total not-to-exceed amount of \$150,000. This would provide approximately 40 hours of legal services per month. City Attorney staff expects that most services would be provided by Nira, but this

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

agreement would also provide the City Attorney's office with the benefit of access to subject-matter experts in the Burke firm when needed. In the past year, Nira and other attorneys at the Burke firm have been providing supplemental City Attorney services on a wide range of municipal issues, including code enforcement, land use, employment, affordable housing, real estate, and telecommunications.

**FISCAL IMPACT:**

Funds to cover the recommended contract amount are available due to budget savings from the vacant Deputy City Attorney II essential position. As with the 2021-2022 agreement, staff is proposing to cap the fees for the 12-month term of this agreement at \$150,000. Staff expects this amount to be sufficient; however, if unanticipated events result in a need for additional contract legal services during the fiscal year, staff will return to the City Council for approval of any increase in total contract fees above the City Manager authorities.

**OPTIONS:**

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

1. Adopt the resolution approving the legal services agreement as recommended.
2. Adopt the resolution with modifications to the agreement.
3. Direct staff to return with more information.
4. Take no action.

**RECOMMENDED ACTION:**

Adopt the resolution.

**ATTACHMENTS:**

1. Resolution
2. Draft Agreement for Legal Services



**RESOLUTION NO.**

**A RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO APPROVE AND EXECUTE AN AGREEMENT WITH BURKE, WILLIAMS & SORENSEN, LLP FOR ESSENTIAL LEGAL SERVICES TO SUPPLEMENT STAFF IN THE CITY ATTORNEY'S OFFICE, IN AN AMOUNT NOT TO EXCEED \$150,000**

**WHEREAS**, the Deputy City Attorney II essential position was vacated at the end of May 2019; and

**WHEREAS**, for assistance with overflow, the City Attorney's office has had an agreement since June 2019 to obtain "on-call" legal services from the firm of Burke, Williams & Sorensen, LLP (BW&S); and

**WHEREAS**, the part-time services provided by BW&S have enabled the City Attorney's office to function, on a temporary basis, without a fulltime deputy city attorney; and

**WHEREAS**, to achieve budget savings, City staff have determined to continue to rely upon contract legal services rather than to fill the Deputy City Attorney II position during Fiscal Year 2022-2023; and

**WHEREAS**, funds to cover the recommended contract amount are available due to budget savings from the vacant Deputy City Attorney II position;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of San Rafael hereby authorizes the City Manager to approve and execute an Agreement for General Municipal Legal Services with Burke, Williams & Sorensen, LLP for essential legal services to supplement staff in the City Attorney's office during Fiscal Year 2022-2023, in an amount not to exceed \$150,000 and in the form presented in the staff report accompanying this resolution, subject to final approval as to form by the City Attorney.

**I, LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on Monday, the 1<sup>st</sup> day of August 2022, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

**LINDSAY LARA, City Clerk**

**AGREEMENT FOR PROFESSIONAL SERVICES  
FOR GENERAL MUNICIPAL LEGAL SERVICES**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and BURKE, WILLIAMS & SORENSEN, LLP (hereinafter "**CONTRACTOR**").

**AGREEMENT**

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

1. **PROJECT COORDINATION.**

A. **CITY'S Project Manager.** The Assistant City Attorney is hereby designated the PROJECT MANAGER for the **CITY**, and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement.

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

2. **DUTIES OF CONTRACTOR.**

**CONTRACTOR** shall perform the duties and/or provide services as follows:

- a. Representation and advice regarding general municipal matters for the City Attorney's office and for the City Council, City Manager, Boards and Commissions and City staff as directed and delegated by the City Attorney's office.
- b. Attendance at Council meetings and staff meetings as directed and delegated by the City Attorney's office.
- c. Occasional office hours at City Hall during Assistant City Attorney vacation, in an agreed upon schedule by the parties.

This Agreement shall include all general municipal legal services which includes all legal services with the exception of special counsel services. Special counsel services include:

- Litigation
- Arbitration
- Complex construction
- Eminent domain

- Complex personnel matters including disciplinary actions (routine personnel matters and advice are included within the Agreement.)
- Imposition of fees and taxes pursuant to Props 26 and 218.

3. DUTIES OF CITY.

**CITY** shall pay the compensation as provided in Paragraph 4.

4. COMPENSATION.

For the full performance of the services described herein by **CONTRACTOR**, **CITY** shall pay **CONTRACTOR** on a time and materials basis at **CONTRACTOR's** standard public agency rates as follows:

- \$325/hour - partners
- \$295/hour – associates

In no event shall the compensation payable to **CONTRACTOR** hereunder exceed the sum of \$150,000 except by written amendment to this Agreement.

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

5. TERM OF AGREEMENT.

The term of this Agreement shall commence on July 1, 2022 and end on June 30, 2023.

6. TERMINATION.

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

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

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

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

7. OWNERSHIP OF DOCUMENTS.

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

8. INSPECTION AND AUDIT.

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

9. ASSIGNABILITY.

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

10. INSURANCE.

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

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

2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million dollars (\$1,000,000) 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 **CONTRACTOR's** performance of services under this Agreement. Where **CONTRACTOR** is a professional not required to have a professional license, **CITY** reserves the right to require **CONTRACTOR** to provide professional liability insurance pursuant to this section.

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

insurance shall be specifically endorsed to waive any right of subrogation against **CITY**.

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

1. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additional insureds (for both ongoing and completed operations) under the policies.

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

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

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

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

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

8. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to **CITY** or any other additional insured party. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage

and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the **CONTRACTOR** under this agreement.

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

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

## 11. INDEMNIFICATION.

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

under this Agreement, **CONTRACTOR** shall provide a defense to the **City Indemnitees** or at **CITY'S** option reimburse the **City Indemnitees** their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

B. Where the services to be provided by **CONTRACTOR** under this Agreement are design professional services to be performed by a design professional as that term is defined under Civil Code Section 2782.8, then, to the extent permitted by law including without limitation, Civil Code sections 2782, 2782.6 and 2782.8, **CONTRACTOR** shall indemnify and hold harmless the **CITY** and its officers, officials, and employees (collectively **City Indemnitees**) from and against damages, liabilities or costs (including incidental damages, Court costs, reasonable attorney's fees as may be determined by the Court, litigation expenses and fees of expert witnesses incurred in connection therewith and costs of investigation) to the extent they are caused by the negligence, recklessness, or willful misconduct of **CONTRACTOR**, or any subconsultants, or subcontractor or anyone directly or indirectly employed by them, or anyone for whom they are legally liable (collectively Liabilities). Such obligation to hold harmless and indemnify any indemnity shall not apply to the extent that such Liabilities are caused in part by the negligence or willful misconduct of such City Indemnitee.

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

12. **NONDISCRIMINATION.**

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

13. **COMPLIANCE WITH ALL LAWS.**

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

14. **NO THIRD PARTY BENEFICIARIES.**

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

15. NOTICES.

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

TO **CITY**'s Project Manager: Assistant City Attorney  
City of San Rafael  
1400 Fifth Avenue  
San Rafael, CA 94901

TO **CONTRACTOR**'s Project Director: Nira Doherty  
Burke, Williams & Sorensen, LLP  
181 Third Street  
San Rafael, CA 94901

16. INDEPENDENT CONTRACTOR.

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

17. ENTIRE AGREEMENT -- AMENDMENTS.

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

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

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

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

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



by reference, the terms and conditions of this Agreement shall control.

18. SET-OFF AGAINST DEBTS.

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

19. WAIVERS.

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

20. COSTS AND ATTORNEY'S FEES.

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

21. CITY BUSINESS LICENSE / OTHER TAXES.

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

22. SURVIVAL OF TERMS.

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

23. APPLICABLE LAW.

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

24. COUNTERPARTS AND ELECTRONIC SIGNATURE.


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

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

**CITY OF SAN RAFAEL**

By: \_\_\_\_\_  
JIM SCHUTZ, City Manager

**CONTRACTOR**

By:  \_\_\_\_\_  
Name: Nira Doherty  
Title: Project Director

ATTEST:

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

APPROVED AS TO FORM:

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Digital Service and Open Government

Prepared by: Vinh Pham,  
Digital Infrastructure Manager

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

**TOPIC: MICROSOFT LICENSING RENEWAL**

**SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE REQUIRED FORMS TO RENEW THE CITY'S ENROLLMENT WITH MICROSOFT CORPORATION AS PART OF A JOINT MICROSOFT ENTERPRISE AGREEMENT, AND ISSUE PURCHASE ORDERS TO SOFTWARE ONE, INC., FOR MICROSOFT SOFTWARE LICENSES AT A COST NOT TO EXCEED \$240,000 PER YEAR FOR THE NEXT THREE YEARS**

**RECOMMENDATION:** Adopt a resolution authorizing the City Manager to execute the required forms to renew the City's enrollment with [Microsoft Corporation](#) (Microsoft) as part of a joint Microsoft Enterprise Agreement and issue purchase orders to [Software ONE, Inc.](#), (Software ONE) for Microsoft software licenses at a cost not to exceed \$240,000 per year for the next three years.

**BACKGROUND:** The City of San Rafael has used Microsoft products as its standard computer software at the server and workstation level since 2000. In August 2004, the City began purchasing its Microsoft software licenses through a joint, volume licensing program known as the County of Riverside's Microsoft Enterprise Agreement (the Riverside EA). This cooperative purchasing program was initiated through a Request for Proposals (RFP) process by the County of Riverside and continues to be the primary procurement vehicle for Microsoft licenses for many government agencies throughout California. The City's [current enrollment in the Riverside EA](#) is due to expire on July 31, 2022. Over the last three years, the most recent enrollment period, the City paid a total of \$534,451.56 (\$178,150.52 per year) for maintenance and support on its original inventory of Microsoft products. During the same timeframe, the City paid an additional \$60,970.31 for new licenses needed in support of recent technology projects; \$31,850 is the ongoing yearly cost for these additional licenses. As a result, the City's ongoing yearly cost for its total inventory of Microsoft products was estimated at \$210,000 at the time of initial budget submittals for FY22-23.

The Riverside EA currently includes Microsoft offerings for traditional products such as Windows, MS Office, MS Project, Exchange, and SQL Server. A few years ago, licensing options were added for Microsoft's newer cloud-based subscription services such as Office 365, OneDrive, SharePoint, Teams, and Azure. The City began migrating to some of these cloud-based services in 2017 to maximize staff's ability to collaborate on email and shared files from any device connected to the Internet (including

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

desktop and laptop computers, tablets, and smartphones). Software ONE has been the sole source provider for Microsoft products that the City has used over the past three years as part of the Riverside EA. The City will continue to work with Software One as our Microsoft provider for this new agreement.

**ANALYSIS:** In order to continue using its inventory of Microsoft products, and proceed without a lapse of coverage, the City needs to execute the necessary forms (Attachment 2) to renew with Microsoft as part of the Riverside EA by August 31, 2022. The Department of [Digital Service and Open Government](#) completed its review of current products in June, with help from Microsoft and Software ONE. Some adjustments to license types and numbers are being made as part of the renewal process as a result of changing needs at the City, as well as changes to Microsoft's licensing guidelines. Software ONE has provided initial cost estimates of under \$210,000 annually and is working with Microsoft to finalize this number in the next week in order to provide their final price quote.

The estimated \$210,000 per year covers the cost for all of the City's Microsoft products for each year of a three-year renewal period under the Riverside EA. This cost includes support and maintenance for all previously purchased licenses and subscription services and adds support for new products purchased in the last three years. The additional \$30,000 requested by staff for each year would provide the latitude to purchase any additional licenses or services needed (such as for increased operational requirements and/or to support new technology projects) during this time period.

**FISCAL IMPACT:** The required costs for renewing licensing and subscription support for the City's Microsoft products are estimated at or under \$210,000 per year. \$210,000 is budgeted and available in the FY 2022-23 Department of Digital Service and Open Government operating budget, in the Technology Fund (fund no. 601), to cover this expense. Staff is recommending City Council approve a contingency of an additional \$30,000 with Software ONE to cover any unanticipated Microsoft licensing expenses for future projects. Any funds needed to cover those additional licenses during the upcoming 3 years would be appropriated separately by the specific technology projects requiring those increases. All funds needed in future fiscal years would continue to be appropriated through the normal budget process.

**RECOMMENDED ACTION:** Adopt a resolution authorizing the City Manager to execute the required forms to renew the City's enrollment with Microsoft as part of the Riverside EA and issue purchase orders to Software ONE for Microsoft software licenses at a cost not to exceed \$240,000 per year for the next three years.

**ATTACHMENTS:**

1. Resolution
2. Microsoft Enterprise Enrollment Forms

**RESOLUTION NO.**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AUTHORIZING THE CITY MANAGER TO EXECUTE THE REQUIRED FORMS TO RENEW THE CITY'S ENROLLMENT WITH MICROSOFT CORPORATION AS PART OF A JOINT MICROSOFT ENTERPRISE AGREEMENT, AND ISSUE PURCHASE ORDERS TO SOFTWARE ONE, INC., FOR MICROSOFT SOFTWARE LICENSES AT A COST NOT TO EXCEED \$240,000 PER YEAR FOR THE NEXT THREE YEARS**

**WHEREAS**, the City has used Microsoft products as its standard for computer software since 2000 and has been purchasing its Microsoft software licenses under the County of Riverside's Microsoft Enterprise Agreement since 2004; and

**WHEREAS**, the County of Riverside's Microsoft Enterprise Agreement is a cooperative purchasing program and the primary procurement vehicle for Microsoft licenses by many government agencies in California; and

**WHEREAS**, the City's current enrollment with Microsoft Corporation as part of the County of Riverside's Microsoft Enterprise Agreement expires on July 31, 2022, and the City wishes to renew its Microsoft licenses after that date; and

**WHEREAS**, City funds in the amount of \$210,000 are budgeted and available for expenditure in the FY 2022-23 Department of Digital Service and Open Government operating budget, in Technology Fund 601, while the additional \$30,000 in contingency funds would be appropriated separately by any technology projects requiring additional Microsoft licenses, and all funds needed in future fiscal years would continue to be appropriated through the normal budget process;

**NOW, THEREFORE BE IT RESOLVED**, that the City Council hereby authorizes the City Manager to execute the required forms to renew the City's enrollment with Microsoft Corporation, subject to approval as to form by the City Attorney, as part of the County of Riverside's Microsoft Enterprise Agreement and to issue purchase orders to Software ONE, Inc., for Microsoft software licenses at a cost not to exceed \$240,000 per year for the next three years.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on Monday, the 1<sup>st</sup> day of August 2022, by the following vote:

AYES:            COUNCILMEMBERS:

NOES:            COUNCILMEMBERS:

ABSENT:        COUNCILMEMBERS:

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

## Enterprise Enrollment

## State and Local

Enterprise Enrollment number <i>(Microsoft to complete)</i>	61834404	Framework ID <i>(if applicable)</i>	
Previous Enrollment number <i>(Reseller to complete)</i>	62650014		

**This Enrollment must be attached to a signature form to be valid.**

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at <http://www.microsoft.com/licensing/contracts>. In the event of any conflict the terms of this Agreement control.

**Effective date.** If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to “anniversary date” refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

**Term.** The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

## **Terms and Conditions**

### **1. Definitions.**

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

“Additional Product” means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer’s regulatory requirements.

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

## **2. Order requirements.**

- a. Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
  - (i) Enterprise commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
  - (ii) Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. Adding Products.**
  - (i) Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.



- (ii) Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
- g. True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
- (i) Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
- (ii) Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
- (iii) Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively to the month in which they were ordered.
- (iv) Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:
- 1)** For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
  - 2)** For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
  - 3)** For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.
- Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.
- (v) Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.
- (vi) True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate

may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

- (vii) Late true-up order.** If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- h. Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

  - (i)** For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
  - (ii)** If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled “Adding new Products not previously ordered,” then for additional step-up Licenses, by following the true-up order process.
- i. Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- j. Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

### **3. Pricing.**

- a. Price Levels.** For both the initial and any renewal term Enrolled Affiliate’s Price Level for all Products ordered under this Enrollment will be Level “D” throughout the term of the Enrollment.
- b. Setting Prices.** Enrolled Affiliate’s prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft’s prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft’s prices to Resellers are reestablished at the beginning of the renewal term.

### **4. Payment terms.**

For the initial or renewal order, Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If an upfront payment is elected, Microsoft will invoice Enrolled Affiliate’s Reseller in full upon acceptance of this Enrollment. If spread payments are elected, unless indicated otherwise, Microsoft will invoice Enrolled Affiliate’s Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft’s acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

### **5. End of Enrollment term and termination.**

- a. General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.

- b. Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal. Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.
- c. If Enrolled Affiliate elects not to renew.**
- (i) Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.
  - (ii) Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.
    - 1) Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month (“Extended Term”) for up to one year, unless designated in the Product Terms to continue until cancelled, is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.
    - 2) Cancellation during Extended Term.** At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.
  - (iii) Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate’s Enterprise must discontinue use. Microsoft may request written certification to verify compliance.
- d. Termination for cause.** Any termination for cause of this Enrollment will be subject to the “Termination for cause” section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.
- e. Early termination.** Any early termination of this Enrollment will be subject to the “Early Termination” Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

## **6. Government Community Cloud.**

- a. Community requirements.** If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly

prohibited and could result in termination of Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.

- b.** All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.
- c.** Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
  - (i)** Government Community Cloud Services will be offered only within the United States.
  - (ii)** Additional European Terms, as set forth in the Use Rights, will not apply.
  - (iii)** References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

FOR REVIEW

## **Enrollment Details**

### **1. Enrolled Affiliate's Enterprise.**

- a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

Enrolled Affiliate only

Enrolled Affiliate and all Affiliates

Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

- b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Exclude future Affiliates

### **2. Contact information.**

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (\*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

**Name of entity (must be legal entity name)\*** City of San Rafael

**Contact name\* First** Gus **Last** Bush

**Contact email address\*** gus.bush@cityofsanrafael.org

**Street address\*** 1400 Fifth Ave

**City\*** San Rafael

**State/Province\*** CA

**Postal code\*** 94901-1943-

(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)

**Country\*** United States

**Phone\*** 415-458-5302

**Tax ID**

*\* indicates required fields*

- b. **Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

Same as primary contact (default if no information is provided below, even if the box is not checked).

**Contact name\*** First Gus Last Bush

**Contact email address\*** gus.bush@cityofsanrafael.org

**Street address\*** 1400 Fifth Ave

**City\*** San Rafael

**State/Province\*** CA

**Postal code\*** 94901-1943-

(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)

**Country\*** United States

**Phone\*** 415-458-5302

**Language preference.** Choose the language for notices. English

This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

*\* indicates required fields*

- c. **Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

**Contact name\*:** First Gus Last Bush

**Contact email address\*** gus.bush@cityofsanrafael.org

**Phone\*** 415-458-5302

This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.

*\* indicates required fields*

- d. **Reseller information.** Reseller contact for this Enrollment is:

**Reseller company name\*** SoftwareONE, Inc.

**Street address (PO boxes will not be accepted)\*** 20875 Crossroads Circle, Suite 1

**City\*** Waukesha

**State/Province\*** WI

**Postal code\*** 53186-4093

**Country\*** United States

**Contact name\*** MS\* Admin

**Phone\*** 262-317-5555

**Contact email address\*** ms-admin.us@softwareone.com

*\* indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

**Signature\*** \_\_\_\_\_

**Printed name\***

**Printed title\***

**Date\***

*\* indicates required fields*

**Changing a Reseller.** If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the

other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*
  - (i) Additional notices contact
  - (ii) Software Assurance manager
  - (iii) Subscriptions manager
  - (iv) Customer Support Manager (CSM) contact

### **3. *Financing elections.***

Is a purchase under this Enrollment being financed through MS Financing?  Yes,  No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

FOR REVIEW

# Previous Enrollment(s)/Agreement(s) Form

**Entity Name:** City of San Rafael

**Contract that this form is attached to:** State Local Government

For the purposes of this form, "entity" can mean the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

Please provide a description of the previous Enrollment(s), Agreement(s), Purchasing Account(s), and/or Affiliate Registration(s) being renewed or consolidated into the new contract identified above.

- a. Entity may select below any previous contract(s) from which to transfer MSDN subscribers to this new contract. Entity shall ensure that each MSDN subscriber transferred is either properly licensed under the new contract or is removed.
- b. Entity may select below only one previous contract from which to transfer the Software Assurance (SA) Benefit contact details, i.e., benefits contact (*not* the SA manager) and the program codes, to this new contract.
- c. An Open License cannot be used to transfer either the SA Benefit details or MSDN subscribers.
- d. The date of the earliest expiring Enrollment/Agreement that contains SA or Online Services will be the effective date of the new contract (or SA coverage period for Select Plus).
- e. Please insert the number of the earliest expiring Enrollment/Agreement with SA or Online Services in the appropriate fields of the new contract.

Enrollment/Agreement/ Purchasing Account/Affiliate Registration Description	Enrollment/Agreement/ Purchasing Account/Affiliate Registration Public Customer Number	Transfer SA Benefit Contact	Transfer MSDN Subscribers
Standard Enrollment	62650014	X	X



# Enterprise and Enterprise Subscription Enrollment Product Selection Form

Enrollment Number  
 Microsoft to complete for initial term.  
 Reseller or Software Advisor to  
 complete for renewal or with prior  
 qualifying Enrollment/Agreement

**Step 1. Enter all fields in the table below (Required).**

Profile	Qualified Devices	Qualified Users	Enterprise Product Platform	Licensing Model
Enterprise			Choose One	Choose One
Device Profile (e.g. Call Center)			Choose One	Choose One

**Step 2. Select the Products and Quantities Enrolled Affiliate is ordering on its initial Enrollment Order.** Quantity may not include any Licenses which Enrolled Affiliate has selected for optional future use, or to which it is stepping-up within Enrollment term.

Products	Enterprise Quantity	Device Profile (e.g. Call Center)
<b>Secure Productive Enterprise (SPE)</b>		
Secure Productive Enterprise E3 USL		
Secure Productive Enterprise E3 Add-on		
Secure Productive Enterprise E5 USL		
Secure Productive Enterprise E5 Add-on		
<b>Office Professional Plus</b>		
Office Professional Plus		
Office 365 ProPlus		
<b>Office 365 Plans</b>		
Office 365 Plan E1 USL		
Office 365 Plan E3 USL		
Office 365 Plan E5 USL		
Office 365 Plan E1 Add-on		
Office 365 Plan E3 Add-on		
Office 365 Plan E5 Add-on		
Office 365 Plan E3 without ProPlus Add-on		
<b>Client Access License (CAL)</b>		
Choose Core CAL or Enterprise CAL:	<Choose One>	<Choose One>
Core CAL or Enterprise CAL		
Bridge for Office 365		
Bridge for Enterprise Mobility Suite		
<b>Windows Desktop</b>		
Windows 10 Enterprise E3 and LTSB Upgrade per Device		
Windows 10 Enterprise E5 per Device SL		
Windows 10 Enterprise E3 per User SL		
Windows 10 Enterprise E3 per User Add-on SL		
Windows 10 Enterprise E5 per User SL		
Windows 10 Enterprise E5 per User Add-on SL		

Products	Enterprise Quantity	Device Profile (e.g. Call Center)
Windows 10 Enterprise E5 per Device Add-on SL		
Windows VDA		
Windows VDA per User SL		
<b>Microsoft Intune</b>		
Microsoft Intune USL		
<b>Enterprise Mobility + Security</b>		
Enterprise Mobility + Security E3 USL		
Enterprise Mobility + Security E3 Add-on		
Enterprise Mobility + Security E5 USL		
Enterprise Mobility + Security E5 Add-on		

**Step 3. Establish the Enrolled Affiliate's price level.** Unless otherwise indicated in the associated contract documents, the price level for each Product offering/pool is set based upon the quantity to price level mapping. *DO NOT INCLUDE BRIDGE CALs OR ADD-ONS.*

Price Group	1	2	3	4
<b>Enterprise Products</b>	Office Professional Plus + Office 365 ProPlus + Office 365 (Plans E3 and E5) + Secure Productive Enterprise USL	Client Access License + Office 365 (Plans E1, E3, and E5) + Secure Productive Enterprise USL	Client Access License + Microsoft Intune + Enterprise Mobility and Security USL + Secure Productive Enterprise USL	Windows Enterprise E3 and LTSC Upgrade+ Windows Enterprise E5 + Win E3/E5 USL + Win E3/E5 per Device + Windows VDA + Windows Enterprise E3 per User SL + Windows Enterprise E5 per User SL + Windows VDA per User USL + Secure Productive Enterprise USL
<b>Quantity</b>				

Product Offering / Pool	Price Level
<b>Enterprise Products and Enterprise Online Services USLs:</b> Unless otherwise indicated in associated contract documents, Price Level is set using the highest quantity from Groups 1 through 4.	
<b>Additional Product Application Pool:</b> Unless otherwise indicated in associated contract documents, Price Level is set using quantity from Group 1.	
<b>Additional Product Server Pool:</b> Unless otherwise indicated in associated contract documents, Price Level is set using the highest quantity from Group 2 or 3.	
<b>Additional Product Systems Pool:</b> Unless otherwise indicated in associated contract documents, Price Level is set using quantity from Group 4.	

Quantity of Licenses and Software Assurance to Price Level Mapping:

Quantity of Licenses and Software Assurance	Price Level
2,399 and below	A
2,400 to 5,999	B
6,000 to 14,999	C
15,000 and above	D

**Notes:**

1. Enterprise Online Services may not be available in all locations. Please see the Product Terms for a list of locations where these may be purchased.
2. If Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "A" throughout the term of the Enrollment.
3. Unless otherwise indicated in the associated Agreement documents, the CAL selection must be the same across the Enterprise for each Profile.

**This form must be attached to a signature form to be valid.**





**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Public Works

Prepared by: April Miller,  
Director of Public Works

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

File No.: 16.01.293

**TOPIC: SPINNAKER POINT PARKING MODIFICATIONS PROJECT**

**SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD AND EXECUTE A CONSTRUCTION AGREEMENT FOR THE SPINNAKER POINT PARKING MODIFICATIONS PROJECT, CITY PROJECT NO. 11363, TO MICHAEL PAUL COMPANY, INC. IN THE AMOUNT OF \$844,693, AND AUTHORIZING CONTINGENCY FUNDS OF \$125,307 FOR A TOTAL APPROPRIATED AMOUNT OF \$970,000**

**RECOMMENDATION:** Adopt the resolution authorizing the City Manager to award and execute a construction agreement for the Spinnaker Point Parking Modification Project to Michael Paul Company, Inc. in the amount of \$844,693 and authorizing contingency funds of \$125,307 for a total appropriated amount of \$970,000.

**BACKGROUND:**

The City has identified the opportunity to convert on-street parallel parking into angled parking along the north side of Spinnaker Point Drive, next to the Albert J. Boro Community Center. This is possible by reconfiguring the large width of the existing road, narrowing the median, and shifting the sidewalk to the north to align with the future Tiscornia Marsh Habitat Restoration project led by the Marin Audubon Society. Their project would improve the levee, restore the marsh, and provide public trail improvements. The Project concept proposes to nearly double the parking on the north side of Spinnaker Point Drive between Bahia Way and the crosswalk west of Portsmouth Cove by converting the parallel parking to angled parking. The improvements include realignment of the curb and gutter, widening of the sidewalk, a new bioretention area, median modifications, new streetlights, and two accessible parking spaces.

In addition to creating more parking spaces, the proposed project includes other features that would add public benefit. The bioretention work provides additional pervious surface area that will help with drainage. The proposed sidewalk would be wider than what exists currently, making the pedestrian path of travel more accessible, especially for those coming from the two newly proposed accessible parking spaces. New streetlights will improve visibility for both vehicles and pedestrians alike improving the overall safety of the area.

**ANALYSIS:** On July 19, 2022, the following bids were received and read aloud:

**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

<b>Business</b>	<b>Bid Total</b>
Michael Paul Company, Inc.	\$844,693
CF Contracting	\$967,197
Ghilotti Bros., Inc.	\$973,778

The construction bids have been reviewed by Public Works staff and the low bid from Michael Paul Company Inc. of \$844,693 was found to be both responsive and responsible.

On July 19 and July 21, 2022, Public Works staff received bid protests submitted by each of the two highest bidders. The bid protests alleged, in part, that the lowest bid, submitted by Michael Paul Company, Inc., listed a subcontractor who did not submit a bid to any bidding prime contractor, and requested that the bid submitted by Michael Paul Company, Inc. therefore be rejected. Michael Paul Company, Inc. submitted a response to the bid protests. City staff reviewed Michael Paul Company's bid, the bid protests, and the response to the bid protests, and determined that the bid protests had no merit. City staff finds that the lowest bid from Michael Paul Company, Inc. is still considered to be responsible and responsive.

City staff recommends awarding the construction contract to Michael Paul Company, Inc. for the amount bid and recommends the City Council authorize a construction contingency of \$125,307, approximately fifteen percent, for a total appropriated amount of \$970,000.

**PUBLIC OUTREACH:** Public Works has engaged community members and key stakeholders to discuss neighborhood parking issues over the past several years. Public Works staff met with community groups such as neighborhood associations, the Canal Alliance, Marin Organizing Committee, and East San Rafael Working Group. Public presentations have been given at Park and Recreation Commission and City Council meetings. This project also followed the CEQA noticing guidelines for the Initial Study/Mitigated Negative Declaration (IS/MND) environmental document, which included a public hearing at the city Council on August 2, 2021. The City Council approved a resolution adopting the IS/MND for the Spinnaker Point Parking Modification Project.

The bid was publicly advertised through BidExpress. City staff also had a Notice Inviting Bids posted in the Marin IJ and sent to the Builders Exchanges.

**ENVIRONMENTAL DETERMINATION:** City Staff contracted with WRA, Inc., an environmental consultant, in May 2020 to prepare California Environmental Quality Act (CEQA) documentation for the Project as well as obtain regulatory permit approval from the Bay Conservation and Development Commission (BCDC).

**FISCAL IMPACT:** Staff proposes to appropriate construction funding for this project in the amount of \$970,000 utilizing the City's Gas Tax Fund 206.

**OPTIONS:**

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

**RECOMMENDED ACTION:** Adopt the resolution authorizing the City Manager to award and execute a construction agreement for the Spinnaker Point Parking Modifications Project with Michael Paul Company, Inc. in the amount of \$844,693 and authorizing contingency funds of \$125,307 for a total appropriated amount of \$970,000.

**ATTACHMENTS:**

1. Resolution

**RESOLUTION NO.**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO AWARD AND EXECUTE A CONSTRUCTION AGREEMENT FOR THE SPINNAKER POINT PARKING MODIFICATIONS PROJECT, CITY PROJECT NO. 11363, TO MICHAEL PAUL COMPANY, INC. IN THE AMOUNT OF \$844,693, AND AUTHORIZING CONTINGENCY FUNDS OF \$125,307 FOR A TOTAL APPROPRIATED AMOUNT OF \$970,000**

**WHEREAS**, on the 19th day of July 2022, pursuant to due and legal notice published in the manner provided by law, inviting sealed electronic bids through Bidexpress.com for the work hereinafter mentioned, as more fully appears from the Proof of Publication thereof on file with the County of Marin, California, through Microsoft Teams, City of San Rafael staff did publicly open, examine, and declare all sealed electronic bids for doing the following work in said City, to wit:

**“Spinnaker Point Parking Modification Project”**

**City Project No. 11363**

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

**WHEREAS**, the bid of \$844,693 from Michael Paul Company, Inc. at the unit prices stated in its bid, was and is the lowest and best bid for said work and said bidder is the lowest responsible bidder; and

**WHEREAS**, staff has recommended that the project budget include a contingency amount of \$125,307.

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

1. The plans and specifications for the “Spinnaker Point Parking Modifications Project”, City Project No. 11363 on file in the Department of Public Works, are hereby approved.
2. The City Manager is authorized and directed to execute a contract with Michael Paul Company, Inc. for the bid amount, subject to final approval as

to form by the City Attorney, and to return the bidder's bond upon the execution of the contract.

3. Funds for project totaling \$970,000, which includes the construction award amount and contingency, will be appropriated for City Project No. 11363, using \$970,000 in Gas Tax funds (Fund #206).
4. The Director of Public Works is hereby authorized to take any and all such actions and make changes as may be necessary to accomplish the purpose of this resolution.

I, **Lindsay Lara**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 1<sup>st</sup> day of August 2022, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

File No.: 16.01.293





**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Public Works

Prepared by: April Miller,  
Director of Public Works

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

**TOPIC: 2022/23 SLURRY SEAL PROJECT**

**SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD AND EXECUTE A CONSTRUCTION AGREEMENT FOR THE 2022/23 SLURRY SEAL PROJECT, CITY PROJECT NO. 11415, TO AMERICAN ASPHALT REPAIR RESURFACING CO., INC. IN THE AMOUNT OF \$737,600, AND AUTHORIZING CONTINGENCY FUNDS OF \$82,400, FOR A TOTAL APPROPRIATED AMOUNT OF \$820,000**

**RECOMMENDATION:** Adopt the resolution authorizing the City Manager to award and execute a construction agreement for the 2022/23 Slurry Seal Project to American Asphalt Repair Resurfacing Co., Inc. in the amount of \$737,600 and authorizing contingency funds of \$82,400 for a total appropriated amount of \$820,000.

**BACKGROUND:** The City’s annual pavement management program provides vital updates to the City’s 331 lane mile network. One of the most important aspects of managing a road network is continual investment toward preservation of recently rehabilitated roads. These types of preservation projects represent relatively low-cost improvements that prolong the effective life of roadways in good condition. The City utilizes the industry standard Pavement Condition Index (PCI) system to initially identify streets in need of preventative maintenance and then conducts field investigation to further analyze conditions.

This fiscal year, the proposed project is a slurry seal project that includes crack sealing, slurry sealing, and the installation of new traffic striping, crosswalks and legends to the current standards for the streets shown in Attachment 1, which includes streets in the Canal, Bret Harte, and Downtown neighborhoods.

On June 23, 2022, the project was advertised in accordance with San Rafael’s Municipal Code.

**ANALYSIS:** On July 12, 2022, the following bids were received and read aloud:

<u>NAME OF BIDDER</u>	<u>AMOUNT</u>
American Asphalt Repair Resurfacing Co., Inc.	\$737,600.00
Pavement Coatings Co.	\$743,990.00
VSS International, Inc.	\$843,000.00
Doolittle Construction, LLC	\$1,068,390.00

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

The construction bids have been reviewed by City staff and the low bid from American Asphalt Repair Resurfacing Co., Inc. of \$737,600 was found to be both responsive and responsible. City staff recommends awarding the construction contract to American Asphalt Repair Resurfacing Co., Inc. for the amount bid, and recommends the City Council authorize a construction contingency of \$82,400, approximately eleven percent, for a total authorized amount of \$820,000.

**PUBLIC OUTREACH:** In June 2022, staff worked with consultant, Ghirardelli Associates, to develop the list of roadways under consideration for slurry sealing and notified all utility companies of the project. The original roadway list was refined to accommodate utility companies performing scheduled work. These utility coordination efforts will minimize the need for repairs within the limits of the newly resurfaced roadways. A mailer has been sent to residents within the project limits describing the project and its impacts, along with an FAQ about the city's annual pavement management program and the proposed treatments for their roadways. In addition, Staff posted updates on the Department of Public Works news blogs, added updates on the City's Resurfacing and Pavement Maintenance website and provided updates via the City's social media platforms.

**FISCAL IMPACT:** Staff proposes to appropriate construction funding for this project in the amount of \$820,000 utilizing the City's Gas Tax Fund 206.

**OPTIONS:**

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

**RECOMMENDED ACTION:** Adopt the resolution authorizing the City Manager to award and execute a construction agreement for the 2022/23 Slurry Seal Project to American Asphalt Repair Resurfacing Co., Inc. in the amount of \$737,600 and authorizing contingency funds of \$82,400 for a total appropriated amount of \$820,000.

**ATTACHMENTS:**

1. Map of Streets to be Slurry Sealed
2. Resolution

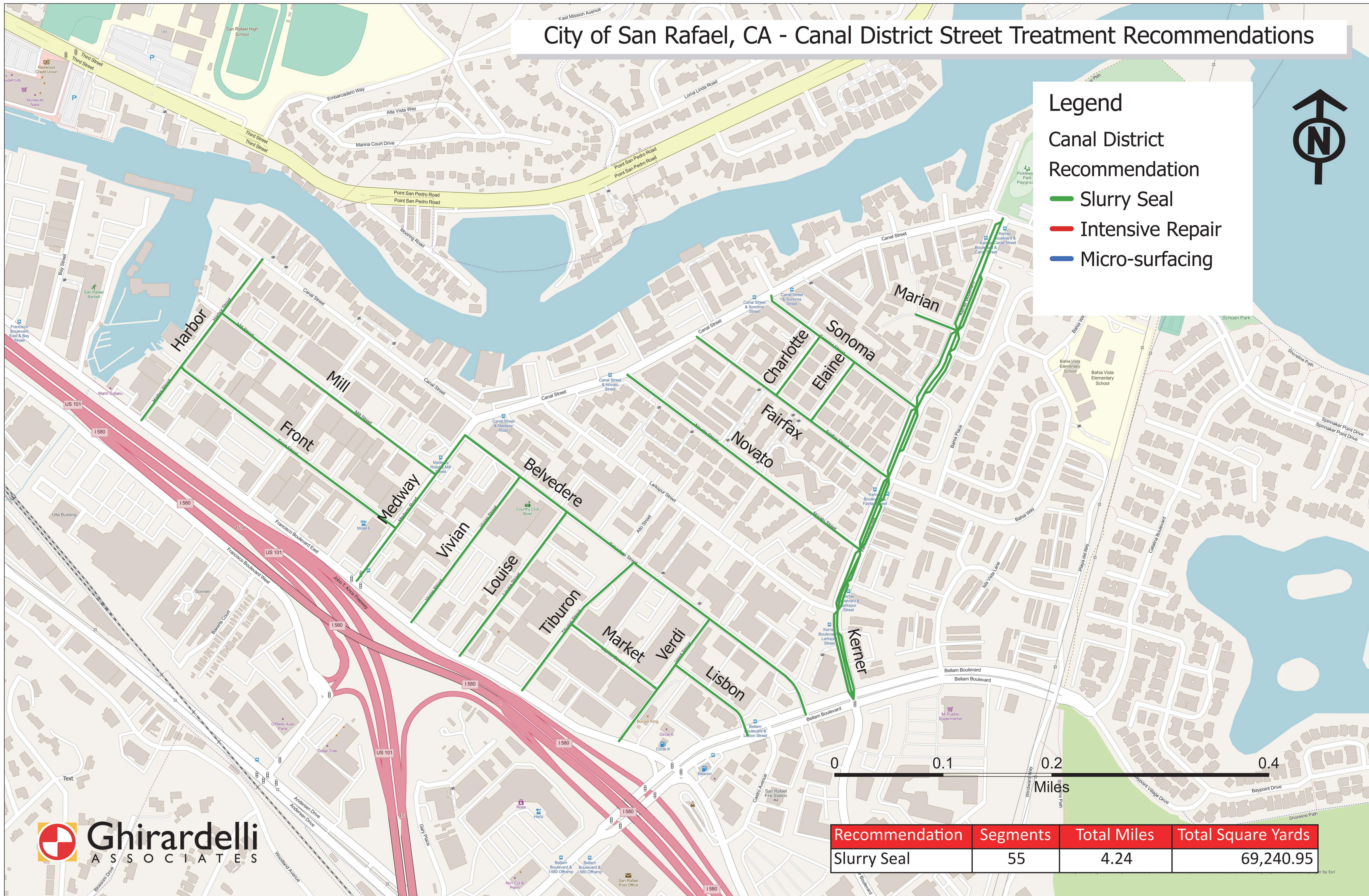


# City of San Rafael, CA - Canal District Street Treatment Recommendations

**Legend**

Canal District Recommendation

- Slurry Seal
- Intensive Repair
- Micro-surfacing



Recommendation	Segments	Total Miles	Total Square Yards
Slurry Seal	55	4.24	69,240.95



By Esri



# City of San Rafael, CA - Bret Harte Neighborhood Street Treatment Recommendations

**Legend**

Bret Harte Treatments Recommendation

- Slurry Seal
- Intensive Repair
- Micro-surfacing



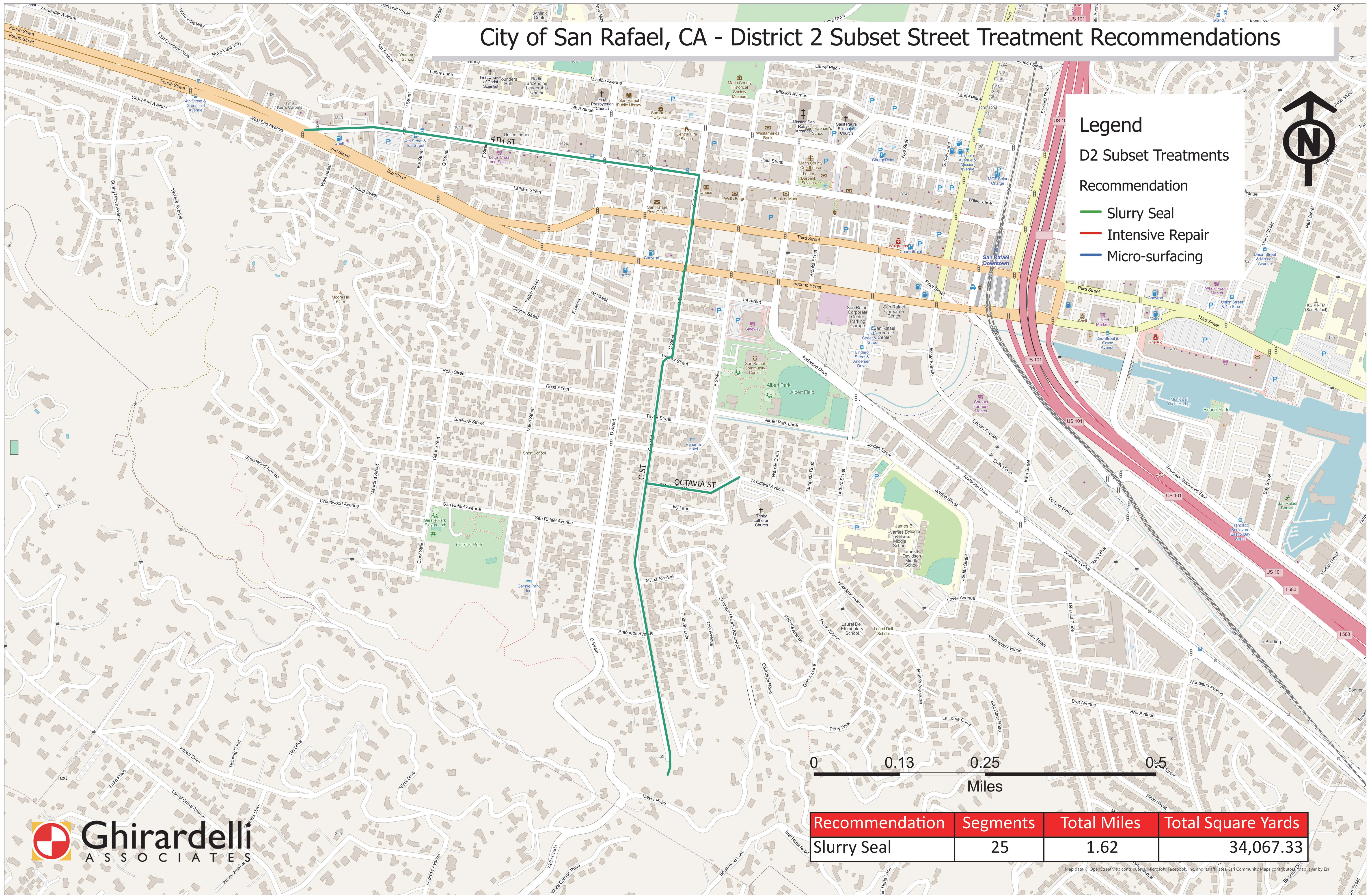
Recommendation	Segments	Total Miles	Total Square Yards
Slurry Seal	14	1.85	26,381.82



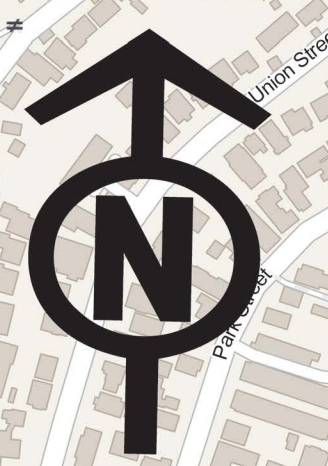
Map data © OpenStreetMap contributors, Microsoft, Facebook, Inc. and its affiliates, Esri Community Maps contributors, Map layer by Esri



# City of San Rafael, CA - District 2 Subset Street Treatment Recommendations



- Legend**
- D2 Subset Treatments Recommendation
- Slurry Seal
  - Intensive Repair
  - Micro-surfacing



Recommendation	Segments	Total Miles	Total Square Yards
Slurry Seal	25	1.62	34,067.33



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**RESOLUTION NO.**

**RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD AND EXECUTE A CONSTRUCTION AGREEMENT FOR THE 2022/23 SLURRY SEAL PROJECT, CITY PROJECT NO. 11415, TO AMERICAN ASPHALT REPAIR RESURFACING CO., INC. IN THE AMOUNT OF \$737,600, AND AUTHORIZING CONTINGENCY FUNDS OF \$82,400, FOR A TOTAL APPROPRIATED AMOUNT OF \$820,000**

**WHEREAS**, on the 12<sup>th</sup> day of July 2022, pursuant to due and legal notice published in the manner provided by law, inviting sealed electronic bids through Bidexpress.com for the work hereinafter mentioned, as more fully appears from the Proof of Publication thereof on file with the County of Marin, California, through Microsoft Teams, City of San Rafael staff did publicly open, examine, and declare all sealed electronic bids for doing the following work in said City, to wit:

**“City of San Rafael 2022/23 Slurry Seal Project”**

**City Project No. 11415**

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

**WHEREAS**, the bid of \$737,600 from American Asphalt Repair Resurfacing Co., Inc. at the unit prices stated in its bid, was and is the lowest and best bid for said work and said bidder is the lowest responsive and responsible bidder; and

**WHEREAS**, staff has recommended that the project budget include a contingency amount of \$82,400.

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

1. The plans and specifications for the “City of San Rafael 2022/23 Slurry Seal Project”, City Project No. 11415 on file in the Department of Public Works, are hereby approved.
2. The City Manager is authorized and directed to execute a contract with American Asphalt Repair Resurfacing Co., Inc. for the bid amount, subject to final approval as to form by the City Attorney, and to return the bidder’s bond upon the execution of the contract.

3. Funds for the project totaling \$820,000 which includes the construction award amount and contingency, will be appropriated for City Project No. 11415, using \$820,000 in Gas Tax funds (Fund 206).
4. The Director of Public Works is hereby authorized to take any and all such actions and make changes as may be necessary to accomplish the purpose of this resolution.

I, **Lindsay Lara**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 1<sup>st</sup> day of August 2022 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

File No.: 16.06.97

LINDSAY LARA, City Clerk



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Public Works**

**Prepared by: April Miller,  
Director of Public Works**

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

**TOPIC: COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT**

**SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE COUNTY OF MARIN FOR THE USE OF \$184,008 OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR THE CITY'S CANAL AREA PUMP STATION IMPROVEMENTS PROJECT**

**RECOMMENDATION:**

Adopt the resolution authorizing the City Manager to execute an agreement with the County of Marin for use of \$184,008 of Community Development Block Grant funds for the City's Canal Area Pump Station Improvements project.

**BACKGROUND:**

The Community Development Block Grant (CDBG) is a federally funded program of the U.S. Department of Housing and Urban Development (HUD) that provides funding for local community-based projects including affordable housing, community infrastructure and capital projects, and public support services. Since 2020, grant funds have been awarded for specific projects over a 2-year cycle.

In February 2020, City staff applied for 2020-22 CDBG funding for its Canal Area Pump Station Improvements project and was given conditional approval for \$184,008. Approval for use of these funds is contingent on completion of a National Environmental Policy Act (NEPA) review and execution of an agreement between the County of Marin, as the CDBG implementer, and the City of San Rafael. If approved, the CDBG funds will be used to replace the nonfunctional generator at the 400 Canal Pump Station.

**ANALYSIS:**

In June 2022, the County of Marin informed City staff that the NEPA review had been completed for this project and the City could proceed with executing an agreement with the County thus authorizing the CDBG funds for use. In preparation, City staff have obtained estimates from different vendors and intends to proceed with construction of this project soon after CDBG funds become available.

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**



**FISCAL IMPACT:**

There is no fiscal impact for the execution of the agreement with the County of Marin.

**OPTIONS:**

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

1. Adopt the resolution as presented.
2. Do not authorize execution of the agreement and provide direction to staff.

**ATTACHMENT:**

1. Resolution
2. Draft CDBG Agreement between Marin County and City of San Rafael

**RESOLUTION NO.**

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE COUNTY OF MARIN FOR THE USE OF \$184,008 OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR THE CITY'S CANAL AREA PUMP STATION IMPROVEMENTS PROJECT**

**WHEREAS**, in February 2020, the City applied for funding from the 2020-22 cycle of the Community Development Block Grant (CDBG) for its Canal Area Pump Station Improvements project.

**WHEREAS**, City staff was notified by the CDBG implementer, Marin County, that \$184,008 of CDBG funding would be made available pending completion of a National Environmental Policy Act (NEPA) review and execution of an agreement between the County of Marin and the City of San Rafael; and

**WHEREAS**, in June 2022, City staff was informed that the NEPA review had been completed and the City could proceed with executing an agreement with the County.

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

1. The City Manager is authorized and directed to execute an agreement with the County of Marin for the use of \$184,008 of CDBG funds for the City's Canal Area Pump Station Improvements project.
2. The Public Works Director 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 1<sup>st</sup> day of August 2022, by the following vote, to wit:

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

---

**LINDSAY LARA, City Clerk**

## A G R E E M E N T

THIS AGREEMENT, made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the COUNTY OF MARIN, State of California, as the Implementor of the Community Development Block Grant Program (hereinafter referred to as "County"), and the **City of San Rafael** (hereinafter referred to as the "Subrecipient Agency").

### WITNESSETH

WHEREAS, the County of Marin has received a Community Development Block Grant from the United States Department of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974, as amended (42 USC 5301 et seq.) (the Act); and

WHEREAS, pursuant to such Grant, the County of Marin is undertaking certain programs and services necessary, as described in greater detail below, for the planning, implementation and execution of such a Community Development Block Grant Program; and

WHEREAS, the County of Marin desires to engage the Subrecipient Agency to render certain services, programs, or assistance in connection with such undertakings of the Community Development Block Grant Program, situated in the Project Area described in Appendix A.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Scope of Service. The Subrecipient Agency shall perform all the necessary services provided under this Contract in accordance with and respecting the following project:

#### **Canal Area Pump Station Improvements**

The Subrecipient Agency shall do, perform and carry out, in a satisfactory manner, as determined by the County, the goals, objectives, and tasks set forth in Appendix B, and incorporated herein by reference.

2. Term of Contract. The services of the Subrecipient Agency are to commence on <Month Day, Year>, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Contract unless so otherwise specified in the Contract in Section 8 (General Terms and Conditions) or in Section 9 (Special Terms and Conditions). This Agreement shall remain in effect until all funds have been spent by the Subrecipient Agency, or until this Agreement is otherwise terminated, unless otherwise specified herein. However, the obligations of the Subrecipient Agency under Section 5 (Program Income) shall continue for any additional time period during which Subrecipient Agency may receive or remain in control of program income, such funds being described in paragraph 5 herein. An Assignment of Proceeds and Grant of Lien may not be terminated without written consent of County. The Subrecipient Agency shall comply with the requirements of 24 CFR 570.503(b)(7) and/or any Assignment of Proceeds and Grant of Lien, at the County's sole discretion.

Time is of the essence in the Agreement.

3. Compensation. The Subrecipient Agency shall be paid a total consideration of **\$184,008** for full performance of the services specified under this Agreement, as explained in paragraph 2 above. Compensation shall be allowed on a reimbursement basis, only after expenditures

have been incurred by the Subrecipient Agency in conformity with the approved and executed budget document which is attached to this Contract as Appendix C, incorporated herein by reference.

In every case, payment will be made subject to receipt of a requisition for payment from the Subrecipient Agency specifying and certifying that such expenses have been incurred and expended in conformance with this Contract and that the Subrecipient Agency is entitled to receive the amount requisitioned under the terms of this Contract.

In addition, payment will be made subject to the Subrecipient Agency's compliance with the grant deliverables document which is attached to this Contract as Appendix D, incorporated herein by reference.

The Subrecipient Agency shall not claim reimbursement from the County for that portion of its obligations which has or will be paid by another source of revenue.

The Subrecipient Agency shall notify the County in writing of all authorized personnel who shall be empowered to file requests for payment pursuant to this Agreement.

4. Use of Funds. Use of funds received pursuant to this Agreement shall be in accordance with the requirements of the Housing and Community Development Act of 1974 (as amended), 24 CFR Part 570, and other regulations governing the Community Development Block Grant program, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement. A copy of said regulations is incorporated by reference. In addition, the Subrecipient Agency agrees to comply with other governing laws, as applicable, including, but not limited to, the National Environmental Policy Act of 1969 (and the implementing regulations at 24 CFR 58), the California Environmental Quality Act, the National Historic Preservation Act of 1966 as amended (16 USC 470), Section 504 of the Rehabilitation Act of 1973 (29 USC 794) (and the implementing regulations at 24 CFR 8), the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975 (42 USC 6101) (and the implementing regulations at 24 CFR 146), the prohibition against using debarred contractors at 24 CFR 570.609, the Davis-Bacon Act (as referenced in section 10.E. below) and Executive Orders 11063, 11246, 11375, 12086, and 12259.

Further, any funded activity must be designed or so located as to principally benefit lower income persons, aid in the prevention or elimination of slums or blight, or meet urgent community development needs, as defined in 24 CFR 570.208.

The Subrecipient Agency agrees to comply with the uniform administrative requirements specified at 24 CFR 570.502 and 24 CFR 570.610, including, but not limited to:

If the Subrecipient Agency is a government agency: 2 CFR Part 200, Subpart B, "General Provisions"; 2 CFR Part 200, Subpart E, "Cost Principles", 200.416-417 "Special Considerations for States, Local Governments and Indian Tribes"; 2 CFR Part 200, Subpart F, "Audit Requirements"; and 2 CFR Part 225, "Cost Principles for State, Local and Indian Tribal Governments.

If the Subrecipient Agency is not a government agency: 2 CFR Part 200, Subpart E, "Cost Principles, 200.418-419, "Special Considerations for Institutions of Higher Education"; 2 CFR Part 215, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"; 2 CFR

Part 220, "Cost Principals for Educational Institutions"; and 2 CFR Part 230, "Cost Principles for Non-Profit Organizations".

Subrecipient Agency is prohibited from using funds provided herein for political, sectarian, religious, or lobbying activities.

5. Program Income. Program income (defined at 24 CFR 570.500) derived from the project, if any, shall revert to the County for use in the Community Development Block Grant Program.

If the Subrecipient Agency executes an Assignment of Proceeds and Grant of Lien to the County, specifying the terms of reversion of proceeds from possible future sale of real property, it is incorporated by reference and made a part of this contract as Appendix E.

6. Assignment. Without written consent of the County, this Agreement is not assignable by the Subrecipient Agency, either in whole or in part.
7. Alteration. No alteration or variation in the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

8. General Terms and Conditions.

- A. The Subrecipient Agency agrees to submit program status reports to the County on at least a bi-annual basis or more frequently if requested, and other reports as may be required.
- B. The Subrecipient Agency agrees to maintain racial, ethnic, gender, disability, family status, head of household, household income, and household size data showing the extent to which these categories of persons have participated in, or benefited from the project, and to submit this information to the County within 30 days of a request from the County. Subrecipient Agency agrees to maintain any other information and meet reporting requirements required by and further detailed in the appendices attached herein, and hereby incorporated by reference.
- C. The Subrecipient Agency agrees to keep all necessary books and records, including property, permits, licenses, income qualification, personnel and financial records in connection with the operations and services performed under this Agreement, and shall document all transactions so that all expenditures may be properly audited. If the Subrecipient Agency expends \$750,000 or more in combined federal assistance during its fiscal year, it agrees to obtain either a single audit or a program-specific financial audit conducted in accordance with OMB SuperCircular 2 CFR §200.
- D. The Subrecipient Agency agrees that the County or any authorized representative has access to and the right to examine all records, books, papers or documents related to the project at any time.
- E. The Subrecipient Agency hereby severally warrants that all project records, books, papers and documents will be retained for a period of not less than four (4) years after the project terminates and grants the County the option of retention of the project records, books, papers and documents.

- F. The Subrecipient Agency agrees to obtain all necessary permits for intended improvements or activities.
- G. The Subrecipient Agency agrees to pay for any federal environmental review process costs associated with activities receiving \$50,000 or more in Community Development Block Grant program funds and requiring a level of environmental review including: Categorically Excluded Subject to Section 58.5, Environmental Assessment, or Environmental Impact Statement, unless waived by the Director.
- H. The Subrecipient Agency agrees to purchase necessary flood insurance if its project is located in a flood hazard area and the nature of the project requires such insurance.
- I. The Subrecipient Agency agrees to conduct affirmative marketing for housing and services provided through this funding. Affirmative marketing activities include, but are not limited to, methods of advertising and community outreach, that are designed to reach persons who are least likely to apply for the program. In order to reach persons who are least likely to apply, the Subrecipient Agency may need to conduct marketing in formats that are accessible for persons with disabilities and in languages other than English.
- J. The Subrecipient Agency hereby severally warrants that it will establish and adopt safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Further, no member, officer, or employee of the Subrecipient Agency who exercises any functions or responsibility with respect to the program during his or her tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, either for themselves or those with whom they have family or business ties, for work to be performed in connection with the program assisted under this Agreement.
- K. The undersigned person signing as an officer on behalf of the Subrecipient Agency, a party to this Agreement, hereby severally warrants and represents that said person has authority to enter into this Agreement on behalf of said Subrecipient Agency and to bind the same to this Agreement, and, further that said Subrecipient Agency has authority to enter into this Agreement and that there are no restrictions or prohibitions contained in any article of incorporation or bylaw against entering into this Agreement.
- L. The County shall not be responsible or liable for any claims, losses, debts, actions, obligations, negligence, or liabilities committed or incurred by the Subrecipient Agency, its staff or clientele; and the Subrecipient Agency hereby agrees to indemnify, defend, and hold County, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged, debts, and/or obligations. No payment, however, final or otherwise, shall operate to release the Subrecipient Agency from any obligations under this Contract.
- M. The Subrecipient Agency hereby certifies that, in the implementation of projects funded by this Agreement and in all of its other operations, it will comply with all requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) (and the implementing regulations at 24 CFR 8), the Americans with Disabilities Act of 1990 (PL 101-336), and all state and local laws requiring physical and program accessibility to people with

disabilities, and agrees to defend, hold harmless, and indemnify the County from and against any and all liability for any noncompliance with any law on the part of the Subrecipient Agency.

- N. Nothing contained in this Agreement is intended to, or shall be construed in any manner to create or establish an employer-employee relationship between the parties, nor shall any employee of the Subrecipient Agency by virtue of this contract be an employee of the County for any purpose whatsoever, nor shall any employee of the Subrecipient Agency be entitled to any of the rights, privileges, or benefits of County employees. The Subrecipient Agency shall be deemed at all times an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this contract. The Subrecipient Agency assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment.
- O. The Subrecipient Agency agrees to participate in training to become informed about the regulations governing the Community Development Block Grant Program, especially with regard to changes in the regulations, provisions requiring nondiscrimination on the basis of disability, and provisions regarding relocation.
- P. The Subrecipient Agency should procure and maintain Commercial General Liability insurance with limits of not less than \$1,000,000 (\$2,000,000 in the aggregate) per occurrence naming the County of Marin as additional insured.

9. Special Terms and Conditions

- A. It is expressly understood and agreed that either party shall have the right to terminate its continued participation pursuant to this Agreement or reduce the compensation amount upon 30 days written notice to the other party, subject to the limitations that follow. The Subrecipient Agency may not terminate its obligations under Section 5 (Program Income) and may not terminate an Assignment of Proceeds and Grant of Lien without written consent of County. All reports or accountings provided for herein shall be rendered whether or not falling due within the contract period. Additionally, County shall not be under any further obligation, including any additional payments, to the Subrecipient Agency following termination.
- B. Further, the County reserves the right to terminate this contract upon written notification to the Subrecipient Agency without 30 days prior written notice, under any of the following conditions:
  - 1) Notification by HUD to the County that said project is ineligible because of project location, services provided, or any other reason cited by HUD;
  - 2) Notification by HUD to the County that said project is deficient and that continued support of the project is not providing an adequate level of services to low income and minority people; or
  - 3) Written notification from HUD to the County that the program funds made available to the County are being curtailed, withdrawn, or otherwise restricted.

C. The County also reserves the right to terminate this Contract or to reduce the contract compensation amount without 30 days written notice if the Subrecipient Agency:

- 1) Fails to file required reports or to meet project progress or completion deadlines;
- 2) Materially fails to comply with any provision of this Agreement (which may result in suspension or termination in accordance with OMB SuperCircular 2 CFR §200;
- 3) Expends funds under this Agreement for ineligible activities, services or items;
- 4) Implements the project prior to notification from the County that the federal environmental review process has been completed;
- 5) Violates Labor Standards requirements; or
- 6) Fails to cure and comply with written notice from the County of substandard performance under the terms of this Agreement and fails to cure and comply with specified remedy requirements within the time frame provided.

#### 10. Other Provisions

##### A. Equal Employment Opportunity

The following provisions (1) and (2) are applicable to all contracts and subcontracts; provisions (3) through (7) are applicable to all non-exempt construction contracts and subcontracts which exceed \$10,000:

During the performance of this contract, the Subrecipient Agency agrees as follows:

- 1) The Subrecipient Agency shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, handicap, disability, sexual orientation, ancestry, national origin, marital status, familial status, or any other basis prohibited by applicable law. The Subrecipient Agency shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, age, handicap, disability, sexual orientation, ancestry, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Subrecipient Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The Subrecipient Agency will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient Agency, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, age, handicap, disability, sexual orientation, ancestry, national origin, marital status, or any other basis prohibited by applicable law.



- 3) The Subrecipient Agency will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Subrecipient Agency's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The Subrecipient Agency will comply with all provisions of Executive Order 11246, Equal Employment Opportunity, of September 24, 1965, as amended by Executive Orders 11375 and 12086, copies of which are on file and available at the County, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The Subrecipient Agency will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the Subrecipient Agency's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Subrecipient Agency may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or as otherwise provided by law.
- 7) The Subrecipient Agency will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Subrecipient Agency will take such action with respect to any subcontract or purchase order as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event an Subrecipient Agency becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the Subrecipient Agency may request the United States to enter into such litigation to protect the interests of the United States.

#### B. Equal Opportunity in Participation

Under the terms of Section 109 of the Housing and Community Development Act of 1974, and in conformance with County policy and all requirements imposed by or pursuant to the Regulations of HUD (24 CFR Part 570.601 and 570.602) issued pursuant to Section 109, no person in the United States shall on the ground of race, color, creed, religion, sex, age, handicap, disability, sexual orientation, ancestry, national origin, marital status, familial status, or any other basis prohibited by applicable law be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any

program or activity funded in whole or in part with Community Development Block Grant program funds.

Specific (not exclusive) Discriminatory Actions Prohibited:

The Subrecipient Agency may not directly or through contractual or other arrangements, on the ground of race, color, creed, religion, sexual orientation, ancestry, national origin, marital status, familial status, age, handicap, disability, sex or any other basis prohibited by applicable law:

- 1) Deny any facilities, services, financial aid, or other benefits provided under the program or activity.
  - 2) Provide any facilities, services, financial aid, or other benefits which are different, or are provided in a different form from that provided to others under the program or activity.
  - 3) Subject to segregated or separate treatment in any facility, or in any matter or process related to receipt of any service or benefit under the program or activity.
  - 4) Restrict in any way access to, or the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.
  - 5) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services, or other benefit provided under the program or activity.
  - 6) Deny any person with the legal right to work an opportunity to participate in a program or activity as an employee.
- C. Business and Employment Opportunities for Lower Income Residents, Women-Owned Business Enterprises, and Minority-Owned Business Enterprises.

The Subrecipient Agency will conform with the rules and regulations set forth under Section 3 of the Housing and Urban Development Act of 1968, (12 USC 1701u), as amended, and the HUD regulations issued pursuant thereto at 24 CFR Part 135. This Act requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the area of the project. In all solicitations for bids, the contractor must, before signing the contract, provide a preliminary statement of the work force needs and plans for possible training and employment of lower income persons. When an Subrecipient Agency utilizes the bidding procedure to let a bid, the invitation or solicitation for bids shall advise prospective contractors of the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, and the clause shall be inserted as a component part of any contract or subcontract.

If an Subrecipient Agency solicits or requests an invitation for bids, every effort feasible will be made to contact minority-owned and women-owned business enterprises for a response to the solicitation or invitation for bidders.

D. Nondiscrimination in Federally-Assisted Programs.

The Subrecipient Agency will comply with Title VI of the Civil Rights Act of 1964 (PL 88-352, 42 USC 2000d et seq.) and the Fair Housing Act (42 USC 3601-20). In accordance with County policy and Title VI of the Civil Rights Act of 1964 (PL 88-352), in the sale, lease or other transfer of land acquired, leased or improved with assistance provided under this Agreement, the deed or lease for such transfer shall contain a covenant prohibiting discrimination upon the basis of race, color, creed, religion, sex, handicap, disability, sexual orientation, ancestry, national origin, marital status, or familial status, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon. The Subrecipient Agency will comply with Title VIII of the Civil Rights Act of 1968 (PL 90-284) as amended and will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing.

E. Labor Standards.

Except with respect to the rehabilitation of residential property designed for residential use for less than eight households, the Subrecipient Agency and all subcontractors engaged in contracts in excess of \$2,000 for the construction, completion, rehabilitation, or repair of any building or work financed in whole or in part with assistance provided under this Agreement are subject to the federal labor standards provisions which govern the payment of wages and the ratio of apprentices and trainees to journeyworkers. Under the terms of the Davis-Bacon Act, as amended, the Subrecipient Agency is required to pay all laborers and mechanics employed on construction work wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor, and shall pay overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act (40 USC 327-332), and the Subrecipient Agency shall comply with all regulations issued pursuant to these Acts and with other applicable Federal laws and regulations pertaining to labor standards, including the Copeland "Anti-Kickback" Act. Provided, that if wage rates higher than those required under the regulations are imposed by State or local laws, nothing hereunder is intended to relieve the Subrecipient Agency of its obligation, if any, to require payment of the higher rates.

F. Tenant Protection Standards

All housing providers using Community Development Block Grant program resources for the construction, completion, rehabilitation, or repair of any building or work financed in whole or in part with assistance provided under this Agreement are subject to federal, state, and County laws regulating tenant protections and are precluded from raising rents in excess of five-percent (5%) during a 12 month period, at any time in which an Assignment of Proceeds and Grant of Lien is held on the property.

G. Flood Disaster Protection.

This Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (PL 93-234). Use of any assistance provided under this Agreement for acquisition or construction in an area identified as having special flood hazards shall be subject to the mandatory purchase of flood insurance in accordance with the requirements of Section 102(a) of said Act.

H. Clean Air Act and Federal Water Pollution Control Act (Applicable to Contracts and Subcontracts Which Exceed \$100,000).

The Subrecipient Agency shall comply with and require each subcontractor to comply with all applicable standards of the Clean Air Act of 1970 (42 USC 1857 et seq.), as amended, the Clean Air Act of 1990, the Federal Water Pollution Control Act (33 USC 1251 et seq.), as amended, and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.

I. Provision of the Hatch Act.

Neither the Subrecipient Agency program nor the funds provided therefor, nor the personnel employed in the administration of the program shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code, or any revisions thereto.

J. Lead-Based Paint.

Any grants or loans made by the Subrecipient Agency for the rehabilitation of residential structures with assistance provided under this Agreement shall be made subject to the provisions for the elimination of lead-based paint hazards including those listed under 24 CFR Part 35. Subrecipient Agency will comply with the requirements of 24 CFR 570.608 for notification, inspection, testing, and abatement procedures concerning lead-based paint. Such regulations require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may contain lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment, and precautions that should be taken when dealing with lead-based paint poisoning.

K. Special Assessments.

The Subrecipient Agency will not attempt to recover any capital costs of public improvements assisted in whole or in part with funds provided under Section 5306 of the Housing and Community Development (HCD) Act of 1974 or with amounts resulting from a guarantee under Section 5308 of the Act by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (1) funds received under Section 5306 of the Act are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under Title I of the Act; or (2) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary of HUD that it lacks sufficient funds received under Section 5306 of the Act to comply with the requirements of subparagraph (1).

L. Acquisition, Rehabilitation, and Demolition of Real Property and Displacement of Persons and Businesses

The Subrecipient Agency will comply with the "County of Marin Community Development Block Grant Program Plan for Minimizing the Displacement of Persons As a Result of Community Development Block Grant Funded Activities" and the "County of Marin Community Development Block Grant Program Residential Antidisplacement and Relocation Assistance Plan." The Subrecipient Agency will conduct any acquisition, rehabilitation, or demolition of real property, and any negotiations for acquisition, rehabilitation, or demolition of real property in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, Section 104(d) of the Act, and the implementing regulations at 49 CFR 24 and 24 CFR 570.606. Unless specifically permitted in Appendix B or Appendix C, the Subrecipient Agency will not cause either temporary or permanent involuntary displacement of persons or businesses. If the Subrecipient Agency causes the involuntary temporary or permanent displacement of any person or business as a result of Community Development Block Grant activities, it shall comply with the County's "Plan to Assist Persons Actually Displaced by Community Development Block Grant Activities," and Subrecipient Agency shall provide all notices, advisory assistance, relocation benefits, and replacement dwelling units as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, Section 104(d) of the Act, and the implementing regulations at 49 CFR 24 and 24 CFR 570.606. Subrecipient Agency hereby agrees to defend, to pay, and to indemnify the County from and against, any and all claims and liabilities for relocation benefits or the provision of replacement dwelling units required by federal statutes and regulations in connection with activities undertaken pursuant to this Agreement.

M. Lobbying Restrictions

The Subrecipient Agency certifies that, to the best of its knowledge and belief:

No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

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 Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

It will require that the language of this paragraph L be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 Section 1352, Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

N. Provisions Required by Law Deemed Inserted.

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

IN WITNESS WHEREOF, the parties hereto have executed this contract.

COUNTY OF MARIN

CITY OF SAN RAFAEL

\_\_\_\_\_  
Katie Rice  
President Board of Supervisors

\_\_\_\_\_  
Jim Schutz  
City Manager

"County"

"Subrecipient Agency"

ATTEST:

ATTEST:

\_\_\_\_\_  
Deputy Clerk of the Board

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

MASTER FORM  
APPROVED AS TO FORM:  
*Tarisha K. Bal*  
(Original signature is on file.)  
*Tarisha K. Bal*  
Deputy County Counsel

APPROVED AS TO FORM:  
\_\_\_\_\_  
Robert F. Epstein, City Attorney

**APPENDIX A**  
**PROJECT AREA**

The project locations are the 400 Canal Pump Station: APN 008-020-02, 400 Canal Street and Kerner Pump Station: APN 009-021-06, north of 3774 Kerner Blvd. Both are city-owned property. These pump stations represent two of the five pump stations that serve the drainage system for the Canal neighborhood of San Rafael located east of the 580/101 freeway and south of the canal within the City of San Rafael.

**APPENDIX B**  
**GOALS, OBJECTIVES AND TASKS**

The City of San Rafael Department of Public Works will use Community Development Block Grant funds to support pump station improvements by replacing the standby generators at the two pump stations. The generators, which were installed in 1984, have reached the end of their useful life. One is inoperable. Both will be replaced with new generators that meet current emission standards. Other proposed work includes replacement of the electrical transfer switches and replacement of a corroded trash grate at the 400 Canal Street pump station. The existing pumps and other equipment are in good condition and will not be replaced.

Based on census tract information, the Canal area population is 80% Hispanic, with minorities of Caucasian and Asian descent. More than 80% of the people who live in this area are considered moderate, low, very low, and extremely low-income persons. Completion of the Canal Area Pump Station Improvement Project will help ensure that this community continues to receive flood protection from the drainage system in this area.

**APPENDIX C**  
**ALLOCATION OF FUNDS**

<b>TOTAL</b>	<b>\$184,008</b>
Generators, materials, and installation	\$184,008

The Housing and Federal Grant Planning Manager, or their designee, reserve the right to reallocate funds in service of the program goals and objectives.

**APPENDIX D**  
**DELIVERABLES**

**Affirmative Marketing Plan**

Prior to the final disbursement of grant funds the Subrecipient Agency must submit to the County for review and approval, an assessment of previous affirmative marketing activities or an updated affirmative marketing plan responding to findings of previous efforts to ensure the project reaches protected classes that would be least likely to access and benefit from the project.

**Reporting**

Two (2) reports will be due annually beginning when this agreement is executed and until the project is deemed complete by the County. Reports will be due by January 31<sup>st</sup>, covering July 1<sup>st</sup> through December 31<sup>st</sup>, and by July 31<sup>st</sup>, covering the entire year. If invoices are submitted in between reporting periods, Subrecipient Agency will be required to provide a project update.

Reporting by the Subrecipient Agency will include, but not be limited to, providing data on the project's progress, beneficiaries, funding category specific requirements, and affirmative outreach and marketing activities to promote increased participation by members of protected classes.

The Subrecipient Agency will report annually on Minority Owned Business and Woman Owned Business engaged during the completion of activities contracted for, using HUD Form 2516, as specified by section 10(C) of this contract. The report is due July 31<sup>st</sup>, covering the 12 months of July 1st - June 30th unless otherwise indicated by staff.

**Use of Facilities**

If, for any reason, the Subrecipient Agency does not operate the facilities providing the activities listed in Appendix B for a period of five years after the completion of the rehabilitation funded under this Agreement, Subrecipient Agency agrees to reimburse County for all amounts spent under this Agreement, in accordance with 24 CFR 570.503(b)(7).





**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Public Works

Prepared by: April Miller,  
Director of Public Works

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

**TOPIC: MANUEL T. FREITAS/101 NORTH RAMPS ROUNDABOUT**

**SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE AND EXECUTE A COOPERATIVE AGREEMENT WITH CALTRANS TO CONTRIBUTE FUNDS FOR PROFESSIONAL ENGINEERING SERVICES ASSOCIATED WITH THE MANUEL T. FREITAS ROUNDABOUT PROJECT IN AN AMOUNT NOT TO EXCEED \$400,000**

**RECOMMENDATION:** Staff recommends that the City Council adopt the Resolution authorizing the City Manager to sign a Cooperative Agreement with Caltrans to contribute funds in an amount of \$400,000 for the Manuel T. Freitas Parkway and US 101 North intersection project.

**BACKGROUND:** The Caltrans-owned intersection of Manuel T. Freitas Parkway (Freitas Parkway) and US 101 North ramp is currently uncontrolled. Northbound vehicles exiting from US 101 go straight through or turn right at the intersection without stopping. Vehicles from Freitas Parkway either stay right to merge onto US 101 north or yield to on-coming vehicles before making a left turn to the next intersection of Freitas Parkway/Redwood Highway/Civic Center Drive, where Freitas is uncontrolled and Redwood Highway and Civic Center Drive are stop-controlled. The intersections are non-standard and there is a history of collisions throughout the years. Further, the intersections are challenging to navigate as a bicyclist or pedestrian. There is a bus stop for Golden Gate transit routes at the on-ramp that is only accessible by stairs and a narrow sidewalk.

**ANALYSIS:** Caltrans is proposing improvements to the two intersections, including a new roundabout and a relocated bus stop at the Freitas Parkway/Redwood Highway/Civic Center Drive intersection that will include a refuge island for vehicles from Freitas waiting to merge. These changes will improve traffic flow and make these busy intersections safer and more straight forward for motorists, bicyclists, and pedestrians.

Caltrans has gone through a few iterations of design after receiving City and community comments. Several of the community comments were focused on the bicycle and pedestrian facility improvements that need to be carried through the project extents and provide a design for future connections.

The current proposed design achieves the goals of better bicycle and pedestrian access through the area, more refuge space for turning vehicles, and slows approaching vehicles that enter the intersections.

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

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

The proposed Cooperative Agreement would contribute funds for activities required for Caltrans to deliver the plans, specifications, and estimate for the Project. The Agreement does not include any funds contributing to construction capital or support or other services for the project. Caltrans and the City are authorized to enter into a cooperative agreement for improvements to the State Highway System (SHS) per the California Streets and Highways Code, Sections 114 and 130.

**PUBLIC OUTREACH:** Caltrans presented this project to City Council at the November 1, 2021 Council meeting. Public Works reviewed this project with the Bicycle and Pedestrian Advisory Committee (BPAC) at the December 1, 2021 regular meeting and held a virtual community meeting on March 9, 2022. The City has also maintained a [webpage](#) with relevant project material and recorded meetings. The current design has been shared with key stakeholders and was presented at a future BPAC meeting.

**FISCAL IMPACT:** The total project cost is expected to be around \$3,300,000 for construction. Caltrans has requested financial assistance from the City for a contribution of \$400,000. This is an eligible cost under both Traffic Mitigation Fund 246 and Gas Tax Fund 206. Staff would like to assess other project activity specific to these funds and asks that Council approve appropriations in the amount of \$400,000 to be allocated amongst either or both funds.

**ENVIRONMENTAL DETERMINATION:** This action authorizes the City to enter into a Cooperative Agreement that only contributes funds to Caltrans' project and does not authorize or approve the project. Caltrans is the sponsor and implementing agency for the project.

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

1. Adopt the resolution authorizing the City Manager to execute a Cooperative Agreement with Caltrans (*staff recommendation*); or
2. Reject the resolution; or
3. Continue the matter and request additional information.

**RECOMMENDED ACTION:** Staff recommends that the City Council adopt the attached Resolution authorizing the City Manager to execute the Cooperative Agreement with Caltrans in the amount of \$400,000.

**ATTACHMENT:**

1. Resolution
2. Draft Cooperative Agreement with Caltrans

**RESOLUTION NO.**

**A RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO APPROVE AND EXECUTE A COOPERATIVE AGREEMENT WITH CALTRANS TO CONTRIBUTE FUNDS FOR PROFESSIONAL ENGINEERING SERVICES ASSOCIATED WITH THE MANUEL T. FREITAS ROUNDABOUT PROJECT IN AN AMOUNT NOT TO EXCEED \$400,000**

**WHEREAS**, the City desires to support Caltrans in their bus stop improvements at the US 101 North ramps/Manuel T. Freitas Parkway and Manuel T. Freitas Parkway/Redwood Highway/Civic Center Drive intersections; and

**WHEREAS**, the current configuration of the two intersections results in a high number of collisions, confusion for motorists, and lacks bicycle and pedestrian connections through the area; and

**WHEREAS**, the proposed configuration with the roundabout will slow vehicles through the area, minimize confusion between conflicting movements, and provide bicycle and pedestrian connections through the area; and

**WHEREAS**, Caltrans has requested financial assistance from the City for a contribution of \$400,000 for activities required for Caltrans to deliver the plans, specifications, and estimate for the Project; and

**WHEREAS**, the City has adequate funds in Gas Tax (206) and Traffic Mitigation (246); and

**WHEREAS**, Caltrans and the City are authorized to enter into a cooperative agreement for improvements to the State Highway System (SHS) per the California Streets and Highways Code, Sections 114 and 130.

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

The City Council hereby authorizes the City Manager to approve and execute a Cooperative Agreement with Caltrans to contribute funds for pre-construction services associated with the

Manuel T. Freitas Roundabout project in the amount not to exceed \$400,000, substantially in the form attached to the Staff Report to the City Council for this matter, subject to final approval as to form by the City Attorney.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on Monday, the 1<sup>st</sup> day of August 2022, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

**LINDSAY LARA, City Clerk**

## **COOPERATIVE AGREEMENT**

### **Local Contribution Only**

This AGREEMENT, effective on \_\_\_\_\_, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of San Rafael, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

#### **RECITALS**

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System (SHS) per the California Streets and Highways Code, Sections 114 and 130.
2. The term AGREEMENT, as used herein, includes this document and any associated attachments, exhibits, and amendments.
3. For the purpose of this AGREEMENT, upgrading curb ramps, sidewalk, and other facilities to make compliant with Americans with Disabilities Act (ADA) standards, will be referred to hereinafter as PROJECT. This description only serves to identify the PROJECT. The project scope of work is defined in the appropriate authorizing documents per the Project Development Procedures Manual.
4. CITY will contribute an amount of \$400,000 to the PROJECT. Contributed funds will be used for the PROJECT.
5. PARTIES agree that funds will be contributed to the following PROJECT COMPONENTS:
  - PS&E
6. PARTIES hereby set forth the terms, covenants, and conditions for CITY's contribution toward the PROJECT.

## **ROLES AND RESPONSIBILITIES**

7. CALTRANS is the SPONSOR and IMPLEMENTING AGENCY for the PROJECT.
8. CITY is a FUNDING PARTY contributing a fixed amount toward the PROJECT as shown in the FUNDING TABLE.
9. CALTRANS is responsible for completing all work for the PROJECT.

## **GENERAL CONDITIONS**

10. All portions of this AGREEMENT, including the Recitals Section, are enforceable.
11. All obligations of CALTRANS under the terms of this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
12. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds administered by CALTRANS are subject to the current Program Functional Rate. All other funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.

In accordance with California Senate Bill 848, the Administration Rate is capped at 10 percent until January 1, 2023, for Self-Help Counties with a countywide sales tax measure dedicated to transportation improvements.

13. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
14. This AGREEMENT is intended to be PARTIES' final expression and supersedes any oral understanding or writings pertaining to PROJECT.

### INVOICE AND PAYMENT

15. CITY will contribute the funds listed below:

<b>FUNDING TABLE</b>			
<b>Fund Source</b>	<b>Fund Type</b>	<b>Project Component</b>	<b>Amount</b>
LOCAL	Local	PS&E	\$400,000
<b>Total Funds</b>			\$400,000

16. CALTRANS will invoice CITY for a \$40,000 initial deposit after execution of this AGREEMENT and forty-five (45) working days prior to the commencement of PS&E expenditures. This deposit represents two months of estimated support costs or one month of estimated capital costs.
17. Thereafter, CALTRANS will submit to CITY monthly invoices for the prior month's expenditures.
18. CITY will pay the invoiced amount within forty-five (45) calendar days of receipt of the invoice unless CITY is paying with Electronic Funds Transfer (EFT). When paying with EFT, CITY will pay the invoiced amount within five (5) calendar days of receipt of the invoice.
19. If CITY has received Electronic Funds Transfer (EFT) certification from CALTRANS then CITY will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
20. PARTIES agree to sign a CLOSURE STATEMENT to terminate this AGREEMENT. However, all indemnification articles will remain in effect until terminated or modified in writing by mutual agreement.

## DEFINITIONS

**CLOSURE STATEMENT** – A document signed by PARTIES that verifies the completion of all obligations included in this AGREEMENT and in all amendments to this AGREEMENT.

**FUNDING PARTY** – A PARTY who commits a defined dollar amount to the PROJECT.

**IMPLEMENTING AGENCY** – The party responsible for managing the scope, cost, and schedule of a project component to ensure the completion of that component.

**PARTY** – An individual signatory agency in this AGREEMENT.

**PARTIES** – The term that collectively references all of the signatory agencies to this AGREEMENT.

**SPONSOR** – The PARTY that accepts the obligation to secure financial resources to fully fund PROJECT. This includes any additional funds beyond those committed in this AGREEMENT necessary to complete the full scope of PROJECT.

**PROJECT COMPONENT** – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, Section 14529(b).

- **PID (Project Initiation Document)** – The activities required to deliver the project initiation document for the PROJECT.
- **PA&ED (Project Approval and Environmental Document)** – The activities required to deliver the project approval and environmental documentation for the PROJECT.
- **PS&E (Plans, Specifications, and Estimate)** – The activities required to deliver the plans, specifications, and estimate for the PROJECT.
- **R/W (Right of Way) SUPPORT** – The activities required to obtain all property interests for the PROJECT.
- **R/W (Right of Way) CAPITAL** – The funds for acquisition of property rights for the PROJECT.



- **CONSTRUCTION SUPPORT** – The activities required for the administration, acceptance, and final documentation of the construction contract for the PROJECT.
- **CONSTRUCTION CAPITAL** – The construction contract funds for the PROJECT.

## **CONTACT INFORMATION**

The information provided below indicates the primary contact information for each PARTY to this AGREEMENT. PARTIES will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this AGREEMENT.

The primary AGREEMENT contact person for CALTRANS is:  
Prakash Sivagnanasundaram, Project Manager  
111 Grand Ave  
Oakland, CA 94612  
Mobile Phone: (510) 715-8693  
Email: prakash.sivagnanasundaram

The primary AGREEMENT contact person for CITY is:  
April Miller, Public Works Director  
111 Morpew Street  
San Rafael, CA 94901  
Office Phone: (415) 485-3409  
Email: april.miller@cityofsanrafael.org

**SIGNATURES**

PARTIES are authorized to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and hereby covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT. By signing below, the PARTIES each expressly agree to execute this AGREEMENT electronically.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**CITY OF SAN RAFAEL**

\_\_\_\_\_  
Helena (Lenka) Culik-Caro  
Deputy District Director, Design

\_\_\_\_\_  
Jim Schutz  
City Manager

**Verification of funds and authority:**

**Attest:**

\_\_\_\_\_  
Jeffrey Kuehnel  
District Budget Manager

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

**Certified as to financial terms and policies:**

**Approved as to form and procedure:**

\_\_\_\_\_  
Nadine Karavan  
HQ Accounting Supervisor

\_\_\_\_\_  
Rob Epstein  
City Attorney





**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Public Works

Prepared by: April Miller,  
Director of Public Works

City Manager Approval: 

**TOPIC: THIRD STREET REHABILITATION PROJECT**

**SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT CHANGE ORDER FOR THE THIRD STREET REHABILITATION PROJECT TO GHILOTTI BROS. INC. IN THE AMOUNT OF \$298,795 FROM THE PROJECT CONTINGENCY**

**RECOMMENDATION:** Staff recommends that the City Council:

Adopt a resolution authorizing the City Manager to execute a Contract Change Order for the Third Street Rehabilitation Project to Ghilotti Bros. Inc. (GBI) in the amount of \$298,795 from the project contingency.

**BACKGROUND:** On February 7, 2022 the San Rafael City Council awarded the construction contract for the Third Street Rehabilitation Project to Ghilotti Bros., Inc. in an amount of \$18,248,708 and authorizing contingency funds of \$2,551,292 for a total appropriated amount of \$20,800,000.

Construction started on March 7, 2022, and during the excavation and clearing and grubbing for the installation of the planned soldier pile retaining wall on Second Street, the contractor encountered bed rock closer to the surface than the plans had predicted. There were also multiple large boulders that were at risk of falling down the hillside.

**ANALYSIS:** Due to the unforeseen conditions found during the clearing and grubbing of the Second Street retaining wall area, changes to the plans were required. The changes resulted in a negotiated contract change order of \$298,795.

**FISCAL IMPACT:** The previously allocated total amount for the project of \$20,800,000 included a construction contingency of \$2,551,292. There is no additional allocation required to execute this contract change order because the existing construction contingency can absorb the contract change order.

**OPTIONS:** Therefore, the City Council may adopt the resolution relating to this matter as follows:

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

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

1. Adopt a resolution authorizing the City Manager to execute a Contract Change Order for the Third Street Rehabilitation Project to Ghilotti Bros. Inc. (GBI), in the amount of \$298,795 from the project contingency.
2. Do not adopt the resolution and provide further direction to staff. Not adopting the resolution will delay the project and will impact the project's completion date impacting traffic delays and delaying critical improvements.

**RECOMMENDED ACTION:** Staff recommends the City Council adopt the resolution authorizing the City Manager to execute a contract change order for the Third Street Rehabilitation Project to Ghilotti Bros. Inc. in the amount of \$298,795 from the project contingency.

**ATTACHMENT:**

1. Resolution

**RESOLUTION NO.**

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT CHANGE ORDER FOR THE THIRD STREET REHABILITATION PROJECT TO GHILOTTI BROS. INC. IN THE AMOUNT OF \$298,795 FROM THE PROJECT CONTINGENCY**

**WHEREAS**, on February 7, 2022 the San Rafael City Council awarded and authorized the City Manager to execute a construction agreement with Ghilotti Bros. Inc. in the amount of \$18,248,708 and authorized a construction contingency in the amount of \$2,551,292 for a total appropriated amount of \$20,800,000; and

**WHEREAS**, on March 7, 2022 construction of the project began; and

**WHEREAS**, unforeseen conditions required design changes to the plans and resulted in a contract change order in the amount of \$298,795; and

**WHEREAS**, the City of San Rafael municipal code requires City Council approval of construction contracts or allocations over \$175,000; and

**WHEREAS**, staff has recommended City Council authorize the City Manager to execute a contract change order in the amount of \$298,795 with Ghilotti Bros. Inc., from the construction contingency.

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

1. The City Manager is authorized and directed to execute a contract change order with Ghilotti Bros. Inc., in the amount of \$298,795, subject to final approval as to form by the City Attorney.
2. Funds totaling \$298,795 will be used to execute this contract change order. These funds will be deducted from the previously allocated construction contingency in the amount of \$2,551,292.
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 held on Monday, the 1<sup>st</sup> of August 2022 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

**LINDSAY LARA, City Clerk**

File No.: 16.01.283






Agenda Item No: 5.a  
Meeting Date: August 1, 2022

**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Community Development**

Prepared by: Ali Giudice, CDD Director  
 Leslie Mendez, Planning Director  
 Jayni Allsep, Contract Planner

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

**TOPIC: AMENDMENT TO ZONING ORDINANCE TO ALLOW ANIMAL CARE FACILITIES AS A CONDITIONALLY PERMITTED USE IN THE OFFICE (O) ZONING DISTRICT**

**SUBJECT: INTRODUCTION OF AN ORDINANCE OF THE CITY OF SAN RAFAEL AMENDING THE TEXT OF THE SAN RAFAEL MUNICIPAL CODE, TABLE 14.05.020 UNDER SECTION 14.05.020, LAND USE REGULATIONS (GC, NC, O, C/O, R/O, FBWC) TO ALLOW ANIMAL CARE FACILITIES AS A CONDITIONALLY PERMITTED USE IN THE OFFICE (O) DISTRICT SUBJECT TO PERFORMANCE STANDARDS; AMENDING THE TEXT OF TABLE 14.06.020 UNDER SECTION 14.06.020, LAND USE REGULATIONS (I, LI/O, CCI/O, LMU) TO SUBJECT ANIMAL CARE FACILITIES TO PERFORMANCE STANDARDS; AND AMENDING TEXT OF CHAPTER 14.17 TO ESTABLISH PERFORMANCE STANDARDS FOR ANIMAL CARE FACILITIES**

**RECOMMENDATION:**

Waive further reading and introduce the Ordinance of the City of San Rafael amending Title 14 (Zoning Ordinance) to allow “animal care facilities” excluding exterior kennels, pens or runs, as a conditionally permitted use in the Office (O) District and to establish performance standards for animal care facilities.

**BACKGROUND:**

On [June 28, 2022](#), the Planning Commission considered a draft ordinance, proposed by applicant Peter Spoerl, to amend the Zoning Ordinance to allow animal care facilities in the Office (“O”) District subject to zoning administrator level use permit approval. During the [June 28th hearing](#), the Planning Commission received all public comments, deliberated, and unanimously recommended that the City Council adopt the Ordinance with the recommendation that Council also adopt performance standards or best practices—similar to those codified for [Animal Keeping \(SRMC §14.17.020\)](#) that would apply to animal care facilities throughout the City to help minimize potential nuisance factors. The attached ordinance (Attachment 1) includes both the text amendment as reviewed by the Planning Commission with the added recommended performance standards discussed below.

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

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

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

**ANALYSIS:**

**Chapter 14.05 - COMMERCIAL AND OFFICE DISTRICTS** of the City's Municipal Code contains land use regulations for commercial and office districts. As shown in Table 14.05.020, animal care facilities, excluding exterior kennels, pens, or runs, are currently permitted in the General Commercial (GC), Neighborhood Commercial (NC), and Commercial Office (C/O) Districts, subject to approval of a use permit by the zoning administrator. Animal care facilities are currently not permitted in the Office (O) District.

The proposed zoning text amendment would allow animal care facilities in the O District, subject to the approval of a use permit by the zoning administrator, and consistent with what is allowed in other Commercial Districts within the City. In response to the Planning Commission's recommendation, staff is recommending a text amendment to Chapter 14.17 to include performance standards that would apply to all animal care facilities proposed within the City. The proposed performance standards are contained in Attachment 1. Even with the adoption of the proposed performance standards, a use permit approved by the zoning administrator would still be required. Additional information (e.g. noise attenuation study) may be required and additional conditions may be imposed as deemed necessary to ensure the permit complies with the findings required by Section 14.22.080, in particular, that the proposed use would "not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city."

Based on the analysis above and the analysis contained in the [June 28th Planning Commission staff report](#), staff believes that the proposed zoning ordinance amendments would be consistent in principle with General Plan 2040 in that it would expand the variety of commercial uses allowed in the Office District, which would contribute to a "complete community" with a diversity of land uses in locations that conveniently serve and benefit the community. Animal care facilities are consistent with the wide range of uses already allowed within the Office District, including residential uses, and they are already conditionally permitted in the General Commercial (GC), Neighborhood Commercial (NC), and Commercial Office (C/O) Districts. The public health, safety and general welfare would be served by the proposed amendment because the proposed performance standards would minimize potential nuisance factors that could result from animal care facilities. Proposed performance standards would address sanitary conditions, and sound attenuation.

**ENVIRONMENTAL DETERMINATION:**

The project is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this zoning amendment or its implementation would have a significant effect on the environment.

**COMMUNITY OUTREACH:**

On June 28, 2022, the Planning Commission of the City of San Rafael held a duly noticed public hearing at which the Planning Commission received all public comments and a report provided by the Community Development Department and approved Resolution 22-13 recommending the City Council amend the Municipal Code related to animal care facilities in commercial zoning districts.

A public hearing notice was mailed to interested parties and was published in the Marin Independent Journal on July 16, 2022, for the City Council to receive public comments and consider an ordinance amending the San Rafael Municipal Code.

**FISCAL IMPACT:**

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

**OPTIONS:**

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

1. Introduce the ordinance,
2. Continue action for additional information and response to Council comments and concerns; or
3. Deny the proposed zoning text amendment

**RECOMMENDED ACTION:**

Waive further reading and introduce the Ordinance of the City of San Rafael amending Title 14 (Zoning Ordinance) to allow “animal care facilities” excluding exterior kennels, pens or runs, as a conditionally permitted use in the Office (O) District and to establish performance standards for animal care facilities.

**ATTACHMENTS:**

1. Draft Ordinance
2. Planning Commission Resolution (without attachments)
3. [Report to the Planning Commission, dated June 28, 2022](#)

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN RAFAEL AMENDING THE TEXT OF THE SAN RAFAEL MUNICIPAL CODE, TABLE 14.05.020 UNDER SECTION 14.05.020, LAND USE REGULATIONS (GC, NC, O, C/O, R/O, FBWC) TO ALLOW ANIMAL CARE FACILITIES AS A CONDITIONALLY PERMITTED USE IN THE OFFICE (O) DISTRICT SUBJECT TO PERFORMANCE STANDARDS; AMENDING THE TEXT OF TABLE 14.06.020 UNDER SECTION 14.06.020, LAND USE REGULATIONS (I, LI/O, CCI/O, LMU) TO SUBJECT ANIMAL CARE FACILITIES TO PERFORMANCE STANDARDS; AND AMENDING TEXT OF CHAPTER 14.17 TO ESTABLISH PERFORMANCE STANDARDS FOR ANIMAL CARE FACILITIES**

WHEREAS, the City of San Rafael Community Development Department has received an application requesting a zoning text amendment; and

WHEREAS, on June 28, 2022, the Planning Commission held a duly-noticed public hearing on the proposed amendment to the San Rafael Municipal Code, accepting all public testimony and the written report of the Department of Community Development, and recommended to the City Council the approval of the amendment; and

WHEREAS, on August 1, 2022, the San Rafael City Council held a duly-noticed public hearing on the proposed zoning text amendment, as required by State law, accepting all oral and written public testimony and the written report of the Community Development Department staff reports relevant to the proposal; and

WHEREAS, the City's police power allows it to regulate animals and animal care in accordance with the health, safety, and welfare of the general public (Cal. Const., Art. XI, § 7); and

WHEREAS, the City has determined that amending the City's Zoning Code to allow for animal care facilities, as defined, as a conditionally permitted use in the Office District and to establish performance standards for animal care facilities in the City further the health, safety, and welfare of the general public; and

WHEREAS, upon review of the application, the City Council finds that this project is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that adoption of this zoning text amendment or its implementation would have a significant effect on the environment; and

WHEREAS, the Community Development Department of the City of San Rafael is the custodian of documents which constitute the record of proceedings upon which this decision is based.

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

**Section 1. Findings.**

The City Council of the City of San Rafael hereby determines and finds that all of the facts and statements contained in the recitals herein and findings of the Planning Commission Resolution 22-13 recommending to the Council adoption of this ordinance, are true and correct.

**Section 2. Amendment of Table 14.05.020 of the San Rafael Municipal Code.**

Table 14.05.020, in Section 14.05.020 (“Land Use Regulations (GC, NC, O, C/O, R/O, FBWC)”) of Chapter 14.05 (“Commercial and Office Districts”) of Division II (“Base District Regulations”) of Title 14 (“Zoning”) of the City of San Rafael Municipal Code is hereby amended as set forth below. Deletions are in strikethrough, and additions are in **bold and underline**. Unless indicated below, no other cells or rows within Table 14.05.020 shall be modified by this amendment.

**Table 14.05.020**

Type of Land Use		GC	NC	O	C/O	R/O	FBWC *	Additional Use Regulations
<b>Commercial Uses</b>								
Animal sales and service, excluding exterior kennels, pens								See <a href="#">Chapter 10.24</a>
Animal care facilities		CZ	CZ	<b><u>CZ</u></b>	CZ			See <a href="#">Chapter 14.17 standards.</a>
Animal retail sales		P	P		P			

**Section 3. Amendment of Table 14.06.020 of the San Rafael Municipal Code.**

Table 14.06.020, in Section 14.06.020 (“Land Use Regulations (I, LI/O, CCI/O, LMU)”) of Chapter 14.06 (“Industrial Districts (I, LI/O, CCI/O, LMU)”) of Division II (“Base District Regulations”) of Title 14 (“Zoning”) of the City of San Rafael Municipal Code is hereby amended as set forth below. Deletions are in strikethrough, and additions are in **bold and underline**. Unless indicated below, no other cells or rows within Table 14.06.020 shall be modified by this amendment.

**Table 14.06.020**

Type of Land Use	I	LI/O	CCI/O	LMU	Additional Use Regulations
<b>Commercial Uses</b>					

Animal care facilities (with or without exterior kennels, pens or runs)	CZ	CZ	CZ	CZ	See Chapter 14.17 standards. *Without exterior kennels, pens or runs (See Chapter 10.24).
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**Section 4. Addition of Chapter 14.17.040 – “Animal Care Facilities” to the San Rafael Municipal Code.**

Section 14.17.040 (“Animal care facilities”) is hereby added to Chapter 14.17 (“Performance Standards”) of Division IV (“Regulations Applying in All or Several Districts”) of Title 14 (“Zoning”) of the San Rafael Municipal Code as set forth below.

Section 14.17.040 - Animal care facilities.

- A. Purpose. Performance standards related to animal care facilities protect the public health, safety and general welfare by minimizing potential nuisance factors that may result from the caring of animals.
- B. Applicability. Performance standards for animal care facilities, unless specifically exempted by this subsection shall apply throughout the City of San Rafael. A use permit approved by the zoning administrator, issued pursuant to Chapter 14.22 of this Division, shall be required for animal care facilities within the City of San Rafael.
- C. Findings. In order to grant a use permit for animal care facilities in an office/commercial district, the following findings shall be made:
  - 1. Compliance with Applicable Laws. The animal care facility will not violate any provision of the San Rafael Municipal Code or any other applicable provision of law. The animal care facility shall maintain an employee handbook outlining best management practices for handling of animals, handling medical waste and disposal of animal waste.
  - 2. Sound Attenuation. The animal care facility shall not result in sound levels that exceed the noise levels established under Chapter 8.13 for any adjacent tenant spaces or properties.
  - 3. Waste. The animal care facility shall include and maintain adequate waste and hazardous waste facilities at all times.
  - 4. Nuisances. The animal care facility will not result in other public or private nuisances.

**Section 5. Severability.**

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

**Section 6. Compliance with CEQA.**

The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3)

of the CEQA Guidelines, because it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment, and pursuant to CEQA Guidelines section 15183 (consistent with the general plan and zoning).

**Section 7. Publication; Effective Date.**

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

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

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for or against the Ordinance.

THE FOREGOING ORDINANCE was first read and introduced at a regular meeting of the San Rafael City Council on the \_\_\_ day of \_\_\_\_\_ 2022, and was passed and adopted at a regular meeting of the San Rafael City Council on the \_\_\_ day of \_\_\_\_ 2022 by the following vote, to wit:

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

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

Attest:

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

**RESOLUTION NO. 22-13**

**RESOLUTION OF THE CITY OF SAN RAFAEL PLANNING COMMISSION  
RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN AMENDMENT TO  
TITLE 14 OF THE SAN RAFAEL MUNICIPAL CODE (ZONING), TABLE 14.05.020  
UNDER SECTION 14.05.020, LAND USE REGULATIONS (GC, NC, O, C/O, R/O,  
FBWC) TO ALLOW “ANIMAL CARE FACILITIES” EXCLUDING EXTERIOR  
KENNELS, PENS OR RUNS, AS A CONDITIONALLY PERMITTED USE IN THE  
OFFICE (O) DISTRICT (ZO22-002)**

**WHEREAS**, the City of San Rafael Community Development Department has received an application requesting a Zoning Text Amendment (ZO22-002); and

**WHEREAS**, this zoning text amendment to Title 14 of The San Rafael Municipal Code (Zoning), Table 14.05.020 Under Section 14.05.020, Land Use Regulations (GC, NC O, C/O, R/O, FBWC) would allow “Animal Care Facilities” excluding exterior kennels, pens or runs, as a conditionally permitted use in the Office (O) District, subject to approval of a Use Permit by the Zoning Administrator; and

**WHEREAS**, on June 28, 2022, the Planning Commission held a duly noticed public hearing on the proposed amendment to the San Rafael Municipal Code, Title 14, accepting all oral and written public testimony and the written report of the Community Development Department staff; and

**WHEREAS**, upon review of the application, the Planning Commission finds that this project qualifies for a Categorical Exemption from the California Environmental Quality Act (“CEQA”) pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this zoning amendment or its implementation would have a significant effect on the environment.

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission recommends to the City Council adoption of the amendment to the San Rafael Municipal Code as outlined in Attachment A of this resolution, based on the following findings as required under Zoning Code Section 14.27.060:

1. The amendment to San Rafael Municipal Code Title 14 – Zoning Ordinance is consistent with the guiding principles that underpin the San Rafael General Plan 2040 in that it would expand the variety of commercial uses allowed in the Office District, and would contribute to a “complete community” with a diversity of land uses in locations that conveniently serve and benefit the community. The amendment is consistent with the following specific and applicable policies:
  - a. **Policy LU-2.1: Land Use Map and Categories** in that the distribution of land use categories within the San Rafael Planning Area, as shown on the General Plan 2040 Land Use Map, was considered in staff’s analysis of the amendment’s conformance with General Plan 2040;
  - b. **Policy LU-2.13: Odor Impacts** and **Program LU-2.13A: Evaluation of Odor Impacts** in that the potential for odor impacts was considered in staff’s analysis of the amendment’s conformance with General Plan 2040;



EXHIBIT 1

c. **General Plan Policies N-1.2: Maintaining Acceptable Levels of Noise and N-1.9 (Maintaining Peace and Quiet)**, and which aims to minimize noise conflicts resulting from everyday activities, including business operations; and **Program N-1.9A: Noise Ordinance** which calls to maintain and enforce the noise ordinance by including “Additional Use Regulations” as reflected in Exhibit A of Draft Resolution, which require that applicants submit documentation that demonstrates adequate sound attenuation improvements within the facility in order to fully comply with the general noise limits contained in Section 8.13.040(B) of the SRMC. These restrictions and requirements would mitigate potential noise impacts associated with animal care facilities on adjacent land uses.

2. The public health, safety and general welfare are served by adoption of the proposed amendment to the SRMC in that all animal care facilities located within the Office District would be required to be located entirely within the interior of a building, overnight boarding of animals would be limited to only that which is strictly necessary for medical purposes, and appropriate sanitation, odor control, and sound attenuation would be required.


The foregoing Resolution was adopted at the regular City of San Rafael Planning Commission meeting held on the 28<sup>th</sup> day of June 2022 with the recommendation to adopt broader standards/best practices for animal care services throughout the City.

Moved by Commissioner Samudzi and seconded by Commissioner Harris.

AYES: Commissioners Harris, Haveman, Mercado, Samudzi, and Chair  
Previtali  
NOES: None  
ABSENT: Vice-Chair Saude and Commissioner Shalk  
ABSTAIN: None

SAN RAFAEL PLANNING COMMISSION

ATTEST:   
Leslie Mendez, Secretary

BY:   
Jon Previtali, Chair

Attachment A: Amendment to San Rafael Municipal Code Title 14 (Zoning),  
Table 14.05.020 of Section 14.05.020

Attachment 3 – Report to the Planning Commission,  
dated June 28, 2022

<https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2022/06/3.-Animal-Care-Facilities-Staff-Report.pdf>



**SAN RAFAEL CITY COUNCIL STAFF REPORT**

**Department: Community Development**

**Prepared by: Alicia Giudice, Director  
Barry Miller, Consultant**

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

**TOPIC: SAN RAFAEL 2023-2031 HOUSING ELEMENT**

**SUBJECT: REPORT ON 2023-2031 HOUSING ELEMENT OPPORTUNITY SITES INVENTORY**

**RECOMMENDATION:**

Accept the Informational Report on the 2023-2031 Housing Element Opportunity Sites Inventory.

**EXECUTIVE SUMMARY**

The City is in the process of updating the Housing Element of the San Rafael General Plan. State law requires that all 101 cities and nine counties in the San Francisco Bay Area adopt revised elements by January 31, 2023 or shortly thereafter. The Housing Element covers an eight-year time period; the current Element covers 2015-2023 and the new Element will cover 2023-2031. The Housing Element is the City’s plan for conserving and maintaining its housing supply, removing regulatory barriers to housing production, and creating housing opportunities for all residents.

The Housing Element includes several statutorily required components. One of these is an analysis and inventory of specific housing opportunity sites, listed and mapped by Assessor Parcel Number. Opportunity sites are properties that the City has identified as being appropriate and available to meet its “fair share” of the region’s housing needs. San Rafael’s fair share assignment for 2023-2031 was calculated by the Association of Bay Area Governments (ABAG) to be 3,220 housing units, including 1,387 units affordable to lower income households. Although the City itself does not develop housing, the City must demonstrate that there are enough sites zoned to allow for construction of residential development by private developers in the private and non-profit sectors. This staff report presents the methodology for identifying housing sites as well as a summary of the data.

**BACKGROUND:**

**Overview**

Every city and county in California is required to adopt a housing element as part of its general plan. The Housing Element is the only part of the general plan that must be submitted to the State for certification, a process that is performed by the State Department of Housing and Community Development (HCD). Cities without certified housing elements face adverse consequences, including limited access to State funding and vulnerability to lawsuits and financial penalties. To avoid such consequences, HCD must make a formal determination that each housing element complies with Government Code requirements,

**FOR CITY CLERK ONLY**

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

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

including demonstration that each city and county is accommodating its “fair share” of the region’s housing needs and is “affirmatively furthering fair housing.”

San Rafael’s current [Housing Element](#) was adopted on January 5, 2015 and was certified by the State on January 23, 2015. The planning period covered by that Housing Element was January 31, 2015 through January 31, 2023. The next Housing Element is due on January 31, 2023 and will cover the period from January 31, 2023 through January 31, 2031.

The City initiated the update process in September 2021. A 13-member working group was appointed by the City Council in November 2021 to advise on key policy choices. Over the last 10 months, the City has completed background data collection and analysis tasks. The City is in the process of developing housing policies and programs and is conducting additional community outreach to get feedback on priorities and potential solutions to housing challenges.

**Regional Housing Needs Allocation**

The key driver of the Housing Element is the Regional Housing Needs Allocation (RHNA). The RHNA process has been in effect since 1969, when the State legislature mandated that all communities do their “fair share” to meet California’s housing needs. The RHNA process begins with the State determining the eight-year housing need for each region of California. Each regional council of governments is given the task of assigning the regional need to individual counties and cities. In the Bay Area, the Association of Bay Area Governments (ABAG) was tasked with distributing a regional assignment of 441,176 housing units to nine counties and 101 cities. This process occurred in 2020-2021.

San Rafael’s allocation for the 2023-2031 planning period is 3,220 units, which are broken down into four income categories, as shown in Table 1 below. The City’s total allocation represents a 220 percent increase over the 2015-2023 allocation of 1,007 units. Marin County, including the unincorporated areas and the 11 cities, saw much steeper rates of increase. The overall countywide RHNA increased by 526 percent, from 2,298 units (2015-23) to 14,405 units (2023-31).

**Table 1: 2023-2031 Regional Housing Needs Allocation (RHNA) for San Rafael**

	<b>Very Low</b>	<b>Low</b>	<b>Moderate</b>	<b>Above Moderate</b>	<b>Total</b>
Number of Units	857	492	521	1,350	3,220
Income Range (Household of 4)	>\$93,200	\$93,200-\$149,100	\$149,100-\$199,200	>\$199,200	

*Source: ABAG, 2021. HCD Income Limits, 2022.*

**ANALYSIS:**

**General Requirements for the Sites Analysis**

Housing site inventories must follow a format prescribed by HCD, with specific data provided for each site. This includes Assessor Parcel Number, General Plan and zoning designation, size of the site, existing use, and whether the property was counted in a prior Housing Element. Cities are also required to evaluate the availability of utilities to serve each site, identify any environmental constraints, and disclose whether the site is publicly or privately owned.

In 2004, AB 2348 established “default densities” for sites identified as providing opportunities for lower income housing. AB 2348 established that in communities with more than 50,000 residents, sites may only be considered acceptable for meeting the lower income RHNA if they are zoned at densities of *at*

*least* 30 units per acre. Government Code 65583.2(h) further requires that each site designated for lower income housing have the capacity for at least 16 units.

Jurisdictions are required to estimate the capacity of housing sites based on “realistic” capacity rather than “theoretical capacity.” A one-acre site may be zoned for 20 units per acre, but that does not mean 20 units will be constructed. A smaller number of units may be built due to topographical and physical features such as steep slopes and hillsides, creeks, narrow roads and woodland areas. Cities may refer to recent projects to determine what is “realistic” in each zoning district.

AB 1397 established additional requirements for housing sites, particularly those sites identified as being suitable to accommodate the lower income RHNA. These include:

- Limitations on identifying sites smaller than 0.5 acres and larger than 10 acres as suitable for lower income housing. These limitations do not prohibit the use of such sites, but they require jurisdictions to prove that they are viable based on past trends and actual projects.
- Special requirements for sites that are being carried forward from one housing element to the next. These “carry-over” sites must be zoned so that certain types of housing development are permitted “by right.” This includes projects where 20 percent or more of the units are affordable to lower income households. By-right approval means that the City cannot require a Planned Development permit, Conditional Use Permit, or other form of local discretionary review. The City can, however, apply objective development and design standards that have been adopted and published prior to receiving an application for development.
- If a Housing Element relies on non-vacant sites to accommodate 50 percent or more of its RHNA for lower income households, then the jurisdiction is required to provide “substantial evidence” that each non-vacant site will actually be available for housing during the planning period. A city cannot simply list an occupied office building as a housing site and declare that because of low demand for office space, it will redevelop. Examples of substantial evidence include expiring leases, dilapidated structure conditions, and a letter from the owner indicating they are interested in residential development. The City also needs to demonstrate a track record showing that similar properties have recently been redeveloped with housing. It must also cite what steps are being taken to incentivize or streamline housing on these sites, potentially including financial assistance and relief from development standards.

Cities are required to identify sites by income category. For reporting purposes, low- and very low-income sites may be added together and described as lower-income sites. Individual sites may also be assigned to multiple income categories. For example, San Rafael has an inclusionary housing ordinance so it is reasonable to assume that at least 10 percent of all larger sites will provide units for lower-income households.

The designation of a site as a lower-income opportunity site does not mandate the development of lower-income housing on that site, nor does it require the property owner to develop the site during the planning period. The designation is merely an acknowledgment that the site meets certain metrics that are conducive to the development of lower-income housing. Cities may approve market-rate housing on such sites. Where commercial uses are permitted, cities and towns may also approve commercial uses on such sites.

The caveat to the above paragraph is that cities and towns must be able to demonstrate that they have adequate sites to meet their RHNAs *at all times* during the planning period. If a lower income site is

developed for another purpose during the planning period, the City must show that it can still meet its 2023-2031 RHNA on the remaining sites. If the City is no longer able to meet its RHNA, it must identify a developable “replacement” site to make up the lost capacity. In some cases, this could require rezoning. This is referred to as the “no net loss” requirement under (SB 166, 2017).

SB 166 also required that cities and towns include a “buffer” of additional sites in case some of the sites listed in this Housing Element become unavailable before 2031. As recommended by HCD, San Rafael’s site inventory will include a buffer of 15 to 30 percent.

As required by HCD, the estimated yields for housing sites do not include the potential for additional units made possible through State density bonuses. These bonuses can add up to 50 percent to the unit yields for market-rate projects that include certain percentages of affordable units, and 80 percent to the unit yields for 100% affordable projects.

Finally, the sites inventory is subject to the Affirmatively Furthering Fair Housing requirements of AB 686. This requires that the lower income sites be geographically distributed in ways that foster integration and create affordable housing opportunities throughout high resource areas. This aligns with the City’s General Plan guiding principle to create a more equitable and inclusive city. The City has selected sites that also support other General Plan guiding principles, such as preserving open space, reducing greenhouse gas emissions, and promoting more compact development patterns.

## **Methodology**

The methodology for identifying housing sites is described below:

- 1) *Account for approved development projects.* This includes projects that have been approved and are either under construction or not yet built as of July 1, 2022. In San Rafael, this includes 781 housing units. Spreadsheet “A” lists these projects. This number may increase by the time the Housing Element is submitted.
- 2) *Account for proposed development projects.* In addition to projects that are fully entitled, there are a significant number of projects in the pre-application or application stages. The largest of these projects is Northgate Mall, which includes a first phase of 907 units. Other projects in this category include the former Westamerica Bank at 1515 Fourth Street (191 units), and 420 Fourth Street (35 units), among others. In total, there were 10 “pre-pipeline” projects identified, representing another 1,309 housing units.

Taken together, categories 1 and 2 include 2,090 units, or 65% of the RHNA. More importantly, they comprise 94% of the moderate and above moderate RHNA but only 24% of the lower income RHNA. This suggests that much of the emphasis in the sites inventory should be on properties where lower income units are possible, as well as ensuring the construction of inclusionary (Below Market Rate) units in new projects.

- 3) *Determine the likely number of Accessory Dwelling Units (ADUs) and Junior ADUs to be produced over the next eight years by income category.* Staff is projecting that San Rafael will produce 25 ADUs a year between 2023 and 2031, or a total of 200 units. Based on data from ABAG, it is estimated that 35 percent of these ADUs (70 units) will be affordable to lower income households, 50 percent (100 units) will be affordable to moderate income households, and 15 percent (30 units) will serve above moderate income households.

- 4) *Determine which sites in the existing 2015-2023 inventory can be carried forward.* The 2015-2023 inventory identified 44 opportunity sites with the capacity for 2,183 housing units. Staff has determined that 26 of these sites remain viable and has carried them forward to the 2023-2031 period. Their estimated capacity is approximately 1,036 units, excluding Northgate Mall which is included in methodology step (2). Eighteen of the sites in the 2015-2023 inventory were dropped from further consideration, either because they have already been developed or are no longer considered viable (see discussion later in this report).
- 5) *Determine the potential number of units on vacant residentially zoned land.* The City updated its inventory of vacant residentially zoned land as part of General Plan 2040. This data was used to estimate housing potential on vacant sites above and beyond what had been inventoried in the previous Housing Element.
- 6) *Calculate the potential on underutilized residential land.* The potential for additional units on previously developed residential sites was evaluated using indicators such as parcel size, property dimensions, average slope, land to improvement value, ownership, and field observations. Examples of such sites are single family homes in multi-family zoning districts, large lot single family homes in areas zoned at suburban densities (2-8 units per acre), and multi-family properties with the potential for additional units.
- 7) *Calculate the potential in the Downtown San Rafael Precise Plan area.* The Downtown Precise Plan (adopted in August 2021) included an estimate of development potential within the 265-acre plan area. The Plan identifies locations for approximately 2,200 housing units. Some of these sites are already counted in the earlier steps or are unlikely to be available until after 2031. Approximately 1,500 units of capacity are identified Downtown, excluding already approved projects.
- 8) *Calculate the potential on commercial and mixed use sites outside of Downtown.* This required a comprehensive analysis of all 1,051 properties in San Rafael with existing commercial land uses. Parcels were analyzed based on factors such as improvement to land value ratio, parcel size and ownership, slope and physical constraints, vacancy status, proximity to transit, and floor area ratio. Properties already covered in Steps (1) through (4) were excluded.
- 9) *Calculate the potential on public, institutional, and nonprofit-owned land.* This includes housing potential on City-owned property, County-owned property, and State-owned property. It also includes properties owned by SMART, various utility districts, Dominican University, and the school districts serving San Rafael.

Steps 6, 7, and 8 in the above methodology require the use of specific metrics to determine if a site is viable. This data (parcel size, land value, improvement value, building area, building age) is generally available through the Marin County Assessor's Office parcel data base. Parcels were also field checked to observe building condition, vacancy status, and whether the building was for sale or lease. In addition, sites were selected to advance the State AFFH mandate and ensure that affordable housing opportunities were being created in the city's high-resource areas.

### **Calculating the Capacity of Each Site**

As noted earlier, HCD requires that the site inventory identify the "realistic capacity" of each site rather than just the "theoretical capacity" allowed by zoning. HCD encourages cities to be conservative when estimating realistic capacity. However, in many cases the capacity estimates in our 2023-2031 inventory are well below what could actually be built. This is particularly true in the Downtown area, since

development is governed by a Form Based Code that regulates the height and mass of the building rather than the number of housing units that can be built.

Estimates of Downtown’s development potential were made as part of the Precise Plan process that occurred in 2018-2019. In general, Downtown sites subject to a 40 foot height limit (e.g., roughly three stories) were presumed to develop at 40 units per acre, sites subject to a 50 foot height limit were presumed to develop at 65 units per acre, sites subject to a 60 foot height limit were presumed to develop at 90 units per acre, and sites subject to a 70 foot height limit were presumed to develop at 120 units per acre. However, recently approved Downtown projects exceed these numbers. As an example, the Seagate site (703 3<sup>rd</sup> Street) was estimated by the 2015 Housing Element to have the capacity for 31 units. The project was ultimately approved for 138 units.

Outside of Downtown, the capacity estimates are generally 80 percent of what is allowed by zoning. Again, the frequent use of density bonuses means that this estimate is low, at least for multi-family sites.

**Summary of Identified Housing Capacity**

The 2023-2031 sites inventory includes 183 sites. Some of the sites are comprised of multiple parcels and others are a single parcel. In some cases, the parcels are under common ownership. In other cases, there are multiple owners. The cumulative capacity of all sites is estimated to be 5,393 units. This includes 1,763 units of lower income capacity, 700 units of moderate-income capacity, and 2,930 units of above moderate-income capacity. There is a significant “buffer” of excess capacity above the 3,220-unit RHNA. However, most of the buffer is the result of already-approved above moderate-income housing. Removal of development constraints and additional financial resources will be critical to meeting the lower-income targets.

Table 2 indicates the housing capacity by site type. Most of the City’s housing capacity is on sites that are zoned for commercial or mixed use development.

**Table 2: Summary of Housing Opportunity Sites by Income and Site Type**

Spread-sheet	Category	Units by Income Category			Total Units
		Lower	Moderate	Above Moderate	
A	Development Pipeline	198	3	580	781
B	Low/Medium Density Residentially Zoned	3	88	160	251
C	High Density Residentially Zoned	248	81	174	503
D	Mixed Use Sites outside of Downtown	712	279	1,053	2,044
E	Downtown Mixed Use sites	602	249	963	1,814
	<b>TOTAL</b>	<b>1,763</b>	<b>700</b>	<b>2,930</b>	<b>5,393</b>
	RHNA	1,349	521	1,349	3,220
	<i>Surplus Capacity</i>	<i>+371</i>	<i>+179</i>	<i>+1,581</i>	<i>+2,173</i>
	<i>Buffer</i>	<i>30%</i>	<i>34%</i>	<i>117%</i>	<i>67%</i>



## **Overview of the Spreadsheets**

A series of 11 x 17 spreadsheets labeled A through E follows this staff report (see Attachment 1). The spreadsheets correspond to the categories listed in Table 1 and provide State-mandated data for each housing type. The spreadsheets are summarized as follows:

- A “summary” spreadsheet (page 1) presents the same data that is shown in Table 2 in this staff report.
- Spreadsheet “A” lists projects in the development pipeline. The projects shown have all been approved but are not yet occupied as of July 1, 2022 (the start of the RHNA projection period). There are 14 projects listed, with a total of 781 units.
- Spreadsheet “B” lists development opportunities on sites zoned for low and medium density residential development. There are 66 sites identified, with a total capacity of 251 units. Most of this capacity is presumed to be “above moderate” income housing due to the associated densities and construction costs.
- Spreadsheet “C” lists development opportunities on sites zoned for high density housing. There are 20 sites listed, with the capacity for 503 units. Only 3 of the sites are “carry overs” from the 2015 Housing Element—the other 17 were not previously listed. About half of the housing capacity identified on this spreadsheet is for lower income housing. Spreadsheet C also includes several sites with Public/Quasi-Public zoning.
- Spreadsheets “D” and “E” list development opportunities on sites zoned for commercial or mixed use development. Spreadsheet “D” includes sites outside of Downtown San Rafael. Spreadsheet “E” includes sites in the Downtown Precise Plan area.
  - Spreadsheet “D” includes 30 sites with the capacity for 2,044 units. This includes 1,053 units of above moderate-income housing, two-thirds of which is associated with Northgate Mall. The spreadsheet also includes 712 units of lower income capacity and 279 units of moderate-income capacity. Only seven of the 30 sites are “carry overs” from the 2015 Housing Element—the other 23 were not previously listed.
  - Spreadsheet “E” includes 53 sites with the capacity for 1,814 units. This includes 963 units of above moderate-income housing, 249 units of moderate-income housing, and 602 units of lower-income housing. Most of the sites listed were specifically called out in the Downtown Precise Plan as housing opportunities. A few were not. Only seven of the sites were counted in the 2015 Element—the other 46 were not previously listed.

Table 3 below indicates the information for each site provided in the spreadsheets.

**Table 3: Key to the Housing Site Spreadsheets**

Column	Title	Description
1	ID#	A unique alpha-numeric ID has been assigned to each site. The letter corresponds to the spreadsheet on which the site appears.
2	APN	Assessor Parcel Number. Some sites have multiple APNs and some sites occupy only a portion of a given APN.
3	Address/ Location	Either a street address or a narrative description of the location of each property
4	Acres	Total (gross) acres of the housing opportunity site
5	GP Des	Existing General Plan Designation
6	Zoning	Existing Zoning Designation
7	Existing Use	A narrative description of the current use of each site
8	Theoretical Capacity	The land area for each site multiplied by the maximum zoning density, inclusive of any proposed increases in allowable density. For already approved projects and for projects with pending applications, the actual number of approved or proposed units is used. Sites in the Downtown area have no density requirements, so theoretical capacity is more difficult to estimate.
9	Realistic Capacity	(1) For already approved projects, the actual number of approved units is used (2) For sites with development constraints such as steep slopes and limited access, the estimate is generally 60-80 percent of what is allowed by zoning. (3) For mixed use and commercially zoned sites, the estimate is generally 80 percent of theoretical capacity. (4) In the Downtown Precise Plan area, the estimates reflect figures that were developed in 2018-19 and used in the EIR for that project. The estimate of a site’s “realistic capacity” does not preclude a site from developing with more units than are shown in this column. This is intended as a conservative estimate based on guidance provided by HCD.
10	Pub/Private	Indicates whether the site is publicly or privately owned. PR = private. PU = public
11	Constraints	Indicates development constraints on each site, with an emphasis on environmental constraints. Typical constraints include steep slopes, sea level rise, fire hazards, historic resources, noise, and air quality.
12	Infrastructure	Indicates the improvements that would be required for site development, including road access and internal streets and utilities. Sites with utilities available in the street right-of-way abutting the site are considered to have infrastructure. Sites without adjacent water, sewer, or dry utilities are noted as needing infrastructure.
13 A, B, C	Income Category (Low, Mod, Above Mod)	Indicates whether the site is expected to serve above moderate, moderate, or lower (low + very low) income households. The designation of a site as lower income does not mandate that it be developed with lower income housing. However, if it is developed with another use, the City must find that it still has capacity to meet its lower income assignment in the remaining sites (or identify additional opportunity sites to make up the deficit).
14	Counted before?	Indicates if the site was counted in the 2015-2023 Housing Element site inventory
15	Comments	Provides additional remarks and comments about each site, including background information and context for why it is listed as a housing opportunity. <b>Red font</b> is used where a follow-up zoning action is required.

### **Sites Removed from the 2015 Inventory**

The sites that were removed from the 2015 Inventory include those that were developed during the last eight years, and others that no longer appear viable. The removed sites include:

- Marin Square Shopping Center. The site had been estimated as having the potential for 200 units. It has been removed from the inventory as it was recently sold and refurbished for retail use. Housing is still permitted on the site.
- Northgate Three (Michael's, CVS, Black Bear Diner). The site had been estimated as having the potential for 203 units. The owners indicate they are focusing on redevelopment of the Mall rather than this perimeter shopping center, and do not intend to redevelop Northgate Three during the next eight years. Housing is still permitted on the site.
- 550, 670, and 820 Las Gallinas. These are three office buildings on Las Gallinas that were estimated to have the potential for 84 units. One of these office buildings was acquired by Kaiser, another was acquired by a law firm, and the third is fully occupied.
- Former Chrysler/Dodge dealership at 1075 E. Francisco. This property is under construction with a new hotel. It had previously been assumed as a potential site for 63 units.

### **Relationship of the Sites Inventory to AFFH**

The City has long been committed to furthering fair housing, having adopted its first inclusionary housing ordinance in 1991, well in advance of other cities in the County. Over the past few years, the City Council has been looking for ways to remove barriers to housing of all types and at all income levels throughout the community. With this 6<sup>th</sup> cycle housing element, the State Department of Housing and Community Development has required cities and counties to be more intentional and transparent about how they intend on furthering fair housing.

Since 2021, the County of Marin has been leading a collaborative effort to coordinate the Housing Elements of the County and its 11 cities. This includes the services of a consulting team retained by the County to provide supplemental services specifically related to the State's Affirmatively Furthering Fair Housing (AFFH) mandate. The sites inventory is subject to this mandate. More specifically, the sites inventory must be analyzed to ensure that it helps overcome patterns of segregation and contributes to a more inclusive, economically diverse community.

This is both a quantitative and qualitative analysis. The County's consultant—Veronica Tam Associates—is performing the quantitative component and has completed a preliminary screen of San Rafael's 183 sites. This included overlaying a map of the housing sites on other maps showing patterns of segregation, poor housing conditions, and access to resources (good schools, jobs, services, etc.)<sup>1</sup>. The intent is to ensure that the City is not concentrating its lower-income housing sites in "low resource" areas, while locating all of its above moderate-income sites in "high resource" areas.

The initial analysis indicated the City is generally consistent with State requirements but some sites may require further justification. In other words, the City has limited the identification of lower-income housing sites to the already impacted Canal census tracts, while creating opportunities for lower-income housing in upper income/ high-resource census tracts in neighborhoods like Northgate and Downtown.

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<sup>1</sup> These maps will be posted to the [www.sanrafaelhousing.org](http://www.sanrafaelhousing.org) once they are finalized. They will also appear in an appendix to the Housing Element.

In the *qualitative* part of this analysis, the City will need to explain instances where its sites may not appear to support AFFH goals on the surface. For example, the City has provided at least a few opportunities for lower income housing in the Canal area since that area has an urgent need for safe, affordable family housing. In addition, placing only market-rate housing in the Canal area could be harmful to the community, as it could cause displacement and drive up the cost of existing housing. Conversely, there are “high resource” areas in San Rafael where lower income housing may be infeasible due to the lack of services and high fire danger. The City believes its inventory will be found consistent with the AFFH mandate, but will need to provide supplemental information in its analysis to explain why.

### **Maps**

A set of five maps, plus a “key” map are included with this staff report (Attachment 2). The maps show the location of the housing sites listed in Attachment 1. The city has been broken into five sub-areas to communicate this information more legibly. Map 1 shows North San Rafael. Map 2 shows the middle part of the City (between Downtown and the Civic Center). Map 3 shows the San Pedro Peninsula. Map 4 shows Southern and Southeastern San Rafael. Map 5 shows Downtown San Rafael.

The colors on the map correspond to the General Plan designations of each site. City staff is presently working to improve the legibility of the maps, add street names and key landmarks, and show other attributes of each site (such as which sites are “pipeline” projects, which sites are lower income sites, and so on). These will be made available and posted to the City’s website as they are developed.

### **Zoning Changes**

Because the 2023-2031 Housing Element immediately followed adoption of the San Rafael General Plan, the City is able to accommodate its RHNA without any zoning changes.

### **Schedule**

As noted in earlier in this report, the Housing Element must be adopted by January 31, 2023. The State has provided a 120-day grace period (ending May 30, 2023) for cities that require additional time in order to respond to HCD comments. The City of San Rafael anticipates that it may use a portion of the grace period, depending on the HCD comments on its initial draft.

State law requires that each city and county submit a “working draft” of its Element to HCD prior to adopting the document. This allows HCD to provide comments that can be addressed before adoption, thereby increasing the likelihood an adopted element will be found in compliance. Staff is currently anticipating release of the Working Draft in September 2022.

State law requires circulation of the Working Draft for public comment for at least 30 days. At the end of the 30 days, the document will be revised as needed and submitted to the State for review. The State then has up to 90 days to review the draft, meaning that comments will be received in January 2023. Depending on the extent of the State’s comments and when they are received, the City will either adopt the Housing Element in January 2023 or make revisions and adopt it during the grace period. Once the Housing Element is adopted, it must be resubmitted to HCD for certification. The State has 60 days to issue a compliance determination.

It is worth noting that other regions of California on an earlier review cycle than the Bay Area are experiencing exceptionally high rates of non-compliance. For example, the deadline for adoption of Housing Elements in the Southern California Association of Governments (SCAG) region was October

15, 2021. There are 191 cities and six counties in that region (197 jurisdictions in total). As of July 15, 2022—nine months past the deadline—only 19 jurisdictions have been deemed compliant. There are 93 SCAG jurisdictions that have adopted their elements and been found non-compliant, and another 73 jurisdictions that have not adopted their elements yet, as they continue to revise them based on HCD comments. There are also 12 cities in the SCAG region that have either not submitted anything to the State or are still waiting for their first response from HCD.

The City Council is encouraged to review [this document](#), just published by ABAG, for a summary of the principal objections HCD has had with the 6<sup>th</sup> Cycle Southern California elements.

**ENVIRONMENTAL REVIEW:**

As a General Plan amendment, the Housing Element update is subject to the California Environmental Quality Act (CEQA). Because the City does not anticipate major changes to its Land Use Map, the appropriate form of CEQA review for the Housing Element is an Addendum to the recently certified General Plan EIR.

The Addendum would determine if the findings identified in the General Plan EIR would be changed by the policies and programs in the new Housing Element. In the event the Housing Element proposes substantial changes to the General Plan Map, a higher level of CEQA review could be required. As with the General Plan EIR, environmental review will still be required for individual projects proposed after the Element is adopted.

**COMMUNITY OUTREACH:**

The August 1 City Council public hearing was advertised in the *Marin Independent Journal* and publicized with a postcard notice to stakeholders, agencies, and special interest groups.

The City has been circulating the sites inventory since June 2022, both for public information and to solicit comments. The inventory was presented to the Housing Element Working Group for discussion on June 30 and was the focus of a Community Workshop on July 14. It was presented to the Planning Commission for discussion on July 26. While some of the public feedback has related to specific sites, most comments have focused on higher-level issues such as the need for affordable housing, the ability to accurately identify sites, and the likelihood of the sites identified being realistically available before 2031.

**FISCAL IMPACT:**

The Housing Element is a policy document and does not have a direct fiscal impact on the city. Future programs developed as a result of HE2023-2031 adoption could have fiscal impacts by identifying programs requiring funding. Other HE2023-2031 programs may have positive fiscal impacts by identifying new revenue sources or improving the City's eligibility for grants and other funds. Conversely, the absence of a certified Housing Element would have adverse fiscal impacts, as the City would become ineligible for numerous state grants and funds.

**RECOMMENDED ACTION:**

Accept the Informational Report on the 2023-2031 Housing Element Opportunity Sites Inventory.

**ATTACHMENTS:**

Attachment 1: [Housing Opportunity Site List](#) (please note, this is formatted at 11 x 17)

Attachment 2: [Housing Opportunity Site Map](#) (set of five maps, plus key map)

Attachment 1 – Housing Opportunity Site List  
(please note, this is formatted at 11 x 17)

<https://www.cityofsanrafael.org/documents/draft-housing-opportunity-sites-list-june-2022/>

## Attachment 2 – Housing Opportunity Site Map (set of five maps, plus key map)

<https://www.cityofsanrafael.org/documents/draft-housing-opportunity-sites-maps-june-2022/>



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: City Manager, Sustainability Division

Prepared by: Cory Bytof,  
Sustainability Program Manager

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

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

**TOPIC: GRAND JURY REPORT ON ELECTRIFYING MARIN'S BUILDINGS**

**SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF SAN RAFAEL'S RESPONSE TO THE 2021-2022 MARIN COUNTY CIVIL GRAND JURY REPORT ENTITLED "ELECTRIFYING MARIN'S BUILDINGS: A COUNTYWIDE APPROACH"**

**RECOMMENDATION:** Adopt a resolution approving and authorizing the Mayor to execute the City of San Rafael's response to the Marin County Civil Grand Jury's report entitled, "Electrifying Marin's Buildings: A Countywide Approach".

**BACKGROUND:**

On June 6, 2022, the [2021-2022 Marin County Civil Grand Jury](#) issued a final report entitled "[Electrifying Marin's Buildings: A Countywide Approach](#)" which lays out findings and recommendations for local jurisdictions to reduce greenhouse gas emissions in the building sector (Attachment 1) through the Green Building "reach code" process.

The City of San Rafael is required to respond to this grand jury report. Penal Code section 933(c) states, in part, the following:

No later than 90 days after the grand jury submits a final report . . . the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body.

To comply with this statute, the City's response to the grand jury report must be approved by resolution of the City Council and submitted to the presiding judge and the foreperson of the grand jury by September 6, 2022. The following analysis explains the proposed response to the grand jury report and rationale.

**ANALYSIS:**

Title 24, Part 11 of the California Code of Regulations, commonly known as [CALGreen](#), was the first-in-the-nation mandatory green building standards code. It was developed by the California Building Standards Commission (CBSC) and is updated every three years. Local jurisdictions

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**



are required to adopt new regulations during each 3-year code cycle. CBSC developed these green building standards in an effort to meet the goals of California's landmark initiative AB 32, which established a comprehensive program of cost-effective reductions of greenhouse gases (GHG). Jurisdictions may also opt to enact stricter local "reach codes" to achieve deeper GHG reductions for the local building stock. Reach codes are local amendments to the building code that require performance that exceeds that of the minimum state code. The CBSC just released the new 2022 CALGreen regulations in July and the City will need to adopt them as well as any potential reach codes by November 2022 in order to take effect January 1, 2023. The grand jury's report addresses potential reach codes and makes recommendations pertaining to them.

In their report, the grand jury investigated what Marin County local jurisdictions are currently doing to address GHG emissions from the building sector, which comprises the second-largest source of emissions in local GHG inventories. The findings and recommendations of the grand jury can be found on page 18 of its report. City staff in the Community Development Department and Sustainability Division of the City Manager's Office have met and discussed the report's findings and recommendations. The City has been asked to respond to findings F1 – F6. In general, City staff agrees with the findings in the report. Most of the findings align with what the City's Climate Change Action Plan (CCAP) Steering Committee learned when developing our [Climate Change Action Plan 2030](#).

The City has also been asked to respond to recommendations R1 – R3. The City is currently [collaborating with the County](#), the Town of San Anselmo, and MCE Clean Energy to analyze and develop potential reach codes. Additionally, the City has been meeting with building officials throughout the County to find synergies across jurisdictions. This includes consideration of all-electric requirements for new construction (recommendation R1) and additional energy efficiency requirements for remodels (recommendation R2). These reach codes are also under consideration by many other jurisdictions throughout California. Final reach code recommendations have not been developed yet and will require more analysis as well as considerable public engagement. A subcommittee made up of Councilmembers Bushey and Llorens Gulati has been convened to review the analysis and provide input prior to finalizing recommendations to be brought to Council for deliberation.

City staff believes further analysis is also required for recommendation R3 to determine if a Countywide Building Electrification Plan led by the County and the [Marin Climate and Energy Partnership](#) (MCEP) would be the most effective means of ensuring equitable, prompt, and material acceleration of building decarbonization and if other jurisdictions would participate. Staff generally agrees that countywide coordination will be necessary to ensure effective and efficient implementation. However, it will require further engagement with MCEP and the other jurisdictions to determine next steps, mutual priorities, and to identify resources.

The City's detailed response can be found in Attachment 2.

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

**OPTIONS:**

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

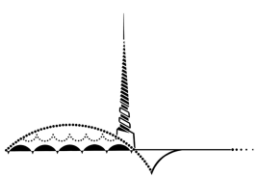
1. Adopt the resolution as presented.
2. Adopt the resolution as amended.
3. Direct staff to return with additional information

**RECOMMENDED ACTION:**

Adopt a resolution approving and authorizing the Mayor to execute the City of San Rafael's response to the Marin County Civil Grand Jury's report entitled, "Electrifying Marin's Buildings: A Countywide Approach".

**ATTACHMENTS:**

1. Marin County Civil Grand Jury Report
2. Resolution
3. Exhibit A to Resolution - Response to Marin County Civil Grand Jury Report
4. Correspondence



## 2021–2022 MARIN COUNTY CIVIL GRAND JURY

# ELECTRIFYING MARIN’S BUILDINGS: A COUNTYWIDE APPROACH

June 6, 2022

### SUMMARY

Marin County’s electricity supplies are becoming cleaner due to the expanding role played by solar and other renewable sources. As this trend continues, local governments have become increasingly engaged in reducing greenhouse gas emissions by electrifying the county’s transportation and building sectors. “Building electrification” refers to the elimination of natural gas-fueled appliances in households and businesses. It aims for adoption of four electric appliances: heat pump space heaters, heat pump water heaters, induction cooktops/ranges, and upgraded service panels. Because the life cycles of appliances are long—often 10 to 20 years or more—decisions made today can have long-term impacts. By one estimate, in order to fully electrify U.S. households before 2050, more than 80 million of these appliances in more than 50 million households would have to be replaced over the next decade.<sup>1</sup> While policy-makers in Washington and Sacramento have an important role to play, change on this scale will be very difficult without robust engagement at the local level. The timely pursuit of building electrification will depend in no small measure on local regulations and consumer decisions that are shaped and supported by local communities.

Initial steps are currently being taken by the county and its cities to pave the way toward building electrification. But as the stakes grow higher with each passing year, the time has come for Marin to pursue an integrated and comprehensive countywide building electrification planning process that will strengthen and accelerate decision-making by public officials throughout the county.

In the discussion that follows, the Grand Jury addresses:

- The critical role building electrification plays in advancing Marin County’s greenhouse gas reduction targets and in improving the health and safety of its residents
- Proposed “reach” codes for adoption by local jurisdictions that would bring an end to natural gas connections in newly constructed buildings and enhance energy efficiency in homes undergoing renovation

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<sup>1</sup> Trevor Higgens, Bianca Majumder, Debbie Lai, Ari Matusiak, and Sam Calisch, *To Decarbonize Households, electrifying all of Marin County’s buildings within a specified time period* *America Needs Incentives for Electric Appliances*, June 3, 2021, <https://www.americanprogress.org/article/decarbonize-households-america-needs-incentives-electric-appliances/>.

- A comprehensive countywide building electrification planning process aimed at potential building electrification strategies that should be addressed as part of a countywide planning process.
- The importance of equity as a guiding principle in planning.

## **APPROACH**

The Marin County Civil Grand Jury investigated the actions taken by Marin's county, city, and town governments to reduce greenhouse gas emissions, including their identification of the sources of these emissions and their strategies to meet emission reduction goals established by state law and otherwise. The Grand Jury focused on the building sector as a primary contributor of greenhouse gas emissions and assessed existing and proposed programs and strategies to bring about the effective and equitable electrification of buildings in Marin.

In carrying out this investigation, the Grand Jury interviewed elected officials, department heads, and staff in the Marin County government and in Marin's city and town governments; interviewed agency officials and non-profit advocacy groups engaged in climate change mitigation; and reviewed reports, studies, plans, and state and local laws dealing directly or indirectly with climate change mitigation.

In the course of its investigation, the Grand Jury repeatedly encountered individuals throughout county and local government who are passionate about their work and extremely well-informed about climate change impacts and mitigation measures. The findings and recommendations presented here are intended to offer a unique perspective afforded by the investigation and help promote an ongoing dialog among county staff, local jurisdictions, and the public on an important component of greenhouse gas reduction efforts.

## **BACKGROUND: WHY BUILDING ELECTRIFICATION MATTERS**

### **The Increasing Urgency of Marin's Efforts to Mitigate Climate Change**

This past year our nation has seen a variety of extreme weather-related impacts including off-season tornados, dramatic flooding, and wildfires at times and locations previously thought immune from such disasters. The hottest annual temperatures ever recorded worldwide have all occurred between 2016 and 2021.<sup>2</sup> More intense and frequent heat waves, droughts, wildfires, and severe weather events are all results of climate change which are now manifesting throughout the country and the world. Marin County has recently experienced severe drought, ongoing heightened wildfire risk, and the slow creep of sea level rise along our shorelines. Given these developments, scientists and government leaders across the globe agree there is an increasing urgency to reduce greenhouse gas emissions if the worst impacts of climate change are to be avoided.

California has helped lead the way in framing the urgent need for prompt action. Legislation passed in 2016 requires state agencies to enact regulations and implement programs that will result in a statewide reduction in greenhouse gas emissions to 40 percent below 1990 levels by

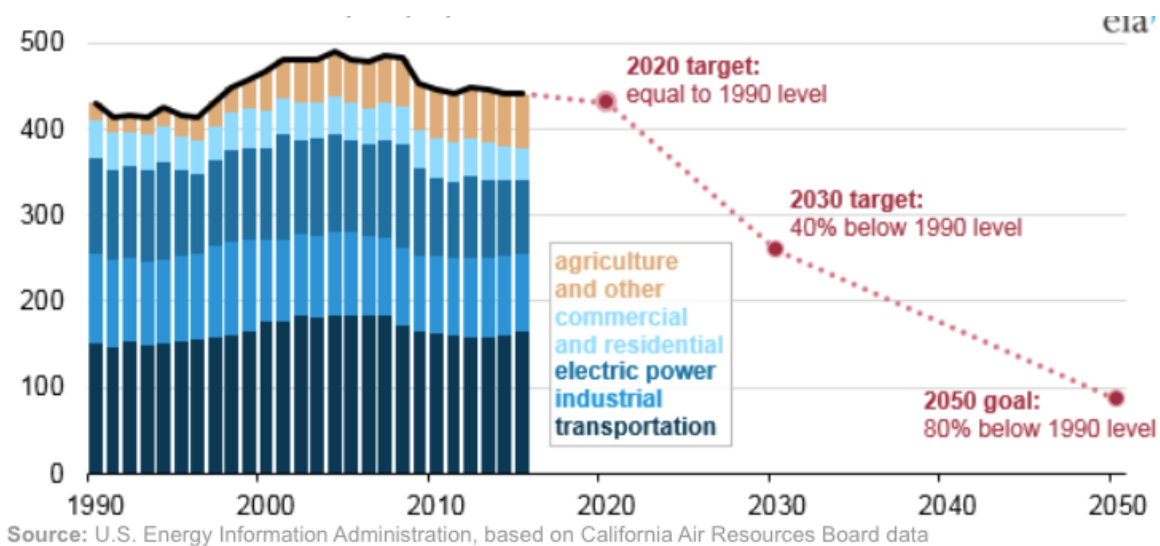
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<sup>2</sup> United Nations, UN News Global Perspective Human Stories, *2021 joins top 7 warmest years on record: WMO*, January 19, 2022, <https://news.un.org/en/story/2022/01/1110022#:~:text=The%20warmest%20seven%20years%20have,to%20record%20global%20average%20warming.>

2030. Unfortunately, a recent report has found that while the state's greenhouse gas emissions dropped 1.6 percent between 2018 and 2019—the second largest percentage decrease since 2010— this is far short of what is needed to reach the mandated reduction by 2030.<sup>3</sup> California must now sustain a 4.3 percent annual decrease through 2030—a reduction that is more than 2.5 times greater than was achieved in 2019.<sup>4</sup>

Marin County's leaders and residents are well aware that climate change is poised to impact future life in the county. The county and its eleven municipalities have each developed climate action plans to address how local governments and residents can contribute to greenhouse gas emission reductions.<sup>5</sup> These plans identify the major sources of emissions throughout the county, quantify those emissions, and recommend actions to be taken by individual jurisdictions to curb emissions and reach statewide emissions targets as well as targets enumerated in the individual plans. Although all jurisdictions reached their 2020 goals of reducing greenhouse gas emissions below 2005 levels by at least 15 percent, there is much more to be done if they are to reach the 2030 reduction targets mandated by state law.<sup>6</sup>

**Figure 1 - California Greenhouse Gas Emissions by Sector (1990-2015) and Targets Through 2050 (million tons CO<sub>2</sub> equivalent)**



Credit: California Air Resources Control Board

Figure 1 shows the dramatic reduction in GHG emissions required for the state to reach its goal of reducing emissions to at least 40% below 1990 levels by 2030.

<sup>3</sup> California Green Innovation Index, 13th Edition, 2021, <https://greeninnovationindex.org/2021-edition/>.

<sup>4</sup> California Green Innovation Index.

<sup>5</sup> County of Marin, Community Development Agency and Sustainability Team, *Marin County Unincorporated Climate Action Plan*, December 2020, [https://www.marincounty.org/-/media/files/departments/cd/planning/sustainability/climate-and-adaptation/cap-2030\\_12082020final.pdf](https://www.marincounty.org/-/media/files/departments/cd/planning/sustainability/climate-and-adaptation/cap-2030_12082020final.pdf). The Climate Action Plans for each of the municipalities in Marin are <https://marinclimate.org/climate-action-plans/>.

<sup>6</sup> See Marin Climate and Energy Partnership (MCEP) website, Marin Sustainability Tracker, <http://www.marintracker.org/>. This is an interactive mapping tool that provides statistics on the greenhouse gas emissions in various jurisdictions.

## **Buildings Are a Significant Source of Greenhouse Gas Emissions**

Building electrification will be a critical component for the county to reach future emissions goals. Natural gas, a major source of greenhouse gas emissions, provides an estimated 70 percent of the energy used in the average California home.<sup>7</sup> Building emissions are generated in the production and use of electricity and natural gas for heating, cooling, lighting, and running appliances in residential, commercial, municipal, and industrial buildings.<sup>8</sup> In Marin the largest source of greenhouse gas emissions is the transportation sector (51 percent). The county's next largest greenhouse gas source is the building sector, which is responsible for 34 percent of total emissions.<sup>9</sup> Of the 34 percent greenhouse gas emissions associated with Marin's building sector, natural gas uses comprise 27 percent of the total, with the remaining 7 percent attributed to the use of electricity generated by coal or gas-fired power plants.<sup>10</sup>

Marin County's building sector primarily consists of residential buildings, with single-family homes comprising the majority of building types in the county. Among the housing stock, 69 percent are single-family homes, followed by multi-unit dwellings at 29.5 percent, and mobile homes at 1.5 percent.<sup>11</sup> Most of the county's natural gas usage results from the residential sector.<sup>12</sup> Thus, removing natural gas usage from the building sector will have a major impact in reducing overall greenhouse gas emissions in the county.

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<sup>7</sup> New Buildings Institute, *Building Electrification Technology Roadmap*, January 12, 2021, p. 3, <https://newbuildings.org/resource/building-electrification-technology-roadmap/#:~:text=The%20Building%20Electrification%20Technology%20Roadmap,emissions%2C%20and%20improve%20public%20health.>

<sup>8</sup> The different plans have slightly different categories names to identify this sector, i.e., some refer to it as Residential Energy, Built Environment – Electricity/Natural Gas, Energy Efficiency Buildings, etc. and may or may not include the source of the energy used (County Plan says 72% decrease in Build Env- Electricity from 2005 to 2018 due to cleaner sources of energy used).

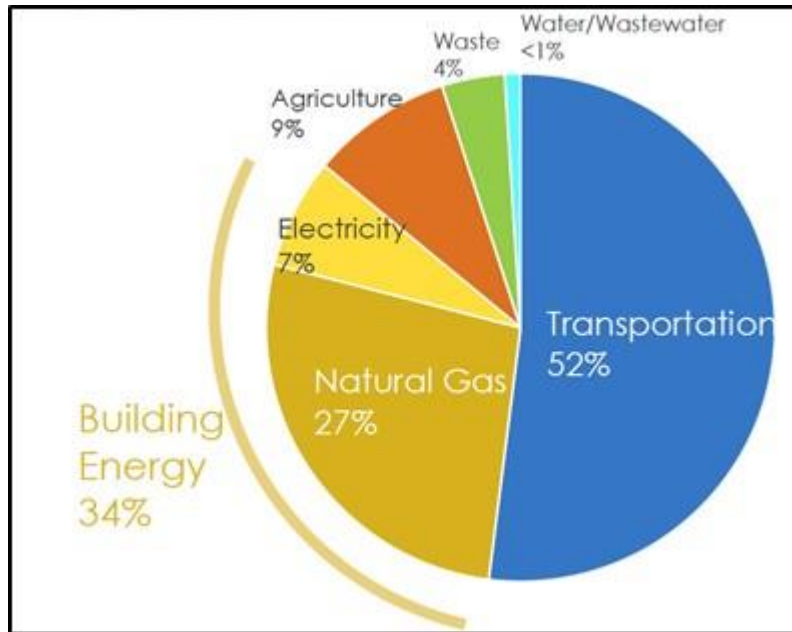
<sup>9</sup> See MCEP website, *Marin County Emissions by Sector, 2019*, <https://marinclimate.org/greenhouse-gas-inventories/>.

<sup>10</sup> MCEP website, *Marin County Emissions by Sector*.

<sup>11</sup> Marin County Housing Element 2015 – 2023 Adopted by the Marin County Board of Supervisors December 9, 2014; See also CountyOffice.org, *Building Departments in Marin County, California*, <https://www.countyoffice.org/ca-marin-county-building-departments/>

<sup>12</sup> In 2005, 72% of natural gas usage was in the residential sector, Marin Community Development Agency's 2007 Marin Countywide Plan at 3.6-4.

**Figure 2 - Marin County's 2019 Greenhouse Gas Emission by Sector**



*Credit: Marin County, Community Development Agency and City of San Rafael, Marin County Green Building Code 2022 Code Cycle Update, February 18, 2022.*

Unfortunately, the consumption of natural gas in homes and buildings in California is on the rise—up 15.3 percent in the commercial sector and 17.8 percent in housing since 2014, and up 19.8 percent in the industrial sector since 2009.<sup>13</sup> Statewide, natural gas usage by buildings is significant, with buildings using more gas overall than the state's power plants.<sup>14</sup>

These building-related uses of natural gas not only result in greenhouse gas emissions as the fuel is burned, but they are also responsible for additional emissions from the extraction and transportation of gas to end users. Emissions from the drilling of natural gas include methane, nitrogen oxides, and sulfur oxides.<sup>15</sup> Methane is among the most worrisome greenhouse gasses as it traps heat more efficiently than carbon dioxide. It is estimated that 13 million tons of methane leak each year during gas extraction, processing, and transportation.<sup>16</sup> About 90 percent of the gas consumed in California is drilled out of state, which creates significant opportunities for greenhouse gas emissions to occur through leaking and venting in pipeline transmission in addition to those created during combustion.<sup>17</sup>

Converting from natural gas to electricity is an effective way to significantly reduce greenhouse gas emissions. It should be noted, however, that some emissions also occur in the generation of

<sup>13</sup> California Green Innovation Index, <https://greeninnovationindex.org/2021-edition/>

<sup>14</sup> Sierra Club, *Building Electrification Action Plan for Climate Leaders*, December 2019, p. ES-1, <https://www.sierraclub.org/sites/www.sierraclub.org/files/Building%20Electrification%20Action%20Plan%20for%20Climate%20Leaders.pdf>

<sup>15</sup> New Buildings Institute, *Building Electrification Technology Roadmap*, p.4.

<sup>16</sup> Jeff Turrentine, *The Natural Gas Industry Has a Methane Problem*, Natural Resources Defense Council website, June 7, 2019, <https://www.nrdc.org/onearth/natural-gas-industry-has-methane-problem>.

<sup>17</sup> Sierra Club, *Building Electrification Action Plan for Leaders*, p. ES-1. See also City of Berkeley, *Existing Buildings Electrification Strategy*, Administrative Draft, April 2021, pp. 13-14, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Draft\\_Berkeley\\_Existing\\_Bldg\\_Electrification\\_Strategy\\_20210415.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Draft_Berkeley_Existing_Bldg_Electrification_Strategy_20210415.pdf) and New Buildings Institute, *Building Electrification Technology Roadmap*, p. 3.



electricity, though at much reduced levels. Pacific Gas and Electric (PG&E) and the community choice aggregator, Marin Clean Energy (MCE), are Marin County's two utility providers.<sup>18</sup> PG&E's electricity is generated from a blend of power sources that is presently 85 percent greenhouse gas emission free. That percentage should increase in the coming decade due to state mandates.<sup>19</sup> MCE customers can currently opt for an arrangement furnishing electricity that is 100 percent generated by wind and solar.<sup>20</sup>

### **Reducing the Health and Safety Risks Posed by Gas Appliances**

In addition to adding greenhouse gas emissions to the atmosphere, natural gas appliances create a significant amount of indoor air pollution.<sup>21</sup> Most residential gas appliances lack any pollution controls and can produce very high nitrogen oxide emissions.<sup>22</sup> In particular, gas stoves emit nitrogen oxides, carbon monoxide, and formaldehyde as well as fine particulate matter in amounts greater than electric stoves.<sup>23</sup> The peak levels of air pollution, particularly nitrogen dioxide, generated by natural gas cooktop usage can exceed outdoor air quality standards.<sup>24</sup> Other natural gas appliances such as heating systems and water heaters also contribute to indoor air pollution and can present significant indoor air quality impacts. Like stoves, natural gas-powered furnaces and hot water tanks also emit nitrogen dioxide, nitric oxide, sulfur oxides, particulate matter, carbon monoxide, and formaldehyde.<sup>25</sup>

The U.S. Environmental Protection Agency has determined that long-term exposure to nitrogen dioxide is linked to the development of asthma in children, and short term exposure can trigger or exacerbate asthma attacks.<sup>26</sup> Children are particularly sensitive to the pollutants generated by gas appliances. Studies have indicated that children in homes with gas appliances are 42 percent more likely to develop asthma symptoms and 32 percent more likely to be diagnosed with asthma during their lifetime.<sup>27</sup> Lower-income households bear greater health risks since many of the factors associated with poor indoor air quality – smaller square footage, older appliances, poorer ventilation, high density of household members – create conditions that contribute to poor indoor air quality.<sup>28</sup>

The use of natural gas as a fuel in buildings also brings safety risks posed by pipeline leaks and ruptures. The potential for earthquakes, aging gas lines, and the volatile nature of natural gas are

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<sup>18</sup> Community Choice Aggregation (CCA) is an alternative to the investor owned utility in which local entities aggregate the buying power of individual customers within a defined jurisdiction in order to secure alternative energy supply contracts.

<sup>19</sup> See California Public Utilities Code §454.53, which mandates that by 2045 all retail electricity sold in the state be generated from renewable and zero-carbon resources .[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB100](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB100)

<sup>20</sup> Marin Clean Energy website, <https://www.mcecleanenergy.org/100-renewable/>.

<sup>21</sup> Sierra Club, *Building Electrification Action Plan for Leaders*, at p. ES-1.

<sup>22</sup> Sierra Club, *Building Electrification Action Plan for Leaders*, at p. ES-1.

<sup>23</sup> Brady Seals and Andee Krasner, *Health Effects from Gas Stove Pollution*, Rocky Mountain Institute, Physicians for Social Responsibility, Mothers Out Front, and Sierra Club, 2020, p.8 <https://rmi.org/insight/gas-stoves-pollution-health>

<sup>24</sup> Seals and Krasner, *Health Effects from Gas Stove Pollution* at p. 9.

<sup>25</sup> City of Berkeley, *Existing Buildings Electrification Strategy* Administrative Draft April 2021, p. 6, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Draft\\_Berkeley\\_Existing\\_Bldg\\_Electrification\\_Strategy\\_20210415.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Draft_Berkeley_Existing_Bldg_Electrification_Strategy_20210415.pdf).

<sup>26</sup> Seals and Krasner, *Health Effects from Gas Stove Pollution* at pp. 12-13; See also City of Berkeley, *Existing Buildings Electrification Strategy* at p. 7.

<sup>27</sup> Seals and Krasner, *Health Effects from Gas Stove Pollution* at p. 13.

<sup>28</sup> Seals and Krasner, *Health Effects from Gas Stove Pollution* at p. 13.



all risk factors. The catastrophic 2010 San Bruno and 2019 San Francisco gas pipeline explosions exemplify the risks of natural gas lines in buildings.<sup>29</sup>

## **DISCUSSION**

### **Near-term Measures to Accelerate Building Electrification**

#### **Banning Natural Gas Connections in New Construction**

One of the most direct means of accomplishing electrification in the building sector is to ensure that newly constructed buildings are fully electric, with no natural gas connections. A shift to all-electric new construction helps accelerate greenhouse gas emission reductions in the building sector and avoids the health hazards posed by the ongoing use of natural gas in the indoor environment. All-electric buildings are also, with rare exception, cheaper to build than “dual fuel” buildings that incorporate both natural gas and electricity.<sup>30</sup> Construction of new dual fuel buildings not only costs more, but it also creates potential inefficiencies as the use of natural gas infrastructure in these buildings is limited in coming years, leaving it underutilized or unused.

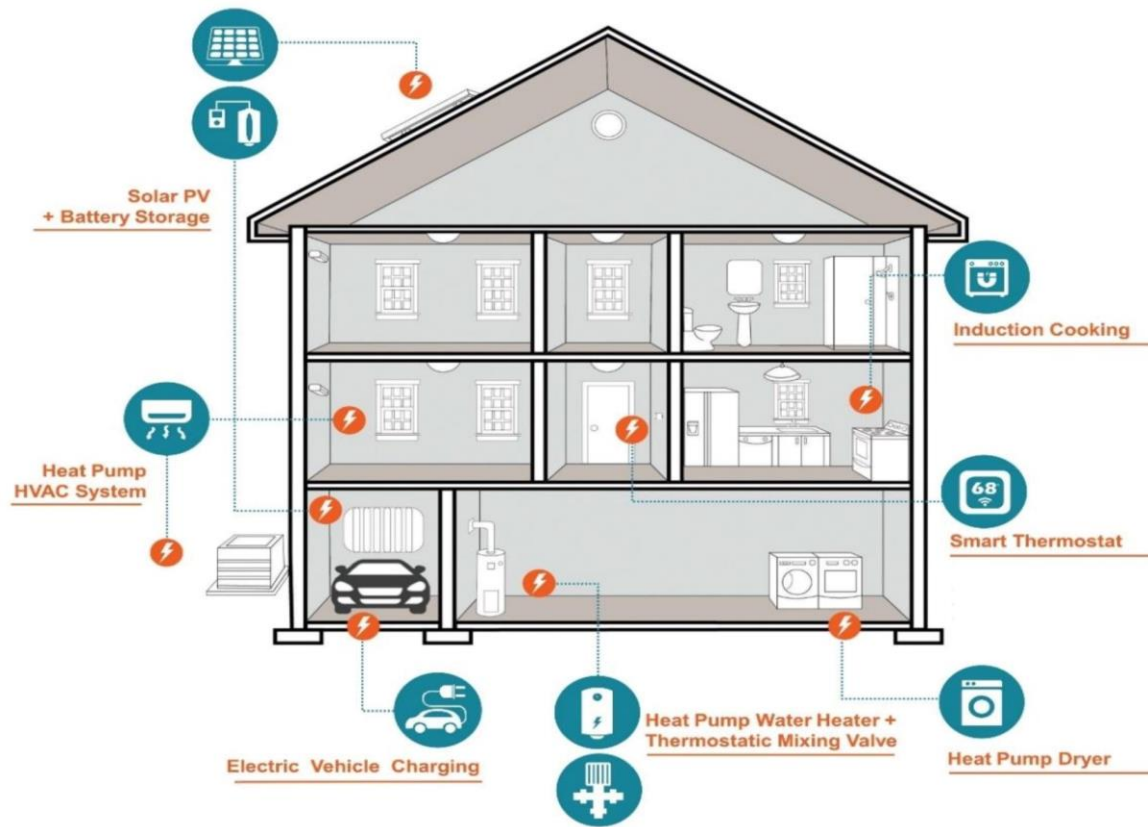
California has taken steps toward electrifying the building sector through the most recent update of its state-wide building code. Every three years, the California Energy Commission is charged with updating the state building code which, among other things, creates energy standards for new construction. The latest building code update went into effect in January 2022. It sets the stage for electrification by requiring newly constructed homes to be “electric-ready,” with dedicated 240-volt outlets and space (with plumbing for water heaters) so electric appliances can eventually replace installed gas appliances. It also requires new homes to have either electric heating or electric water heating, depending on which is the larger energy user. While these and other requirements will have a meaningful impact in paving the way for home electrification in the future, many observers had hoped for more decisive action from the state including, potentially, a statewide ban on natural gas connections in a range of newly constructed buildings.

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<sup>29</sup> City of Berkeley, *Existing Buildings Electrification Strategy* at p. 14; See also Michael Cabanatuan, “PG&E software issue allowed massive 2019 S.F. gas fire to burn longer, feds say,” *San Francisco Chronicle*, Aug. 10, 2021, <https://www.sfchronicle.com/sf/article/PG-E-software-issue-allowed-massive-2019-S-F-gas-16378054.php> which explains the initial blast was caused by a negligent contractor accidentally excavating the line, but the lack of PG&E’s proper software to isolate valve led to a long wait time for the gas line to be shut off.

<sup>30</sup> A recent study found incremental costs for new home construction ranged from \$30,000 less to \$3,000 more for an all-electric compared to a dual fuel home. See Frontier Energy, Inc. and Misti Bruceri & Associates, LLC, *2019 Energy Efficiency Ordinance Cost-Effectiveness Study: Low-Rise Residential*, prepared for Pacific Gas and Electric, August 2019, pp. 15-16, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=234020-6&DocumentContentId=66846>

Figure 3 - Common Components of All-Electric Homes



Credit: Building Decarbonization Coalition

The state's next building code update will not occur until 2025. In the near term, it will be up to local jurisdictions to decide whether to adopt more restrictive "reach codes" or take other measures banning or limiting the use of natural gas in newly constructed buildings. A reach code is a local building energy code that "reaches" beyond the state minimum requirements for energy use in building design and construction. To date, more than 50 local jurisdictions throughout California have adopted reach codes banning or limiting new natural gas infrastructure in new construction.<sup>31</sup> Within Santa Clara and San Mateo counties, 20 cities have adopted their own building electrification reach codes, a majority of which require new buildings to be all-electric unless limited exceptions are met.<sup>32</sup>

Within Marin County, Fairfax is currently the only city to have adopted an all-electric requirement for new buildings.<sup>33</sup> This may soon change, however, as a result of current efforts within the county to develop and disseminate a model reach code addressing electrification in

<sup>31</sup> Matt Gough, *California's Cities Lead the Way to a Gas-Free Future*, July 22, 2021, <https://www.sierraclub.org/articles/2021/01/californias-cities-lead-way-gas-free-future>.

<sup>32</sup> County of Santa Clara, California, Ordinance 108511 [http://sccgov.iqm2.com/Citizens/Detail\\_LegiFile.aspx?Frame=&MeetingID=13238&MediaPosition=&ID=108511&CssClass=](http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=13238&MediaPosition=&ID=108511&CssClass=)

<sup>33</sup> Town of Fairfax, *Staff Report*, August 4, 2021, <https://storage.googleapis.com/proudcity/fairfaxca/uploads/2021/07/Item-18-Ord-Electric.pdf>. San Anselmo is currently considering adoption of a ban on natural gas connections for newly constructed buildings. See Adrian Rodriguez, "San Anselmo considers gas ban for new buildings," *Marin Independent Journal*, March 18, 2022.

new construction and in certain types of building renovations. It would then be up to the county and each of its municipalities to consider the proposed model code for adoption. Data collected by the county shows that only 16 percent of new building projects in unincorporated Marin voluntarily elected all-electric construction.<sup>34</sup> The proposed reach code would require all new residential, multifamily, and commercial construction to be “all-electric.” If widely adopted, this reach code would have an immediate and pronounced impact in electrifying new building construction throughout Marin.

### **Renovations of Existing Residential Buildings**

New building construction accounts for only a small fraction of Marin’s building stock. The bigger opportunities in electrifying Marin’s building sector lie in electrification of existing buildings. Marin’s proposed reach code would not require that existing dual fuel buildings be electrified, nor would it require replacement of natural gas appliances with electric appliances in existing homes. Rather, the code would be limited to certain residential building renovations. Under the “flexible path” approach that is contemplated, homeowners and contractors applying for building renovation permits would be required to select from a menu of electrification and energy efficiency measures to incorporate into the renovation plan.<sup>35</sup> Applicants could select any combination of specified measures, including the addition of electric heat pump space or water heaters, that meet or exceed a target energy score.

To date, at least one California city has enacted a reach code adopting a version of this flexible path approach. In 2021, the City of Piedmont enacted an ordinance that uses a menu of energy efficiency and heating system electrification improvements, and requires renovations on residential buildings to incorporate one item from the menu for projects over \$25,000, and two items for projects over \$100,000.<sup>36</sup> In Marin, planning staffs from the county and San Rafael are in the process of drafting and refining the proposed model reach code, including determining what kinds of renovations will trigger its requirements. There are plans to engage the public through community workshops, finalize the draft model reach code, and submit it for legislative review by the fall of 2022.

With respect to new construction, the proposed reach code presents a needed, near-term end to the perpetuation of natural gas infrastructure in Marin’s building sector. With regard to renovations, the proposed code is an effective and practical, if incremental, step towards accelerating building electrification in Marin.

While the proposed model reach code presents a promising start, there are numerous important issues that remain to be addressed. What is the best way to extend electrification initiatives to homes that are not undergoing renovations and to large multi-unit residential buildings? Can enough consumers be incentivized to voluntarily replace gas-fueled appliances with electric ones? Are additional mandates needed? How can electrification programs be structured so as to consider the needs of Marin’s underserved communities and low-income residents? Is there a

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<sup>34</sup> Brian Reyes, *Policy Brief: 2022 Code Cycle Green Building Ordinance Update – Strategy and Options for Requirements*, prepared for the County of Marin, undated.

<sup>35</sup> A program funded by the state’s largest utilities and conducted under the auspices of the California Public Utilities Commission (CPUC) provides guidance and resources to local jurisdictions interested in adopting this kind of approach. See CPUC Codes and Standards. website, <https://explorer.localenergycodes.com/>.

<sup>36</sup> Sara Lillevand, *City of Piedmont, Council Agenda Report*, February 1, 2021, <https://www.piedmont.ca.gov/common/pages/DisplayFile.aspx?itemId=17376920>.

means for addressing these questions in a coordinated, comprehensive way that will reach all of Marin's communities?

## **A Countywide Planning Process Focused on Equity**

### **The Need for Coordinated, Comprehensive, and Strategic Planning to Effectively Address Building Electrification**

As shown by the ongoing effort to develop Marin's model reach code, coordination between and among the county and its cities and towns increases the potential for achieving widespread, meaningful results in the short term. All of Marin's local jurisdictions are facing similar challenges in electrifying their building sectors and in reaching greenhouse gas reduction targets. Building departments will play an important role in implementing changes in building codes and permitting requirements. Uniformity will ease the burden on builders and contractors, and thus help to accelerate adoption.

Even more importantly, a countywide approach to planning will help to ensure the timely, sustained, and in depth focus that is required. Time is of the essence. As new gas infrastructure continues to be added to Marin's buildings, and as new gas appliances are installed in Marin's homes, electrification in these buildings is deferred for possibly a decade or more, making greenhouse gas reduction targets correspondingly more difficult to achieve.

There is also a human cost to delay. As low-income residents remain challenged by the up-front costs of electrification, the risk increases of a further divide between those who can afford to electrify and those who cannot. This results in greater exposure to potential displacement, adverse health effects, and other negative impacts to Marin's underserved communities. A countywide planning process would help to ensure that all of Marin's jurisdictions are actively engaged in solving these problems in the near term.

A countywide planning process will also help to ensure that adequate resources are devoted to the complex, multi-layered challenges posed by building electrification. A prior Grand Jury has described the county's approach to climate change mitigation, which relies heavily on the respective climate action plans adopted in each individual jurisdiction.<sup>37</sup> With few exceptions, these plans deal with broad recommendations that address a wide variety of areas. Given their breadth, and the limited resources available for developing them, climate action plans rarely take a "deep dive" into a specific issue or topic, and sometimes lack context or specificity, particularly in the area of building electrification.

A coordinated countywide planning process can provide a framework for collaboration that will maximize existing resources by leveraging research, data collection, and policy analysis. A timely example of this kind of collaboration is provided by the Marin Countywide Electric Vehicle Acceleration Plan (Countywide EV Plan). This plan was coordinated by the Marin Climate and Energy Partnership (MCEP).<sup>38</sup> Through the coordinated efforts of staff from its

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<sup>37</sup> Marin County Civil Grand Jury, 2019-2020 *Climate Change: How Will Marin Adapt?*, September 11, 2020, <https://www.marincounty.org/-/media/files/departments/gj/reports-responses/2019-20/climate-change--how-will-marin-adapt.pdf?la=en#>.

<sup>38</sup> MCEP is composed of representatives from all eleven cities and towns in Marin, the county, the Transportation Authority of Marin (TAM), Marin Clean Energy, the Marin General Services Authority, and the Marin Municipal Water District. MCEP's mission is to promote collaboration between its members, share resources, and obtain funding to analyze and implement the strategies contained in each jurisdiction's climate action plan.

respective members and its own part-time sustainability coordinator, MCEP has produced a draft Countywide EV Plan that identifies guiding principles, describes relevant data and local conditions, enumerates barriers to EV adoption, and proposes specific strategies and recommended actions for overcoming those barriers. This plan can serve as a model for a similar effort aimed at producing a countywide plan for electrifying Marin's building sector.

There are unique challenges posed by the building sector, to be sure. The scope and complexity of building electrification planning will likely require more time and greater resources than a plan focused on EV adoption. These challenges, however, have not prevented other jurisdictions from producing building electrification plans suited to their specific needs. Planners in San Jose, Berkeley, and elsewhere have recently released comprehensive building electrification plans that provide needed focus and depth, laying the groundwork for implementation of short and long-term electrification strategies within established timeframes.<sup>39</sup> Marin County should do the same.

An in-depth planning process will require funding to ensure that sufficient staff is allocated for the project, and that any necessary outside consultants are retained. Development of the Countywide EV Plan was supported by a grant from the Transportation Authority of Marin. As an initial step, staff from the county and its municipalities should identify and pursue potential sources of grant funding from local, regional, and state entities.

At a minimum, a Marin Countywide Building Electrification Plan could identify current programs and policies, remaining challenges, and concrete actions the county and its cities and towns can take to accelerate the electrification of residential and commercial buildings throughout Marin. This plan could set a date for accomplishing the complete electrification of all buildings in Marin and establish a timeline for reaching that goal. And it could establish the necessary "guardrails" to avoid unintended adverse impacts on Marin's underserved communities.

While local policies and programs are critical to the success of building electrification, they cannot succeed without broader efforts to increase the capacity and reliability of the electric grid. Power outages pose an ongoing challenge, especially for underserved communities that may lack the resources to buy generators and otherwise mitigate the cost and inconvenience of short-term power loss. With increasing electrification of homes and the growth of electric vehicles, the state's utilities will need to expand clean power generation and distribution infrastructure. These utilities, in conjunction with state regulatory agencies, must ensure that electricity is available to meet increased demand, especially during peak usage periods.

### **The Importance of Equity**

An initial challenge for planners will be to ensure that equity issues are considered from the outset and are adequately reflected in resulting policies and programs. Underserved communities, often largely composed of renters, have in many cases been left out of California's

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<sup>39</sup> City of Berkeley, *Existing Building Electrification Strategy*, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Draft\\_Berkeley\\_Existing\\_Bldg\\_Electrification\\_Strategy\\_20210415.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Draft_Berkeley_Existing_Bldg_Electrification_Strategy_20210415.pdf)  
See also City of San José Department of Environmental Services, *Healthy Homes, Healthy Air - A Framework for Existing Building Electrification Centered on Community Priorities*, February 22, 2022, <https://www.sanjoseca.gov/home/showpublisheddocument/82395/637811379809170000>.



push toward electrification.<sup>40</sup> Low-income households often have a high energy burden – meaning a disproportionate amount of household income goes toward energy expenses. In Marin County, about 50 percent of renters are housing cost burdened, meaning they spend more than 30 percent of their income on rent. Contributing to this burden is the fact that low-income housing tends to be older and less energy efficient. Research has shown that African-American, Latino, and low-income households tend to pay more for electricity and natural gas service per square foot of building space.<sup>41</sup> These households have greater vulnerability to rising energy costs and are less able to mitigate the impact of rising costs through measures that require significant up-front investment, such as installing solar panels and batteries or replacing outdated gas appliances with cleaner, more efficient electric appliances. Beyond these financial burdens, underserved communities must also contend with the added health risks posed by poor indoor air quality.

If building electrification strategies are to succeed, they must not increase the burden on Marin's underserved communities. Rather, they must ensure that these communities have full access to building electrification's principal benefits: cleaner air, healthier homes, affordable clean energy, and energy efficiency resulting in reduced monthly energy bills. This can be accomplished in part by promoting and advocating for expansion of such programs as MCE's pilot program for Low-Income Families and Tenants which offers subsidies of \$1,200 per unit to fund acquisition of appliances and energy efficiency improvements for up to 1,400 affordable multifamily units.<sup>42</sup>

Countywide planners should identify and prioritize the critical needs of underserved communities and identify priority solutions that can be addressed through building electrification. They can design a broad community engagement strategy to ensure the countywide plan reflects a diverse set of community voices and concerns. Through such an approach, the countywide plan can more effectively address communities who in the past may have been excluded from the full benefits of clean energy.

### **Electrification Strategies for Existing Buildings**

A ban on natural gas infrastructure in newly constructed buildings is important. But in order to reach its greenhouse gas emission reduction targets, Marin must develop effective strategies for the electrification of existing dual fuel buildings, which comprise the overwhelming majority of Marin's building stock. Marin's proposed reach code addressing certain residential renovations presents a meaningful step forward. But it is not enough. As a next step, Marin's planners should evaluate a full range of potential electrification initiatives for existing buildings, a number of which are being considered and implemented by other local jurisdictions. In the sections below,

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<sup>40</sup> We use the term “underserved communities” to refer to communities where residents are: predominantly people of color; living on low incomes; underrepresented in the policy setting or decision-making process; subject to disproportionate impact from one or more environmental hazards; and likely to experience disparate implementation of environmental regulations and socioeconomic investments.

<sup>41</sup> Ariel Drehobl and Lauren Ross, *Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities*, April 2016, [https://assets.ctfassets.net/ntcn17sslow9/1UEmqh5159cFaHMqVwHqMy/1ee1833cbf370839dbbdf6989ef8b8b4/Lifting\\_the\\_High\\_Energy\\_Burden\\_0.pdf](https://assets.ctfassets.net/ntcn17sslow9/1UEmqh5159cFaHMqVwHqMy/1ee1833cbf370839dbbdf6989ef8b8b4/Lifting_the_High_Energy_Burden_0.pdf).

<sup>42</sup> MCE press release (Nov 3, 2017), *MCE Launches Pilot Program for Low-Income Families and Tenants* <https://www.mcecleanenergy.org/press-releases/lift-2/#:~:text=The%20LIFT%20program%20will%20build,in%20rebates%20for%20affordable%20properties>.

the Grand Jury identifies some of the issues, initiatives, and programs that should be considered as part of a countywide planning process.

### **Consumer Choice, Incentives, and Rebates**

Ideally, the transition needed to electrify Marin's households can be accomplished in the near term, as consumers make the choice to replace old gas-fueled appliances that have reached the end of their useful lives with clean, efficient electric appliances. Local governments can play a critical role in supporting this shift through programs educating consumers about the advantages of electrification, and by providing financial incentives and subsidies as added inducements.

A countywide building electrification plan could be used to develop coordinated strategies aimed at public outreach and education. These strategies could go beyond past and current efforts by the county, and more fully engage each of Marin's cities and towns in coordinated outreach and marketing campaigns. Among other things, these outreach efforts would seek to educate consumers about the importance of household electrification in reducing greenhouse gas emissions and reducing the health and safety risks of indoor natural gas use. They would acquaint consumers with the electric appliances needed to electrify their household and the advantages offered by each of them, and provide information about the upfront costs of acquiring and installing these electric appliances, as well as the potential ongoing cost savings resulting from more efficient electric appliances. They would also direct consumers to available incentives offered by local utilities and by local and state government agencies, including enhanced subsidies and rebates available to lower income households. Importantly, they would also inform consumers about additional financing assistance available to lower income households in the form of low interest loans and other financing options.

Through its "Electrify Marin" program, the county currently offers rebates to single family property owners for the replacement of natural gas appliances with electric ones, including water heaters, furnaces, cooktops, as well as upgrading electric service panels, where needed.<sup>43</sup> This program, launched in January 2019 and funded by a grant from the Bay Area Air Quality Management District, achieved modest success in its initial two year phase, paying out \$152,750 in rebates for 129 appliance upgrades.<sup>44</sup> In recent months, there has been an uptick in activity, possibly associated with easing of pandemic restrictions, bringing the total to over 400 appliance upgrades. Earlier this year, the county's board of supervisors approved the decision to infuse the program with \$447,000 in additional funds received through the American Rescue Plan Act.<sup>45</sup> While Electrify Marin remains a vital program, its scope is limited. It remains unclear that these incentives will suffice in prompting the participation required to advance widespread electrification throughout the county.

In addition to the county's Electrify Marin rebate program, other subsidies are available to homeowners as well as owners of multi-unit residential buildings. These include:

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<sup>43</sup> County of Marin, Electrify Marin - Natural Gas Appliance Replacement Rebate Program website, <https://www.marincounty.org/depts/cd/divisions/sustainability/electrify>.

<sup>44</sup> County of Marin website, *Local Government Programs and Policies for Existing Building Decarbonization* (January 2021) <https://www.marincounty.org/-/media/files/departments/cd/planning/sustainability/electrify-mar/531-lessons-learned-report.pdf?la=en>.

<sup>45</sup> Richard Halstead, "Marin to spend \$4M in pandemic aid on climate projects," *Marin Independent Journal*, December 20 2021, <https://www.marinij.com/2021/12/20/marin-to-spend-4m-in-pandemic-aid-on-climate-projects/>.

- Bay Area Regional Energy Network - rebates and incentives for heat pump water heaters and panel upgrades<sup>46</sup>
- TECH Clean California - incentives for heat pump systems, heat pump water heaters<sup>47</sup>
- Marin Clean Energy - rebates for heat pump water heaters, solar, and battery storage<sup>48</sup>
- PG&E - rebates for heat pump water heaters, battery storage.<sup>49</sup>

In addition to rebates and incentives, acquisition and installation of electric appliances may also be supported by a variety of financing options that offer advantages over market-rate financing. Taken together, these incentive and financing programs furnish a critical boost to building electrification by raising consumer awareness and lowering financial barriers to adoption. They also advance equity to the extent that enhanced incentives and adequate financing options are available to low-income residents.

If sufficient resources are directed to rebate and financing programs, they could fulfill a role similar to the incentives and tax credits that have proven so effective in accelerating electric vehicle adoption in Marin and elsewhere. But unless and until those resources become available, the pace of electrification for existing buildings remains uncertain, and may fall well short of the level needed to reach emission reduction goals. Consequently, mandates may be needed as an additional means of ensuring these goals are met.

### **Mandating The Switch to Electric Appliances at the Time of Replacement**

Marin's proposed model reach code would apply to a small subset of existing buildings – residences that are being renovated. In contrast, the county's most recent Climate Action Plan refers to a much more sweeping mandate, potentially reaching all dual fuel single family residences in Marin. The Climate Action Plan states that the county will “[c]onsider adopting an ordinance in 2024, effective January 1, 2025, that requires homeowners to replace natural gas appliances, such as hot water heaters, stoves, cooktops, and clothes dryers, with high-efficiency electric appliances at time of replacement where feasible.”<sup>50</sup> Larkspur has a similar statement in its Climate Action Plan. Fairfax's Climate Action Plan also states that it will “[a]dopt an ordinance that phases in requirements to replace natural gas appliances and equipment with electric appliances and equipment at time of replacement.”

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<sup>46</sup> Bay Area Regional Energy Network (BayREN) website, which allows users to navigate to appliance specific rebates, <https://www.bayren.org/rebates-financing>.

<sup>47</sup> TECH Clean California Incentives website, <https://energy-solution.com/tech-incentives/>.

<sup>48</sup> MCE website, <https://www.mcecleanenergy.org/?s=rebates>, which explains various categories of rebates available.

<sup>49</sup> Pacific Gas and Electric (PG&E) website, [https://www.pge.com/en\\_US/search/search-results.page?%26query=waterheater](https://www.pge.com/en_US/search/search-results.page?%26query=waterheater), which explains various rebates available for water heaters.

<sup>50</sup> County of Marin, *Marin County Climate Action Plan 2030*, p. 29 [https://www.marincounty.org/-/media/files/departments/cd/planning/sustainability/climate-and-adaptation/cap-2030\\_12082020final.pdf](https://www.marincounty.org/-/media/files/departments/cd/planning/sustainability/climate-and-adaptation/cap-2030_12082020final.pdf)



**HVAC** – Heating, Ventilation, and Air Conditioning (HVAC). Heat pump technology, which transfers heat rather than generating it, provide a particularly efficient alternative to gas space heating. Air-source heat pumps are a significant portion of the cost of electrification but can provide two systems in one – both heating and cooling.

**Water Heating** – Heat pump water heaters transfer heat from the indoor or outdoor air into a storage tank to heat water.

**Cooking** – Induction stoves use electricity to directly heat pots and pans through a magnetic current rather than a direct heat source.

**Dryers** – Some clothes dryers are currently fueled by natural gas. Heat pump and electric resistance clothes dryers are an efficient alternative.

**Electric Panels** – Electric panel upgrades may be necessary in many buildings to support sufficient capacity for all-electric equipment. This can add significant costs to electrification retrofits.

*Credit: City of San Jose*

By mandating a transition to electric appliances, a time-of-replacement ordinance could be instrumental in advancing the county's greenhouse gas reduction goals. The county's proposed 2024 timetable leaves ample time for a thorough assessment of such an ordinance as part of a broader building electrification planning process.

One potential drawback of the proposed replacement ordinance lies in the financial burden that could result from the up-front costs required to purchase and install electric appliances. Because the ordinance applies only when the household has decided to replace an existing (presumably outdated or nonfunctioning) appliance, the burden would include any difference in cost between a new gas

appliance and its (new) electric counterpart. This burden can be reduced through rebates and incentives, including enhanced rebates aimed at lower-income households. The County's Climate Action Plan acknowledges this by noting the need to "[e]valuate the financial impact on households at different income levels and consider offering rebates or subsidies, in partnership with electricity providers if available, for disproportionately impacted households."<sup>51</sup> Existing rebate programs, including Electrify Marin, could provide greater focus on equity by directing additional dollars to needs-based rebates. If electrification of appliances is mandated by ordinance, rebates would be less important in incentivizing consumer choice, and more important in subsidizing the transition for those with greater financial need.<sup>52</sup> Rebate programs could be expanded or restructured accordingly.

Other issues that should be addressed in developing a time-of-replacement ordinance include:

- Identification of a pool of qualified contractors who can help guide consumer choice and install electric appliances economically and effectively
- Identifying effective enforcement mechanisms, including ways to minimize permit avoidance
- Creative ways to minimize upfront costs, including bulk buying of electric appliances which could be resold to consumers at discounted prices.

<sup>51</sup> County of Marin, *Marin County Climate Action Plan 2030*, p. 29.

<sup>52</sup> Incentivizing consumer choice would remain important for those households that are not subject to the proposed ordinance, for example, renters in multi-unit apartment buildings.

### **Electrifying Multi-Unit Residential Buildings**

Approximately 38 percent of current housing in Marin is renter-occupied, mostly in multi-unit buildings.<sup>53</sup> This segment of the housing market poses the difficult challenge of “split incentives,” which refers to the differing interests of landlords and tenants in addressing energy upgrades. Tenants, who typically pay utilities, benefit from lower energy costs. But landlords typically shoulder the capital costs of energy-related upgrades. Planners thus face the challenge of incentivizing building owners to make these improvements, even though they are not the primary beneficiaries of lower energy costs.

There are many strategies that would help to encourage landlords to undertake electrification related upgrades. For instance, expanding or increasing rebate programs that address multi-unit residential buildings could increase the number of appliances replaced. While Electrify Marin is available only to owners of single family properties, rebates for electrification of multi-unit buildings are available from other sources, including MCE and the Bay Area Regional Energy Network.<sup>54</sup> Owners of multi-unit buildings can use these rebates to lower their upfront costs, install new electric appliances, and benefit from the enhanced market appeal of clean, all-electric units with lower health risks and the potential for lower monthly energy bills for tenants. Publicizing and/or increasing the rebates for larger properties would encourage more participation.

Another strategy to increase electrification for rental properties would be requiring time of use replacement for multi-unit buildings. The proposed reach code requiring electrification at time of replacement, as currently described in Marin County's Climate Action Plan, would apply only to single-family homes. Expanding it to reach multi-unit residential buildings would significantly broaden its impact. Such an expansion would have to take into account the financial burden on building owners, and should be considered in the context of other measures to ease this burden (such as access to adequate rebates and other incentives)

Finally, as discussed in more detail below, planners should consider implementing benchmarking and performance standards (i.e., a minimum energy efficiency standard) for large residential complexes. This would be an opportunity to incentivize electrification and/or other efficiency measures, possibly using a “flexible path” approach similar to that contemplated by Marin's proposed reach code for residential renovations.

### **Using Building Performance Standards to Electrify Existing Buildings**

For buildings that consume large amounts of energy, such as large multi-unit residential or commercial buildings, the use of building performance standards can be a practical, measurable, and effective means of reducing greenhouse gas emissions. Using this approach, greenhouse gas emissions standards, based on the size and function of the building, are established, and then enforced through audits and fees.

The US Environmental Protection Agency uses the term “benchmarking” to describe the measurement of a building's energy usage as compared with similar-sized buildings to track

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<sup>53</sup> Caroline Peattie and Lucie Hollingsworth, “Marin Voice: Housing element can advance racial, economic equity,” *Marin Independent Journal*, March 17, 2022, <https://www.marinij.com/2022/03/17/marin-voice-housing-element-can-advance-racial-economic-equity/>.

<sup>54</sup> BAYREN “Multifamily Property Owners,” <https://www.bayren.org/rebates-financing/multifamily-property-owners>

energy consumption over time, and the agency has developed a widely used tool to track energy usage.<sup>55</sup> The State, as well as several jurisdictions around the Bay Area, currently require benchmarking for large buildings. In particular, the California Energy Commission has promulgated a statewide regulation that requires owners of all buildings over 50,000 square feet to annually report energy usage, and several jurisdictions in the region have adopted benchmarking ordinances based on size or building classification, though they vary in their requirements.<sup>56</sup> Elsewhere in the country, a handful of large cities, including New York, Washington, DC, and St. Louis, have developed and begun to implement building performance standards.

**Table 1 - Bay Area Jurisdictions Requiring Annual Benchmarking**

<b>Jurisdiction</b>	<b>Square Footage Threshold</b>	<b>Building Use</b>
San Francisco	50,000 10,000	Residential Commercial or Industrial
Brisbane	10,000	Any class of privately owned building
Berkeley	25,000	Any class of privately owned building
San Jose	50,000 10,000	Residential Commercial or Industrial

*Credit: California Energy Commission*

Although no jurisdictions in the Bay Area have yet implemented ordinances requiring building owners to meet specific energy consumption targets, the jurisdictions in Table 1 all anticipate using benchmarking data to develop enforceable building performance standards in the future. In the meantime, San Jose and Berkeley have voluntary programs that challenge owners to decrease greenhouse gas emissions each year or complete other energy efficiency related activities. Many of the climate action plans in Marin state they will consider developing building performance standards for existing buildings, though no jurisdiction has set any benchmarking requirements beyond those set by the California Energy Commission. The development of performance standards will require assessment of complex issues such as appropriate building size or usage exemptions, financing support, how compliance will be demonstrated, as well as equity and gentrification concerns among other issues. The collection of energy use data could assist with developing performance standards in the future.

<sup>55</sup> ENERGY STAR Portfolio Manager Portfolio Manager website, <https://www.energystar.gov/buildings/benchmark>.

<sup>56</sup> California Energy Commission, Building Energy Benchmarking Program website, <https://www.energy.ca.gov/programs-and-topics/programs/building-energy-benchmarking-program/exempted-local-benchmarking>.

## **FINDINGS**

- F1. With the building sector accounting for approximately 34 percent of greenhouse gas emissions in Marin County, it will be necessary to substantially reduce emissions from that sector if the county and its cities and towns are to meet their 2030 greenhouse gas reduction goals.
- F2. Reducing or eliminating natural gas as a fuel source in buildings will dramatically reduce greenhouse gas emissions from Marin County's building sector.
- F3. The use of natural gas in buildings gives rise to health and safety risks, including adverse health effects attributed to exposure to natural gas, and safety risks posed by pipeline leaks, ruptures, and explosions. These health and safety risks serve as additional reasons to eliminate natural gas as a fuel source in new and existing buildings.
- F4. The timely reduction of greenhouse gas emissions from Marin County's building sector will require in-depth, comprehensive, and coordinated planning. A countywide planning process, coordinated by Marin Climate and Energy Partnership or the county's Sustainability Team, would be an effective and efficient means of sustaining focus and leveraging the resources needed for developing a Countywide Building Electrification Plan.
- F5. Underserved communities and lower income households have greater vulnerability to rising energy costs and will likely require extra financial support to mitigate those costs and reduce household greenhouse gas emissions through measures that require significant up-front investment.
- F6. The timely electrification of existing buildings will likely require one or more mandatory measures, supported where necessary by financial subsidies and rebates.

## **RECOMMENDATIONS**

- R1. On or before January 1, 2023, Marin County and each of its cities and towns that have not already done so should adopt a reach code banning natural gas connections in newly constructed buildings.
- R2. On or before January 1, 2023, Marin County and each of its cities and towns that have not already done so should adopt a reach code requiring energy efficiency measures in connection with renovations of existing residential buildings. The reach code should specify the size of the renovation that will trigger the requirement and provide flexibility by allowing the applicant to choose from a list of energy efficiency measures, including electrification of gas appliances.
- R3. Marin County and each of its cities and towns, collaborating through the Marin Climate and Energy Partnership or otherwise, should develop a comprehensive Countywide Building Electrification Plan to be completed on or before January 1, 2024. The Plan should identify those strategies, programs, and concrete actions necessary to bring about an equitable, prompt, and material acceleration of building electrification throughout the county.

## **REQUEST FOR RESPONSES**

Pursuant to Penal code section 933.05, the grand jury requests responses as follows:

From the following governing bodies:

- City of Belvedere (F1–F6, R1- R3)
- City of Larkspur (F1–F6, R1- R3)
- City of Mill Valley (F1–F6, R1- R3)
- City of Novato (F1–F6, R1- R3)
- City of San Rafael (F1–F6, R1- R3)
- City of Sausalito (F1–F6, R1- R3)
- Marin County Board of Supervisors (F1–F6, R1-R3)
- Town of Corte Madera (F1–F6, R1- R3)
- Town of Fairfax (F1–F6, R2- R3)
- Town of Ross (F1–F6, R1- R3)
- Town of San Anselmo (F1–F6, R1- R3)
- Town of Tiburon (F1–F6, R1- R3)

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

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

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

**RESOLUTION NO.**

**A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF SAN RAFAEL'S RESPONSE TO THE 2021-2022 MARIN COUNTY CIVIL GRAND JURY REPORT ENTITLED "ELECTRIFYING MARIN'S BUILDINGS: A COUNTYWIDE APPROACH"**

**WHEREAS**, pursuant to Penal Code section 933(c), a public agency which receives a final grand jury report addressing aspects of the public agency's operations must, within ninety (90) days, provide a written response to the presiding judge of the Superior Court, with a copy to the foreperson of the grand jury, responding to the report's findings and recommendations; and

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

**WHEREAS**, the City Council of the City of San Rafael has received and reviewed the Marin County Grand Jury Report, dated June 6, 2022, entitled "Electrifying Marin's Buildings: A Countywide Approach", and has added the discussion of this report to the August 1, 2022 City Council meeting agenda to consider the City's response.

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

1. Approves and authorizes the Mayor to execute the City's response to the Marin County Grand Jury's June 6, 2022 report, entitled "Electrifying Marin's Buildings: A Countywide Approach", a copy of which is attached hereto as Exhibit A and incorporated herein by reference.
2. Directs the City Clerk to forward the City's response forthwith to the presiding judge of the Marin County Superior Court and to the foreperson of the Marin County Grand Jury.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on the 1<sup>st</sup> day of August 2022, by the following vote to wit:

**AYES: COUNCILMEMBERS:**

**NOES: COUNCILMEMBERS:**

**ABSENT: COUNCILMEMBERS:**

LINDSAY LARA, City Clerk

# RESPONSE TO GRAND JURY REPORT

Report Title: ELECTRIFYING MARIN'S BUILDINGS: A COUNTYWIDE APPROACH  
Report Date: June 6, 2022

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

## FINDINGS:

- We agree with the findings numbered **F1, F2, F3, F4, F5, and F6**
- We disagree wholly or partially with the findings numbered \_\_\_\_\_  
(See Attachment A)

## RECOMMENDATIONS:

- Recommendations numbered \_\_\_\_\_ have been implemented.
- Recommendations numbered \_\_\_\_\_ have not yet been implemented but will be implemented in the future.
- Recommendations numbered **R1, R2 and R3** require further analysis. (See Attachment A)
- Recommendations numbered \_\_\_\_\_ will not be implemented because they are not warranted or are not reasonable.

DATED: \_\_\_\_\_ Signed: \_\_\_\_\_  
KATE COLIN, Mayor

ATTEST: \_\_\_\_\_  
Lindsay Lara, City Clerk

Number of pages attached: 3

**ATTACHMENT A: RESPONSE OF THE CITY OF SAN RAFAEL TO GRAND JURY REPORT “ELECTRIFYING MARIN’S BUILDINGS: A COUNTYWIDE APPROACH”**

**FINDINGS AND RESPONSES**

***F1. With the building sector accounting for approximately 34 percent of greenhouse gas emissions in Marin County, it will be necessary to substantially reduce emissions from that sector if the county and its cities and towns are to meet their 2030 greenhouse gas reduction goals.***

Response: Agree

***F2. Reducing or eliminating natural gas as a fuel source in buildings will dramatically reduce greenhouse gas emissions from Marin County’s building sector.***

Response: Agree

***F3. The use of natural gas in buildings gives rise to health and safety risks, including adverse health effects attributed to exposure to natural gas, and safety risks posed by pipeline leaks, ruptures, and explosions. These health and safety risks serve as additional reasons to eliminate natural gas as a fuel source in new and existing buildings.***

Response: Agree

***F4. The timely reduction of greenhouse gas emissions from Marin County’s building sector will require in-depth, comprehensive, and coordinated planning. A countywide planning process, coordinated by Marin Climate and Energy Partnership or the County’s Sustainability Team, would be an effective and efficient means of sustaining focus and leveraging the resources needed for developing a Countywide Building Electrification Plan.***

Response: Agree

***F5. Underserved communities and lower income households have greater vulnerability to rising energy costs and will likely require extra financial support to mitigate those costs and reduce household greenhouse gas emissions through measures that require significant up-front investment.***

Response: Agree

***F6. The timely electrification of existing buildings will likely require one or more mandatory measures, supported where necessary by financial subsidies and rebates.***

Response: Agree



## RECOMMENDATIONS AND RESPONSES

***R1. On or before January 1, 2023, Marin County and each of its cities and towns that have not already done so should adopt a reach code banning natural gas connections in newly constructed buildings.***

Response: This recommendation requires further analysis.

The City of San Rafael is undertaking an analysis of a potential all-electric reach code that will include public community engagement and input on the topic. This includes analysis of greenhouse gas emissions, economic/financial impacts, social equity, and resiliency. This analysis will be applied to a variety of building types, including single family and multi-family residential, accessory dwelling units, and various commercial building types common to San Rafael. The City is working with the County of Marin, Town of San Anselmo, and MCE Clean Energy as part of the Green Building Reach Codes Steering Committee to develop model reach codes and try to provide consistency across jurisdictions. However, there are significant differences amongst jurisdictions in terms of building stock and development as well as affordable housing and economic development goals that require different considerations. The City Council will consider a reach code ordinance later this fall and if adopted it would go into effect January 1, 2023.

***R2. On or before January 1, 2023, Marin County and each of its cities and towns that have not already done so should adopt a reach code requiring energy efficiency measures in connection with renovations of existing residential buildings. The reach code should specify the size of the renovation that will trigger the requirement and provide flexibility by allowing the applicant to choose from a list of energy efficiency measures, including electrification of gas appliances.***

Response: This recommendation requires further analysis.

Like Recommendation 1, the City is conducting an analysis of reach codes for existing buildings among a variety of residential building types taking into account the same set of considerations for new construction: greenhouse gas reductions, economic impacts, equity, and resiliency. As part of this analysis, the City is considering a flexible path with a menu of energy efficiency measures that includes electrification of appliances which would specify the size of the renovation. The City is also considering the standard Tier 1 and Tier 2 options for reach codes as well as other options to eliminate or reduce natural (methane) gas use in existing buildings.

***R3. Marin County and each of its cities and towns, collaborating through the Marin Climate and Energy Partnership or otherwise, should develop a comprehensive Countywide Building Electrification Plan to be completed on or before January 1, 2024. The Plan should identify those strategies, programs, and concrete actions necessary to bring about an equitable, prompt, and material acceleration of building electrification throughout the county.***

Response: This recommendation requires further analysis.

We agree that countywide collaboration is important in achieving significant timely reductions in greenhouse gas emissions from Marin County's building sector and should address all these factors. Collaboration is already underway through the Marin Climate and Energy Partnership

(MCEP), County Sustainability Team, and Bay Area Regional Energy Network (BayREN). In addition, the City of San Rafael has been working with the County, the Town of San Anselmo and MCE Clean Energy to try to align Green Building Reach Codes this year and accelerate building decarbonization efforts.

A Countywide Building Electrification Plan may be effective and efficient, but care will need to be taken to not divert from existing programs and activities. All jurisdictions would need to agree and contribute to the plan, it would require additional resources, and our utility partners MCE and PG&E would need to participate and contribute to the effort as well. Though discussions are happening at this date no agreement has been made. More analysis will be required to determine the most effective and efficient route to take. Should all the jurisdictions agree to pursue a Countywide Building Electrification Plan in addition to the current collaborative efforts, the City would likely participate provided there was commitment to implementation and there were adequate resources to do so.

DRAFT

July 20<sup>th</sup>, 2022



Protecting Marin Since 1934

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

Dear Honorable City Council Members:

Marin Conservation League supports a robust coordinated effort by Marin County and its towns, cities, and agencies to accelerate building electrification. As the Marin County Grand Jury noted in its June 6, 2022 report, *Electrifying Marin's Buildings: A Countywide Approach*, “. . . [t]he timely reduction of greenhouse gas emissions from Marin County's building sector will require in-depth, comprehensive and coordinated planning.”

In framing your required response to the Grand Jury, we urge you to commit to its recommendations R1 and R2 to adopt a reach code banning natural gas in new buildings and incentivizing electrification when renovating existing buildings. The countywide model ordinance now being finalized by the County and other jurisdictions enables each body to implement these recommendations by the January 1, 2023 target suggested by the Grand Jury.

In addition, we urge your continued participation with towns and cities countywide to implement recommendation R3 to develop a comprehensive Countywide Building Electrification Plan by January 1, 2024 in order to accomplish electrification of all existing buildings as rapidly as feasible. In addition to the excellent strategies for existing buildings suggested by the Grand Jury, we offer additional approaches below (items 3.a-f).

It's critical that Marin jurisdictions immediately enact a model ordinance that requires that all new buildings be all-electric, strongly incentivizes electric space and water heating in major renovations, and puts Marin firmly on track to accelerate electrification of existing buildings and eliminate installations of gas appliances altogether by 2035.

Why is timely action so important? It will 1) reduce public health and safety risks, 2) avoid stranded assets and exposure to rising fossil fuel prices, and 3) combat climate change.

### **Reduce Public Health and Safety Risks**

Methane, a potent greenhouse gas (GHG) is the principal component of natural gas. It also poses numerous health and safety risks. Eliminating natural gas use in buildings reduces a major fire risk following earthquakes and removes a very dangerous combustion source for structure fires and explosions. Ending natural gas appliance use eliminates their release of toxic combustion byproducts into our homes and businesses that have long term health impacts, especially for children and the elderly. These toxic byproducts include carbon monoxide, nitrogen dioxide,

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carbon dioxide, formaldehyde, and fine particulate matter. Health impacts include much higher rates of asthma in children.

### **Avoid Stranded Assets and Exposure to Rising Fossil Fuel Prices**

Since underground gas piping installed today will last 30-50 years, this infrastructure will become obsolete well before the end of its useful life, representing a wasteful cost that will be passed on to ratepayers in our utility bills. Buildings typically last more than 50 years and if constructed with gas infrastructure those buildings will need to be retrofitted as society moves to phase out natural gas. PG&E acknowledges that we are moving toward all-electric buildings and supports that shift, including phasing out current CPUC subsidies for gas lines and appliances in new residential construction.

All-electric new buildings, by avoiding the cost of installing exterior and interior gas piping, have lower capital costs than identical new buildings with both gas and electricity. They also will likely have lower energy costs, as prices for natural gas have risen sharply during the past year and are forecast to remain high in the future.

### **Combat Climate Change**

The recent Intergovernmental Panel on Climate Change (IPCC) report makes it clear that we must accelerate the reduction in our GHG emissions if we are to meet our climate goals of reducing emissions 40% by 2030 (from 1990 levels) and below net zero by 2045. Approximately 25 percent of California's GHG emissions, and 34 percent of Marin emissions, come from the buildings in which we live and work. While the normal operation of gas appliances produces carbon dioxide, the methane in natural gas is an even more potent GHG than carbon dioxide, and significant leakage of methane directly to the atmosphere occurs during its production, distribution, storage, and even its use inside our buildings. With this leakage, natural gas is nearly as dirty a fuel as coal. Since appliances are typically replaced every 10-20 years, we must start now to assure their replacement with electric appliances in time to meet climate goals.

### **What Can Marin County Do?**

1. Stop adding more natural gas infrastructure immediately by enacting an ordinance mandating that new residential and commercial construction be all-electric. Marin already is seeing applications for thousands of new units to address the affordable housing crisis and to meet our Regional Housing Needs Allocation (RHNA) requirements. The countywide model ordinance now being finalized needs to be adopted by all Marin's towns and cities, so we have uniform standards that are easier for the construction industry to understand and follow.
2. At the same time, enact reach code ordinances countywide that require or strongly encourage a shift now from gas to electrical appliances during significant building renovations, as much of the construction in Marin takes the form of renovating existing

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structures. Space and hot water heaters have a useful life of 10-20 years and we must avoid locking in their emissions for that period of time. Because significant renovation projects frequently already involve upgrades to electrical panels and wiring, changing to electrical appliances as part of a renovation should not involve significant additional costs for those upgrades.

3. Complete a countywide Building Electrification Plan by July 1, 2023 to accelerate the electrification of our existing buildings, in accordance with recommendation R3 and findings F4-F6 of the Marin Civil Grand Jury report. A coalition of stakeholders collaborating on the plan should include: MCE Clean Energy, PG&E, local jurisdiction stakeholders, building societies, labor unions, and community/environmental advocacy groups. This plan should address single family and multi-family residences as well as commercial buildings, include strategies to make sure building electrification takes place in an equitable manner, and contain strong incentives to replace old gas space and water heaters with high efficiency heat pump space and water heaters, on or before completion of their life cycle.

Marin Conservation League recognizes that any plan for shifting existing buildings from gas appliances to electrical appliances must address a series of challenges, especially since such replacement often occurs on a short time-line when an existing appliance fails. However, countywide programs can and must meet these challenges in a number of ways. We suggest that the plan include at least the following elements.

- a. Educate the public on the benefits and cost savings of operating electric appliances, the meaningful rebate programs that are currently<sup>1</sup> available, resources to help consumers identify qualified contractors, and prudent lifecycle planning for replacement of old equipment. Work with home energy assessment providers to include such information in their programs. Work with suppliers and manufacturers to improve availability of electrical appliances and consumer education.
- b. Require that at time of sale, building inspections identify the remaining useful life of existing gas appliances and the estimated cost of any necessary electrical service upgrades, so that potential buyers know what is required to make buildings “electric ready” and how soon after purchase they may need to replace their gas appliances with more efficient electric appliances.
- c. Require replacement of gas space heaters, water heaters, and other appliances with electric within five years of a building's purchase, and prohibit installation of gas appliances in all existing buildings after 2035.

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<sup>1</sup> Currently the best source for available rebates from state and local sources can be found at <https://www.bayren.org/rebates-financing>.

- d. Provide and facilitate rebates for purchase and installation costs of electrical appliances, including any necessary electric panel upgrades, so they are no more expensive than gas appliances. Apply incentives at the point of purchase whenever possible. Consider tax rebates and property assessed clean energy (PACE) or other financing options to help achieve such price parity.
- e. In addition to the existing incentives from MCE, PG&E, Bay Area Regional Energy Network (BayREN), Electrify Marin, and local governments, take steps to increase incentives by having the countywide building electrification plan coalition submit comprehensive, innovative, ambitious multi-stakeholder proposals to obtain large-scale funding from state and federal sources.
- f. Address any special challenges to electrification of multi-family dwelling units or single-family homes in lower-income areas. Prioritize funding for building electrification in lower-income areas; such a focus will increase the potential success of grant applications, and (regardless of grants) is the right thing to do.

Thank you for your commitment to this important countywide means of mitigating climate change within the diminishing timeframe we confront.

Sincerely,



Robert Miller  
President, Marin Conservation League  
Chair, MCL Climate Action Working Group



Ken Strong  
Member, MCL Climate Action Working Group

Bill Carney  
Member, MCL Climate Action Working Group

ccs:

Cory Bytof, Sustainability Manager  
Jim Schutz, City Manager  
Alicia Giudice, Community Development Director  
Lindsay Laura, City Clerk

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**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: City Attorney and Public Works

Prepared by:  
Genevieve Coyle, Assistant City Attorney  
April Miller, Director of Public Works

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

**TOPIC:** HEARING ON RESOLUTION OF NECESSITY INITIATING EMINENT DOMAIN PROCESS TO ACQUIRE A PORTION OF 700/740 FRANCISCO BOULEVARD WEST, SAN RAFAEL, CALIFORNIA IN CONNECTION WITH PHASE 1 OF THE FRANCISCO BOULEVARD WEST MULTI-USE PATHWAY PROJECT

**SUBJECT:** RESOLUTION TO DETERMINE THE NECESSITY TO ACQUIRE A PORTION OF PROPERTY BY EMINENT DOMAIN IN CONNECTION WITH PHASE 1 OF THE FRANCISCO BOULEVARD WEST MULTI-USE PATHWAY PROJECT; TO AUTHORIZE COMMENCEMENT OF LITIGATION TO ACQUIRE PROPERTY BY EMINENT DOMAIN; AND TO SEEK AN ORDER OF POSSESSION (CODE OF CIVIL PROCEDURE SECTION 1245.220)

**RECOMMENDATION:**

Staff recommends that the City Council open the hearing on the Resolution of Necessity, take testimony, close the hearing and consider adopting the Resolution of Necessity authorizing the acquisition of property by eminent domain in connection with Phase 1 of the Francisco Boulevard West Multi-Use Pathway project.

**BACKGROUND:**

In 2018, the City began construction of Phase 1 of the Francisco Boulevard West Multi-Use Pathway project ("Project"), which includes the construction of a bicycle and pedestrian pathway between Andersen Drive and Rice Drive in San Rafael. The multi-use pathway project was separated into two phases due to fiscal constraints. Phase 1 involved the installation of a class 1 multi-use path from Andersen drive to Rice Drive, which parallels SMART's rail system. Phase 2 was completed in spring 2021 and involved installation of a Class IV two directional bicycle facility from Rice Drive to Second Street.

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**FOR CITY CLERK ONLY**

File No.: \_\_\_\_\_

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

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

The Project included an asphalt pathway, fencing to separate the pathway from the SMART tracks, retaining walls, lighting, striping, a pedestrian crosswalk signal, and other supporting items. Phase 1 was completed in 2019.

Part of the Project was constructed on an approximately 18,398 square foot portion of privately owned property ("Property") located at 700/740 Francisco Boulevard West, San Rafael, California (APNs 018-014-66 and 018-014-67). That Property is owned by Francisco Boulevard Investors, LLC and improved with an auto dealership. On August 23, 2021, Francisco Boulevard Investors, LLC filed a complaint for inverse condemnation against the City for building a portion of the Project on its Property ("Inverse Action"). Before the Inverse Action was filed, the City made numerous efforts to reach an agreement with Francisco Boulevard Investors, LLC to purchase the Property that was necessary for the Project.

After the Inverse Action was filed, the City met and conferred with Francisco Boulevard Investors, LLC's attorney, who urged the City to file a complaint in eminent domain to acquire the Property. The Parties entered a stipulation providing that if the City Council, in its sole and absolute discretion, decides to consider and adopt a Resolution of Necessity to acquire the Property, Francisco Boulevard Investors, LLC will waive its right to challenge the City's right to acquire the Property via eminent domain. The proposed Resolution of Necessity is attached as Attachment 1. A copy of the Stipulation is attached as Attachment 2.

**ANALYSIS:**

A hearing on the Resolution of Necessity must be held and the resolution approved by a four-fifths (4/5) vote of the City Council prior to the City moving forward with the eminent domain process. Adoption of the Resolution of Necessity authorizes the City to acquire the Property by eminent domain, deposit the probable amount of just compensation with the State Treasury, and obtain an order for prejudgment possession of the Property. The purpose of the hearing on the Resolution of Necessity is to provide the property owner with an opportunity to address the City Council on this matter relating to the City's necessity acquiring the Property for the Project. However, the amount of compensation owed for the acquisition will be decided through continued negotiations or by a court of law, and thus, compensation is not a proper matter to be discussed at the hearing.

State law requires the City Council make certain findings with respect to the adoption of the Resolution of Necessity. The findings for the adoption of the Resolution of Necessity at the hearing of the City Council must include the following information:

1) The Public Interest and Necessity Require the Project

First, the City Council must find that the public interest and necessity require the Project. Here, the Property is necessary for a Project that provides residents, commuters, and students safe and accessible access to the Downtown San Rafael SMART Station, the Bettini Transit Center, and the Ferry. The Project is a component of a larger north-south non-motorized transportation network in Marin. The Project encourages increased cycling and walking trips and reduces the number of vehicle miles traveled in the City. The Project is for a public use and would not have been possible if the City could not acquire the Property.

2) The Interests Sought to be Acquired are Necessary for the Project

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**



Second, the City Council must find that the interests sought to be acquired are necessary for the Project. As previously described, the Property sought to be acquired by eminent domain is necessary for the Project.

3) The Project is Located in such a Manner as to Offer the Greatest Public Benefit with the Least Private Detriment

Third, the City Council must find that the Project is located in such a manner as to offer the greatest public benefit with the least private detriment. Prior to the Project's construction, staff and City consultants evaluated a variety of options and determined that Project use of the Property, which was an undevelopable seasonal wetland/drainage swale/ditch that was separated from the auto dealership that occupies the remainder of 700/740 Francisco Boulevard West by a fence, and does not impact the operations of the car dealership(s), would result in the least private injury. Accordingly, the Project was designed to afford the greatest public benefit with the least possible burden on the affected property owner.

4) A Government Code Offer Has Been Extended To Each Property Owner

Fourth, the City Council must find that the City has extended an offer pursuant to Government Code section 7267.2 to each property owner. On July 6, 2022, the City sent a purchase offer in conformance with Government Code section 7267.2(a) to the owners of record. Since sending the offer, the City has reached out to the property owner's attorney to ascertain whether a negotiated purchase would be possible. To date, these efforts have been unsuccessful. On July 14, 2022, the City mailed the property owner a Notice of Intention to consider adoption of a Resolution of Necessity to acquire the Property by eminent domain at its regular meeting of Monday, August 1, 2022. A copy of the notice provided to the owner is attached as Exhibit B to the Resolution of Necessity.

**ENVIRONMENTAL REVIEW:**

The City has fully complied with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, for acquiring the Property described herein when [on December 4, 2017](#), the City adopted a Mitigated Negative Declaration for the Project in Resolution No. 14428.

**PUBLIC OUTREACH AND NOTICING:**

The posting of the City Council agenda serves as the notice to the general public. Notice of the public hearing was mailed to the property owners and business tenants at least 15 days in advance of the hearing, as required by state law.

**FISCAL IMPACT:**

The amount of compensation owed for the acquisition will be decided through continued negotiations or by a court of law. While it is unknown as to what the ultimate cost will be for the acquisition of the Property, the City obtained an appraisal of the Property in June 2022 that appraised it for \$368,000.

**OPTIONS:**

1. Adopt Resolution as presented.
2. Adopt Resolution with modifications.
3. Direct staff to return with more information.

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

**RECOMMENDED ACTION:**

Conduct a Hearing and Consider Adopting the Resolution.

**ATTACHMENTS:**

1. Resolution, including:
  - Exhibit A – Legal Description and Plat Map
  - Exhibit B – Notice of Intention to Adopt Resolution of Necessity
2. Stipulation

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

**RESOLUTION NO.**

**A RESOLUTION TO DETERMINE THE NECESSITY TO ACQUIRE A PORTION OF PROPERTY BY EMINENT DOMAIN IN CONNECTION WITH PHASE 1 OF THE FRANCISCO BOULEVARD WEST MULTI-USE PATHWAY PROJECT; TO AUTHORIZE COMMENCEMENT OF LITIGATION TO ACQUIRE PROPERTY BY EMINENT DOMAIN; AND TO SEEK AN ORDER OF POSSESSION (CODE OF CIVIL PROCEDURE SECTION 1245.220)**

Property: Approximately 18,398 square foot Portion of  
700/740 Francisco Blvd. West, San Rafael, California  
(APNs 018-014-66 and 018-014-67)

**WHEREAS**, the City Council has determined that the City of San Rafael ("**City**") needs to acquire certain property interests in connection with Phase 1 of the Francisco Boulevard West Multi-Use Pathway project.

**NOW, THEREFORE BE IT RESOLVED**, that the City Council of the City, by vote of four-fifths or more of its members, FINDS, DETERMINES, DECLARES, AND RESOLVES the following:

1. The City has constructed Phase 1 of Francisco Boulevard West Multi-Use Pathway project ("**Project**"), which includes the construction of a bicycle and pedestrian pathway between Andersen Drive and Rice Drive in San Rafael. The Project included, but is not limited to, an asphalt pathway, fencing to separate the pathway from the SMART tracks, retaining walls, lighting, striping, a pedestrian crosswalk signal, and other supporting items. The Project is for a public use.

2. In connection with the Project, the City needs to acquire approximately 18,398 square feet of that certain privately owned property known as 700/740 Francisco Boulevard West, San Rafael, California (APNs 018-014-66 and 018-014-67) and more particularly described and depicted on Exhibit A attached to this Resolution and incorporated herein ("**Property**"). The Property is necessary for the Project.

3. The City is authorized to acquire the Property by eminent domain for the public use set forth herein in accordance with the California Constitution, Article 1, Section 19; the California Eminent Domain Law, Code of Civil Procedure Section 1230.010 et seq., including, but not limited to, sections 1240.010 through 1240.050 inclusive, and sections 1240.110, 1240.120, 1240.150, 1240.220, 1240.320, 1240.330, 1240.350, 1240.410, 1240.510, 1240.610, 1240.650, and 1240.660; Government Code sections 37350.5 and 38730; Streets & Highway Code Section 10102; and other provisions of law.

4. On July 15, 2022, the City mailed a Notice of Intention to Adopt a Resolution of Necessity ("Notice of Intention") for acquisition by eminent domain of the Property, which notice is attached hereto as Exhibit B, and incorporated herein. The

Notice of Intention was mailed to all persons whose name(s) appear on the last Equalized County Assessment Roll as having an interest in the Property, and to the addresses appearing on the Roll. The Notice of Hearing advised the persons of their right to be heard on the matters referred to in the Notice of Hearing on the date and at the time and place stated.

5. The hearing referenced in the Notice of Intention was held on August 1, 2022, at the time and place stated in said notice, and all interested parties were given an opportunity to be heard. The hearing was then closed.

6. Based upon the evidence presented at the hearing, the City Council of the City of San Rafael finds, determines, declares, and resolves each of the following:

- A. The public interest and necessity require the proposed Project;
- B. The interests in the Property sought to be acquired by eminent domain are necessary for the Project;
- C. The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- D. The City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property described herein, as well as any other matter regarding the right to take said Property by eminent domain, including but not limited to, making the offer required by Government Code Section 7267.2(a); and
- E. The City has fully complied with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, for acquiring the Property described herein when on December 4, 2017, the City adopted a Mitigated Negative Declaration for the Project in Resolution No. 14428.

7. The City Attorney is hereby authorized to acquire in the name of the City the Property described in this Resolution in accordance with the provisions of California Eminent Domain Law, to commence an action in eminent domain, to deposit the probable amount of compensation with the California State Treasury, to apply to the Superior Court for an order permitting the City to take immediate possession and make immediate use of the Property for the Project, and to take all necessary steps to acquire the Property under the law.

I, **Lindsay Lara**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 1<sup>st</sup> day of August 2022 by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

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

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List of Exhibits:

- A. Legal Description and Plat Map of the Property
- B. Notice of Intention to Adopt a Resolution of Necessity

Exhibit A

**LEGAL DESCRIPTION FOR RIGHT OF WAY (RW) TAKE**

**APN 018-014-67 AND 018-014-66**

A portion or Real Property situated in the City of San Rafael, County of Marin, State of California, more particularly being a portion of the Lands of Francisco Boulevard Investors, LLC as described in that certain Grand Deed Recorded in Series 2004-0052865 in the Office of the County Recorder of said Marin County in addition to a portion of the Lands of Francisco Boulevard Investors, LLC as described in that certain Grand Deed Recorded in Series 2011-0052704 in the Office of the County Recorder of said Marin County; said portions being more particularly described as follows:

**Beginning** at the most easterly corner of said Lands of Francisco Boulevard Investors, LLC as described in that certain Grand Deed Recorded in Series 2011-0052704; thence along the boundary of said Lands South 49°38'54" West 17.00 feet; thence continuing along the boundary of said Lands North 49°10'05" West 381.01 feet to the northeasterly Right of Way Line of the Lands of the Sonoma-Marín Area Rail Transit (SMART) District; thence along said northeasterly Right of Way Line North 40°20'55" West 102.25 feet to the most southerly corner of said Lands of Francisco Boulevard Investors, LLC as described in that certain Grand Deed Recorded in Series 2004-0052865; thence along said northeasterly Right of Way Line and the southwest line of said Lands of Francisco Boulevard Investors, LLC North 40°20'55" West 90.39 feet; thence into said Lands of Francisco Boulevard Investors, LLC North 49°39'05" East 24.60 feet; thence South 40°20'55" East 90.39 feet to a point on the easterly line of said Lands of Francisco Boulevard Investors, LLC, said point also being on the westerly line of aforesaid Lands of Francisco Boulevard Investors, LLC as described in that certain Grand Deed Recorded in Series 2011-0052704; thence into said Lands South 40°20'55" East 172.11 feet; thence North 46°51'05" East 40.86 feet; thence South 51°45'27" East 50.51 feet to a point on the boundary line of said Francisco Boulevard Investors, LLC; thence along said boundary line South 40°21'08" East 259.13 feet to the **Point of Beginning.**

Contains 18,398 sq. ft. (0.422 acres) more or less

**Bearings based upon the California Coordinate System (CCS 83, Zone 3)**

All distances are in feet and decimals thereof.

Signature \_\_\_\_\_

*[Handwritten Signature]*  
\_\_\_\_\_  
Licensed Land Surveyor (PLS 7739)

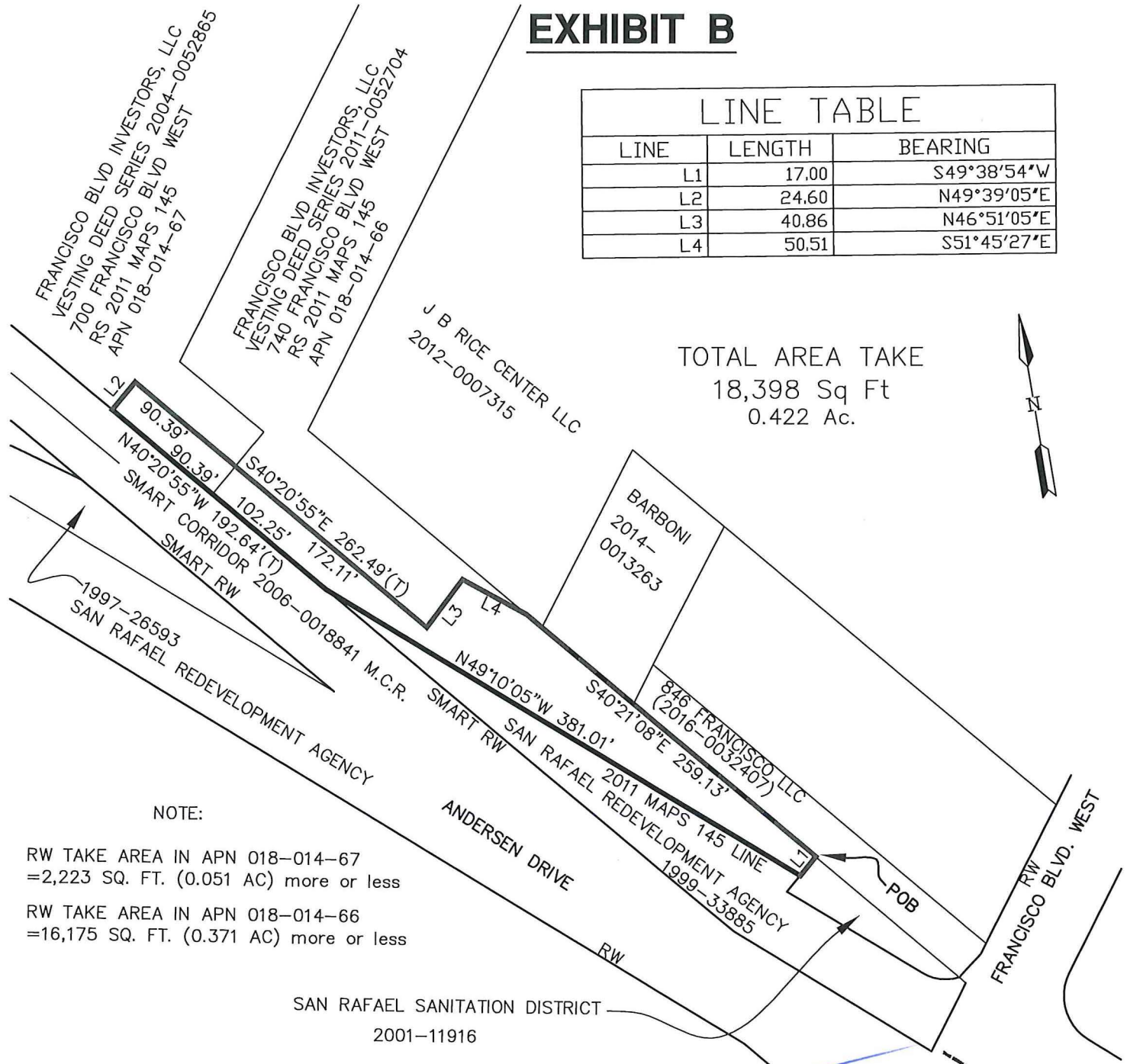




# EXHIBIT B

LINE TABLE		
LINE	LENGTH	BEARING
L1	17.00	S49°38'54"W
L2	24.60	N49°39'05"E
L3	40.86	N46°51'05"E
L4	50.51	S51°45'27"E

TOTAL AREA TAKE  
18,398 Sq Ft  
0.422 Ac.

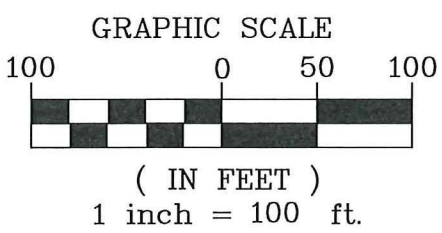


**NOTE:**

RW TAKE AREA IN APN 018-014-67  
=2,223 SQ. FT. (0.051 AC) more or less

RW TAKE AREA IN APN 018-014-66  
=16,175 SQ. FT. (0.371 AC) more or less

SAN RAFAEL SANITATION DISTRICT  
2001-11916



**LEGEND**

- APN ASSESSOR'S PARCEL NUMBER
- M.C.R. MARIN COUNTY RECORDS
- P.O.B. POINT OF BEGINNING
- RW RIGHT OF WAY
- (T) TOTAL DISTANCE

**RIGHT OF WAY TAKE OVER A PORTION OF THE  
LANDS OF THE FRANCISCO BLVD. INVESTORS, LLC  
AS RECORDED IN SERIES 2004-0052865 AND  
2011-0052704 FILED IN MARIN  
COUNTY RECORDERS OFFICE  
STATE OF CALIFORNIA**

MAY 29, 2019

SHEET 1 OF 1

**CHAUDHARY & ASSOCIATES, INC.**  
ENGINEERS SURVEYORS INSPECTORS  
211 Gateway Road West, Suite 204  
NAPA, CALIFORNIA 94558  
Tel: (707) 255-2729 FAX: (707) 255-5021  
WWW.CHAUDHARY.COM

Q:\2015\15-12-050 Kimley Horn\Closures\RW-Take-Area.txt  
Created on 5/29/2019 11:00:00 AM  
Created by H. Korstick, PLS

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Parcel name: RW-Take-Area

North:	2178526.9697	East :	5981655.7144
Line Course:	S 49-38-54 W	Length:	17.00
	North: 2178515.9626	East :	5981642.7589
Line Course:	N 49-10-05 W	Length:	381.01
	North: 2178765.0832	East :	5981354.4751
Line Course:	N 40-20-55 W	Length:	192.64
	North: 2178911.8978	East :	5981229.7529
Line Course:	N 49-39-05 E	Length:	24.60
	North: 2178927.8151	East :	5981248.5093
Line Course:	S 40-20-55 E	Length:	262.49
	North: 2178727.7740	East :	5981418.4485
Line Course:	N 46-51-05 E	Length:	40.86
	North: 2178755.7179	East :	5981448.2592
Line Course:	S 51-45-27 E	Length:	50.51
	North: 2178724.4526	East :	5981487.9296
Line Course:	S 40-21-08 E	Length:	259.13
	North: 2178526.9752	East :	5981655.7123

Perimeter: 1228.24 Area: 18,398 Sq Ft 0.422 Ac.

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0058 Course: N 20-23-21 W  
Error North: 0.00546 East : -0.00203  
Precision 1: 211,763.79



Francisco Boulevard Investors LLC  
740 W Francisco Blvd  
San Rafael, CA 94901  
(APN 018-014-66)

Francisco Boulevard Investors LLC  
740 Francisco Blvd W  
San Rafael, CA 94901-3927  
(APN 018-014-67)

**NOTICE OF INTENTION TO ADOPT A RESOLUTION OF NECESSITY TO  
ACQUIRE PROPERTY BY EMINENT DOMAIN; AUTHORIZING  
COMMENCEMENT OF LITIGATION TO ACQUIRE PROPERTY AND FOR  
ORDER OF POSSESSION**

**City of San Rafael**  
Multi-Use Path Project

Re: Notice of Hearing Regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain. (Code Civ. Proc. § 1245.235.)

**1. Notice of the Intent of the City of San Rafael to adopt a Resolution of Necessity and Hearing.** The City Council of the City of San Rafael (“**City Council**”) intends to hold a hearing to consider whether a Resolution of Necessity should be adopted that, if adopted, will authorize the City of San Rafael (“**City**”) to acquire the real property described herein (“**Property**”) by eminent domain in connection with the SMART Larkspur extension project and the City of San Rafael multi-use path project (“**Project**”). Attached hereto as **Exhibit A** is a legal description of the approximately 18,398 square foot portion of the property located at 700/740 Francisco Blvd. West, San Rafael, California, commonly known as Assessor Parcel Numbers 018-014-66 and 018-014-67, that the City needs to acquire in fee for the Project.

You are being sent this notice because your name appears on the last equalized State Board of Equalization Assessment Roll for the Property.

DATE OF HEARING: August 1, 2022  
TIME OF HEARING: 7:00 p.m., or as soon as the matter may be heard  
PLACE OF HEARING: San Rafael City Council Chambers  
1400 Fifth Avenue  
San Rafael, CA 94901

**2. Notice of Your Right to Appear and Be Heard.** You have the right to appear and be heard before the City Council at the above-scheduled hearing on the following matters and issues and to have the City Council give consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity:

a) Whether the public interest and necessity require the Project;

- b) Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c) Whether the interest in the Property sought to be acquired is necessary for the Project;
- d) Whether the City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property, as well as any other matter regarding the right to take said property by eminent domain, including but not limited to, making the offer required by Government Code Section 7267.2(a); and
- e) Whether the City has fully complied with the California Environmental Quality Act, Public Resources Code section 21000 *et seq.*

The statutes that authorize the City to acquire the Property by eminent domain for the Project include, but are not limited to, Article 1, Section 19 of the Constitution of the State of California; Streets and Highway Code section 10102; Government Code sections 37350.5, 40401, and 40404; and Code of Civil Procedure sections 1230.010, *et seq.*, including, but not limited to, sections 1240.010 through 1240.050 inclusive, and sections 1240.110, 1240.120, 1240.220, 1240.420, 1240.510, 1240.610, 1240.650, and other provisions of law.

**3. Failure to File a Written Request to Be Heard Within Fifteen (15) Days After the Notice Was Mailed Will Result in Waiver of the Right to Appear and Be Heard.** If you desire to be heard, or to present information to the City Council on this resolution, you are required by law to file a written request with the City Clerk no later than fifteen (15) days from the date that this notice was mailed. You must file your request to be heard at the Office of the City Clerk, 1400 Fifth Ave., Rm. 209, San Rafael, CA 94901.

If you mail a request to be heard, please keep in mind that it must be actually received by the City Clerk no later than fifteen (15) days after the date this notice is mailed. (See Code Civ. Proc. § 1245.235(b)(3).)

**If you elect not to appear and be heard at this hearing, your decision not to appear and be heard will constitute a waiver of your right to challenge the right of the City to acquire the Property by eminent domain. (Code Civ. Proc. § 1245.235(b)(3).) Thus, the matters described in the Resolution of Necessity will be deemed to be established.**

**4. You Will Not Waive the Right to Claim Greater Compensation if You Do Not Appear at the Hearing.** The amount of compensation to be paid for the Property will not be decided or heard at this hearing. Your nonappearance at this noticed hearing will not prevent you from claiming compensation in an amount to be determined by a court of law under the laws of the State of California. This notice is not intended to foreclose further ongoing negotiations between you and the representatives of the City on the amount of compensation to be paid to you for the Property. At this hearing, the City Council will not make any determination about the amount of money to be paid or to be offered to you for the Property.

**However, if you elect not to appear and be heard, you will be foreclosed from raising in a court of law the issues which are the subject of this noticed hearing and which are concerned with the right to take the property by eminent domain.**

If the City Council elects to adopt the Resolution of Necessity, then within six months of the adoption of the Resolution, the City will commence eminent domain proceedings in Superior

Court. In that proceeding, the Court will determine the amount of compensation to which you are entitled.

CITY OF SAN RAFAEL

By:   
Lindsay Lara, City Clerk

Dated and mailed on: July 14, 2022

Enclosure: Exhibit A – Legal Description and Plat Map of the Property

Copy to: Peter Sonnen  
Francisco Boulevard Investors, LLC  
28 Liberty Ship Way, Suite 2840  
Sausalito, CA 94965



May 29, 2019

Exhibit A

**LEGAL DESCRIPTION FOR RIGHT OF WAY (RW) TAKE**

**APN 018-014-67 AND 018-014-66**

A portion or Real Property situated in the City of San Rafael, County of Marin, State of California, more particularly being a portion of the Lands of Francisco Boulevard Investors, LLC as described in that certain Grand Deed Recorded in Series 2004-0052865 in the Office of the County Recorder of said Marin County in addition to a portion of the Lands of Francisco Boulevard Investors, LLC as described in that certain Grand Deed Recorded in Series 2011-0052704 in the Office of the County Recorder of said Marin County; said portions being more particularly described as follows:

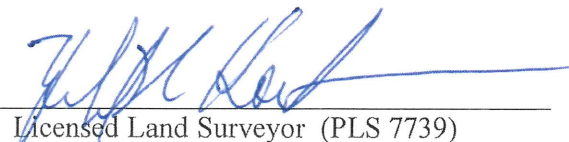
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Contains 18,398 sq. ft. (0.422 acres) more or less

**Bearings based upon the California Coordinate System (CCS 83, Zone 3)**

All distances are in feet and decimals thereof.

Signature

  
Licensed Land Surveyor (PLS 7739)

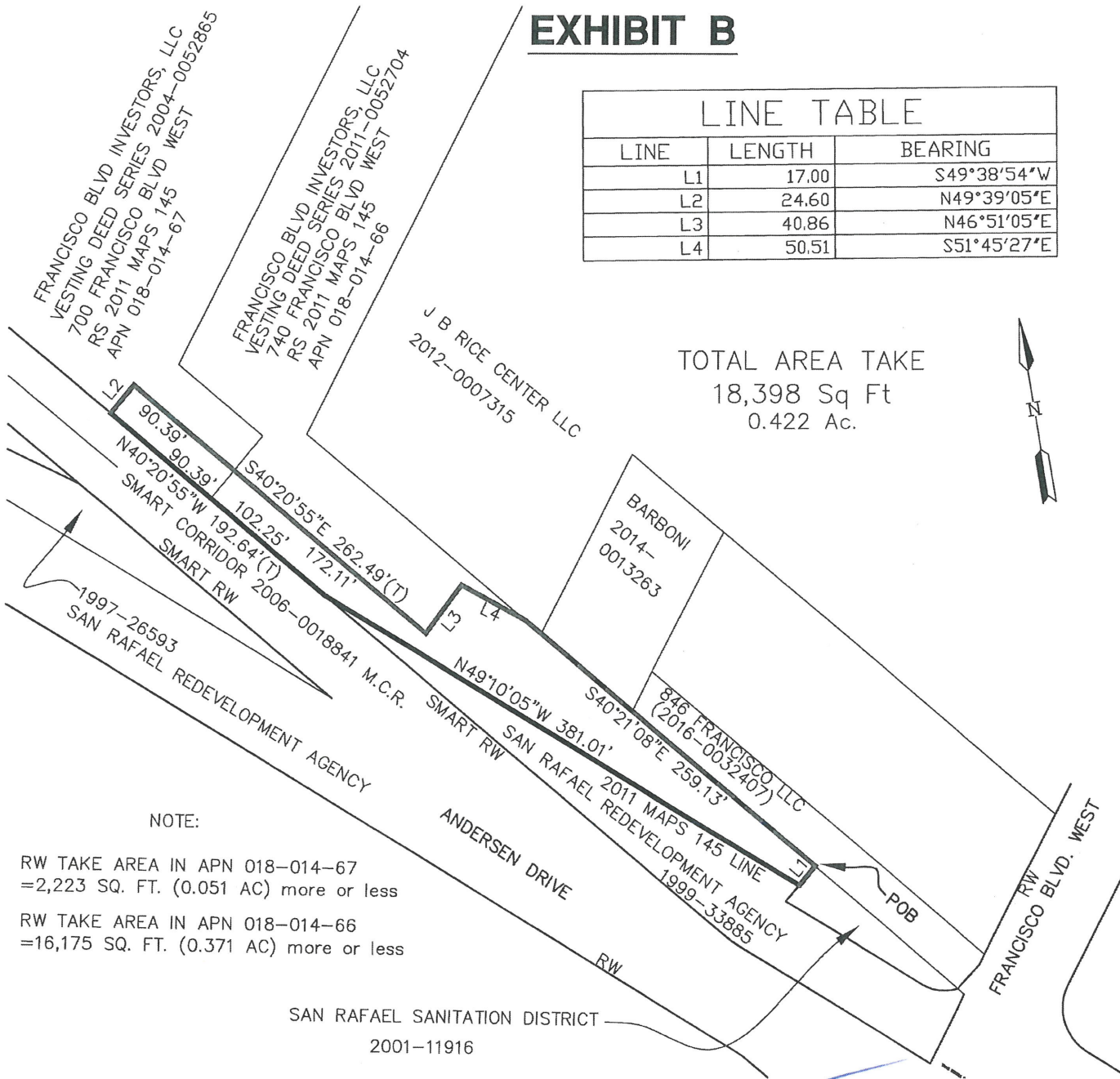
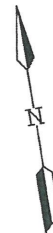




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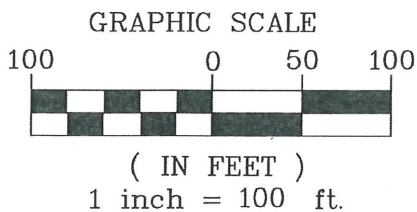


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RW TAKE AREA IN APN 018-014-66  
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SAN RAFAEL SANITATION DISTRICT  
2001-11916



**LEGEND**

- APN ASSESSOR'S PARCEL NUMBER
- M.C.R. MARIN COUNTY RECORDS
- P.O.B. POINT OF BEGINNING
- RW RIGHT OF WAY
- (T) TOTAL DISTANCE



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**RIGHT OF WAY TAKE OVER A PORTION OF THE  
LANDS OF THE FRANCISCO BLVD. INVESTORS, LLC  
AS RECORDED IN SERIES 2004-0052865 AND  
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STATE OF CALIFORNIA**

MAY 29, 2019

SHEET 1 OF 1

Q:\2015\15-12-050 Kimley Horn\Closures\RW-Take-Area.txt  
Created on 5/29/2019 11:00:00 AM  
Created by H. Korstick, PLS

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Error Closure: 0.0058 Course: N 20-23-21 W  
Error North: 0.00546 East : -0.00203  
Precision 1: 211,763.79



1 Benjamin L. Stock (SBN 208774)  
E-mail: bstock@bwslaw.com  
2 Nicholas J. Muscolino (SBN 273900)  
E-mail: nmuscolino@bwslaw.com  
3 BURKE, WILLIAMS & SORENSEN, LLP  
181 Third Street, Suite 200  
4 San Rafael, CA 94901-6587  
Tel: 415.755.2600 Fax: 415.482.7542  
5

6 Attorneys for Defendant  
CITY OF SAN RAFAEL

FILING FEE EXEMPT PURSUANT TO  
GOVERNMENT CODE § 6103

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF MARIN

10  
11 FRANCISCO BOULEVARD  
INVESTORS, LLC,

12 Plaintiff,

13 v.

14 CITY OF SAN RAFAEL, et al.,

15 Defendant.  
16

Case No. CIV-2102789

**STIPULATION BETWEEN PLAINTIFF  
FRANCISCO BOULEVARD INVESTORS,  
LLC AND DEFENDANT CITY OF SAN  
RAFAEL**

JFAP: Honorable A. Sweet; Dept. E

Complaint Filed: 8/23/2021  
17  
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1 Plaintiff Francisco Boulevard Investors, LLC (“Francisco”) and Defendant City of San  
2 Rafael (“City” and, together with Francisco, the “Parties”), by and through their counsel of  
3 record, hereby stipulate as follows:

4  
5 **RECITALS**

6 1. On or about June 18, 2019, the City sent Francisco a letter pursuant to Government  
7 Code section 7267.2 offering to purchase an approximately 18,398 square foot portion of that  
8 certain real property located at 700/740 Francisco Boulevard West, San Francisco (APN 018-014-  
9 66 and 018-014-67) (“Subject Property”) to facilitate the SMART Larkspur extension project and  
10 the City of San Rafael multi-use path project (“Project”). Francisco did not accept the City’s  
11 offer.

12 2. On August 23, 2021, Francisco filed a Complaint for Inverse Condemnation and  
13 Injunctive Relief against the City that alleges in relevant part that “[b]eginning on or about  
14 February 26, 2018, and without permission of or from plaintiff, and without payment of any  
15 compensation, defendant City caused [a portion of the Project] to be constructed . . . on plaintiff’s  
16 Properties.”

17 3. The Parties have met and conferred and, in the event that the City Council  
18 determines, in its sole and absolute discretion, to adopt a Resolution of Necessity and file a direct  
19 condemnation action to acquire the Subject Property from Francisco, hereby agree as follows:

20 **STIPULATIONS**

21 1. In the event that the City Council, in its sole and absolute discretion, decides to  
22 consider and adopt a Resolution of Necessity pursuant to Code of Civil Procedure sections  
23 1245.220 *et seq.* to acquire the Subject Property by eminent domain, Francisco hereby agrees to  
24 waive its right to challenge the City’s right to take the Subject Property for the Project by eminent  
25 domain. This waiver shall be deemed to have the same legal effect as a withdrawal of a deposit  
26 of probable compensation pursuant to Code of Civil Procedure section 1255.260.

27 2. In the event that (a) the City Council, in its sole and absolute discretion, decides to  
28 consider and adopt a Resolution of Necessity pursuant to Code of Civil Procedure sections  
SR #4894-6234-8311 v1

1 1245.220 *et seq.* to acquire the Subject Property by eminent domain, and (b) the City makes a  
2 deposit of probable just compensation pursuant to Code of Civil Procedure sections 1255.010 and  
3 1255.410, and (c) the City files a complaint in eminent domain to acquire the Subject Property,  
4 then the City will stipulate to Francisco's immediate withdrawal of the deposit of probable just  
5 compensation from the State's Condemnation Fund and Francisco will stipulate to the City taking  
6 immediate prejudgment possession of the Subject Property.


7 3. In the event that the City Council, in its sole and absolute discretion, decides to  
8 consider and adopt a Resolution of Necessity pursuant to Code of Civil Procedure sections  
9 1245.220 *et seq.* to acquire the Subject Property by eminent domain, and the City files a  
10 complaint in eminent domain to acquire the Subject Property, then City and Francisco both  
11 stipulate that said eminent domain action may be consolidated with the above-referenced action,  
12 Marin County Superior Court, Action No. CIV-2102789.

13 4. The Parties agree to execute and deliver such further stipulations and/or documents  
14 as may be reasonably necessary or appropriate to effectuate the intent of this Stipulation.

15 IT IS SO STIPULATED.

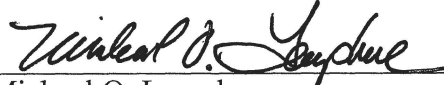
16 Dated: May 18, 2022

BURKE, WILLIAMS & SORENSEN, LLP

17 By:   
18 Nicholas J. Muscolino  
19 Attorneys for Defendant CITY OF SAN  
20 RAFAEL

21 Dated: May 18, 2022

LAMPHERE LAW OFFICES

22 By:   
23 Michael O. Lamphere  
24 Attorneys for Plaintiff FRANCISCO  
25 BOULEVARD INVESTORS, LLC  
26  
27  
28