



AGENDA

SAN RAFAEL CITY COUNCIL - MONDAY, MAY 1, 2023

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/san-rafael-city-council>

Watch on YouTube: www.youtube.com/cityofsanrafael

Listen by phone: (669) 444-9171

ID: 844 3204 9611

One Tap Mobile: +16694449171,,84432049611# US

This meeting will be held in-person. The public may attend in-person or participate virtually using Zoom. This meeting is being streamed to YouTube at www.youtube.com/cityofsanrafael.

How to participate in the meeting virtually:

- Submit public comment in writing before 4:00 p.m. the day of the meeting to city.clerk@cityofsanrafael.org.
- Join the Zoom webinar and use the 'raise hand' feature to provide verbal public comment.
- Dial-in to Zoom's telephone number using the meeting ID and press *9 to raise your hand, and *6 to unmute yourself, then provide verbal public comment.

If you experience technical difficulties during the meeting, please contact city.clerk@cityofsanrafael.org.

OPEN SESSION - THIRD FLOOR CONFERENCE ROOM - 6:30 PM

Dial-in: (669) 900-9128, Meeting ID# 839-2754-6670#

1. Mayor Kate to announce Closed Session items.

CLOSED SESSION - THIRD FLOOR CONFERENCE ROOM - 6:30 PM

2. Closed Session:

- a. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: 519 Fourth Street, San Rafael (APN 014-123-06)
Agency negotiator: Gerald Ramiza, Burke, Williams and Sorensen
Negotiating parties: Chris Hart
Under negotiation: Price and terms of sale

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:

- City Attorney Status Update on Police Investigation

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 the Regular and Special City Council Meetings of April 17, 2023 (CC)
Recommended Action - Approve minutes as submitted

b. **Paramedic Tax Rates for Fiscal Year 2023-24**

Adoption of Ordinance 2026: An Ordinance of the City Council of the City of San Rafael Amending the Paramedic Service Special Tax Rates Within the Voter-Approved Limit, Commencing with Fiscal Year 2023-2024, for Residential Units and Non-Residential Structures in the City of San Rafael, County Service Area No. 13, County Service Area No. 19, and The Marinwood Community Services District (CC)
Recommended Action - Final adoption of Ordinance 2026

c. **Permanent Local Housing Allocation (PLHA)**

Resolution Recommending Permanent Local Housing Allocation (PLHA) Project Funding for the Calendar Year 2023 to the Marin County Board of Supervisors (CD)
Recommended Action - Adopt Resolution

d. **Proclamations**

- Proclamation Supporting Wildfire Preparedness Month (FD)
- Proclamation Supporting Public Service Recognition Week (HR)
- Proclamation Supporting Asian American and Pacific Islander Heritage Month (HR)
- Proclamation Supporting National Police Week (PD)
- Proclamation Supporting Mental Health Awareness Month (HR)
Recommended Action - Receive and File

e. **FY 2023 Local Measure A, AA and B Allocation**

Resolution Authorizing the City Manager to Execute Funding Agreement A-FY23-11 Between the Transportation Authority of Marin (TAM) and the City of San Rafael, Thereby Authorizing the Receipt of an Allocation of \$47,527 in Measure A, \$440,653 in Measure B, and \$1,322,378 in Measure AA Funding for FY 2022-2023 (PW)
Recommended Action - Adopt Resolution

f. **2023 MTC Regional Active Transportation Program Local Support**

- Resolution of Local Support Authorizing the Filing of an Application for Funding Assigned to MTC and Committing Any Necessary Matching Funds and Stating the Assurance to Complete the Canal Active Transportation Enhancements Project (PW)
Recommended Action - Adopt Resolution

- ii. Resolution of Local Support Authorizing the Filing of an Application for Funding Assigned to MTC and Committing any Necessary Matching Funds and Stating the Assurance to Complete the San Rafael Canal Crossing (PW)
Recommended Action - Adopt Resolution

- g. **Southern Heights/Courtright Retaining Wall Project**
Resolution Approving and Authorizing the City Manager to Execute the Property Purchase Agreement for Acquisition of a Roadway and Slope Easement with Property Owner of 78 Southern Heights Boulevard and Accept the Grant Deed for Such Property (PW)
Recommended Action - Adopt Resolution

- h. **Spinnaker Point Parking Modification Project Notice of Completion**
Accept Completion of the Spinnaker Point Parking Modification Project (City Project No. 11363), and Authorize the City Clerk to File the Notice of Completion (PW)
Recommended Action - Accept completion of the Spinnaker Point Parking Modification Project and authorize the City Clerk to file the Notice of Completion

PUBLIC HEARINGS

5. Public Hearings:

- a. **Use Permit Revocation for Nightclub at 842 Fourth Street**
Resolution Denying an Appeal (AP23-001) and Affirming the Planning Commission's March 28, 2023 Action to Revoke the Use Permit (UP05-01) Allowing the Re-Establishment of Live Entertainment and a Cocktail Lounge as Part of a New Restaurant/Supper Club Located at 842 4th Street (CD)
Recommended Action - Adopt Resolution

- b. **Reusable Foodware Ordinance**
Introduction of An Ordinance of the City Council of the City of San Rafael Amending the San Rafael Municipal Code to Repeal and Replace Chapter 10.92 - Prohibition on Use of Polystyrene Foam Disposable Food Packaging with New Chapter 10.92 - Regulation of Foodware for Retail Food Vendors (CM)
Recommended Action - Waive further reading of the Ordinance and refer to it by title only, and introduce the Ordinance

- c. **BioMarin Development Agreement**
Accept the 3rd Anniversary Annual Report for the Executed Development Agreement (Ordinance No. 1982) Between BioMarin Pharmaceutical and the City of San Rafael for the Development of an Expanded San Rafael Corporate Center (750-790 Lindaro Street and 781-791 Lincoln Avenue and 999 3rd Street); Case No.: P23-004 (CD)
Recommended Action - Accept the 3rd Anniversary Annual Report for the Executed Development Agreement (Ordinance No. 1982) Between BioMarin Pharmaceutical and the City of San Rafael for the Development of an Expanded San Rafael Corporate Center (750-790 Lindaro Street and 781-791 Lincoln Avenue and 999 3rd Street)

OTHER AGENDA ITEMS

6. Other Agenda Items:

a. **Downtown San Rafael Business Improvement District**

Approval Of Actions Supporting the Downtown San Rafael Business Improvement District Capacity Building and Management (ED):

- i. Resolution Appropriating Funds and Authorizing the City Manager to Negotiate and Execute a Downtown Business Improvement District Management and Enhancement Agreement with the San Rafael Chamber of Commerce In an Amount of \$100,000

Recommended Action – Adopt Resolution

- ii. Resolution Appointing Downtown Business Improvement District Advisory Board Members

Recommended Action – Adopt Resolution

- iii. Resolution Authorizing the City Manager to Negotiate and Execute a Downtown Business Improvement District Transition Agreement with the Downtown San Rafael Business Improvement District (BID Corporation) In an Amount of \$5,000

Recommended Action – Adopt Resolution

- iv. Resolution Adopting the Downtown Business Improvement District Administrative Guidelines

Recommended Action – Adopt Resolution

b. **Community Development Block Grant (CDBG)**

Resolution Recommending Community Development Block Grant (CDBG) Project Funding for the Fiscal Year 2023-24 to the Marin County Board of Supervisors (CD)

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 and at City Hall, 1400 Fifth Avenue, and placed with other agenda-related materials on the table in front of the Council Chamber prior to the meeting. Sign Language interpreters may be requested by calling (415) 485-3066 (voice), emailing city.clerk@cityofsanrafael.org or using the California Telecommunications Relay Service by dialing “711”, at least 72 hours in advance of the meeting. Copies of documents are available in accessible formats upon request. To request Spanish language interpretation, please submit an online form at <https://www.cityofsanrafael.org/request-for-interpretation/>.

Minutes subject to approval at the May 1, 2023 meeting

MINUTES



**SAN RAFAEL CITY COUNCIL SPECIAL MEETING
MONDAY, APRIL 17, 2023 AT 6:00 P.M.**

In-Person:

San Rafael City Hall
Third Floor Conference Room
1400 Fifth Avenue, San Rafael, CA 94901

Participate Virtually:

Watch on Zoom Webinar: <https://tinyurl.com/SPCC-2023-04-17>

Listen by phone: (669) 444-9171

ID: 824-0033-6958#

One Tap Mobile: US: +16694449171,,82400336958#

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

Absent: None

Also Present: City Manager Jim Schutz
Assistant City Manager Cristine Alilovich
City Clerk Lindsay Lara
Community Development Director Ali Giudice
Planning Manager Leslie Mendez

Mayor Kate called the meeting to order at 6:00 p.m. and requested City Clerk Lindsay Lara call the roll. All members of the City Council were present.

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

1. Planning Commission Interviews

Interview Applicants and Make Appointment to Fill One Unexpired Four-Year Term as a District 1 Representative to the End of October 2025 on the Planning Commission Due to the Resignation of Camille Harris (CC)

Recommended Action - Appoint one applicant

The City Council interviewed the following applicants: Claire Taylor, Jill Rodby, Meili Zhao and Susan Landwirth.

Councilmember Bushey moved and Councilmember Llorens Gulati seconded to appoint Jill Rodby to fill one, unexpired four-year term as a District 1 representative to the end of October 2025 on the Planning Commission.

Ayes: Councilmembers: Bushey, Hill, Kertz, Llorens Gulati and Mayor Kate

Noes: Councilmembers: None

Absent: Councilmembers: None

ADJOURNMENT:

Mayor Kate adjourned the meeting at 6:55 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2023

KATE COLIN, Mayor

DRAFT



MINUTES

SAN RAFAEL CITY COUNCIL - MONDAY, APRIL 17, 2023

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

Absent: None

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

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

Mayor Kate provided opening remarks, which included gratitude to City staff, the City's recent launch of a mobile crisis team called SAFE (Specialized Assistance for Everyone), Earth Day and a land acknowledgement.

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

OPEN SESSION

1. None.

CLOSED SESSION

2. Closed Session: - None.

OPEN TIME FOR PUBLIC EXPRESSION

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

CITY MANAGER AND COUNCILMEMBER REPORTS:

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

3. City Manager and Councilmember Reports:

Jim Schutz announced:

- City Council Goals and Objectives sessions to be held May 8th and May 15th
- Earth Day Clean and Green, April 21st, 10 a.m. - 12 p.m.
- Earth Day Neighborhood Clean-Ups, April 22nd, 9 a.m. - 12 p.m.

City Councilmember Reports:

- Vice Mayor Llorens Gulati reported on the SAFE team ribbon-cutting, an East San Rafael Working Group meeting, a Marin Women Run for Office event, a Reusable Foodware meeting and a working group meeting on EV charging. She announced an upcoming Pickleweed Clean-up on Saturday, April 22nd.
- Councilmember Bushey reported on a Central Marin Sanitation Agency meeting, a Police Department ride-along, a Public Works tour, a San Rafael Library Foundation meeting and a San Rafael Chamber of Commerce meeting.
- Councilmember Kertz reported on Marin Wildfire Prevention Authority (MWPA) meetings, a Fire Department ride-along, a Public Works ride-along and the Marin Economic Forum.
- Councilmember Hill reported on an Economic Development Subcommittee meeting. He announced the unveiling of the Draft Economic Development Strategic Plan (EDSP).
- Mayor Kate reported on a Public Works ride-along.

Mayor Kate invited public comment.

Speaker: Eva Chrysanthe

CONSENT CALENDAR:

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

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

4. Consent Calendar Items:

a. **Approval of Minutes**

Approve Minutes of the City Council Meeting of April 3, 2023 (CC)

Approved minutes as submitted

b. **Grant Funded Canal Broadband Feasibility Study Consulting Contract**

Approve and Authorize the City Manager to Negotiate and Execute a Professional Services Agreement with EntryPoint Networks, Inc. to Coordinate and Perform the Services Required to Create the Work Products Outlined in the Local Agency Technical Assistance

(“LATA”) Grant Award from the California Public Utilities Commission (“CPUC”) for the San Rafael Canal Qualified Opportunity Zone Project in the Amount of \$182,120 (DS)

Authorized the City Manager to negotiate and execute a professional services agreement in the amount not to exceed \$182,120 with EntryPoint Networks, Inc. to perform the services required to create the work products outlined in the contract and Digital Feasibility Study Proposal previously submitted and approved by the California Public Utilities Commission (CPUC) as a part of the City’s Local Agency Technical Assistance (LATA) grant application and award.

- c. **Grant Award from the State of California Arts Commission
Resolution Approving the Acceptance and Appropriation of Grant Funding from the State of California Arts Commission in An Amount of \$671,429 for The Downtown San Rafael Arts District, and Authorizing the City Manager to Execute a Grant Agreement and Other Documents Related to the Grant (ED)**
Resolution 15199 - Resolution Approving the Acceptance and Appropriation of Grant Funding from the State of California Arts Commission in An Amount of \$671,429 for The Downtown San Rafael Arts District, and Authorizing the City Manager to Execute a Grant Agreement and Other Documents Related to the Grant
- d. **City Quarterly Investment Report
Acceptance of City of San Rafael Quarterly Investment Report for the Quarter Ending March 31, 2023 (Fin)**
Recommended Action - Accepted report
- e. **National Library Week
Proclamation Supporting National Library Week April 23-29, 2023 (LR)**
Received and filed
- f. **Approval of Special Event Street Closures in San Rafael
Resolution Authorizing the Temporary Closure of Streets in San Rafael for “Dining Under the Lights”, A Special Event Series on Fourth Street (PD)**
Resolution 15200 - Resolution Authorizing the Temporary Closure of Streets in San Rafael for “Dining Under the Lights”, A Special Event Series on Fourth Street
- g. **B Street Culvert Replacement Project
Authorize the City Manager to Terminate the Construction Contract for B St Culvert Replacement Project, City Project No. 11380 with Maggiora & Ghilotti, Inc. (PW)**
Authorized the City Manager to terminate the construction contract for the B St Culvert Replacement Project, City Project No. 11380 with Maggiora & Ghilotti, Inc.

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

PUBLIC HEARINGS

5. Public Hearings:

- a. [Paramedic Tax Rates for Fiscal Year 2023-24](#)
Introduction of An Ordinance of the City Council of the City of San Rafael Amending the Paramedic Service Special Tax Rates Within the Voter-Approved Limit, Commencing with Fiscal Year 2023-2024, for Residential Units and Non-Residential Structures in the City of

San Rafael, County Service Area No. 13, County Service Area No. 19, and The Marinwood Community Services District (Fin)

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

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment, however there was none.

Councilmembers provided comments.

Councilmember Hill moved and Councilmember Kertz seconded to waive further reading of the Ordinance, refer to it by title only and introduce the Ordinance; and the City Clerk read the title of the Ordinance.

An Ordinance of the City Council of the City of San Rafael Amending the Paramedic Service Special Tax Rates Within the Voter-Approved Limit, Commencing with Fiscal Year 2023-2024, for Residential Units and Non-Residential Structures in the City of San Rafael, County Service Area No. 13, County Service Area No. 19, and The Marinwood Community Services District

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Waived further reading of the Ordinance, referred to it by title only, and introduced the Ordinance

OTHER AGENDA ITEMS

6. Other Agenda Items:

a. [Citywide Parks and Recreation Master Plan](#)

Resolution Adopting the Citywide Parks and Recreation Master Plan (LR)

Catherine Quffa, Library & Recreation Director introduced Lauren Ivey-Thomas, RHAA Landscape Architects and Teifion Rice-Evans, EPS-Economic & Planning Systems who presented the Staff Report.

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment.

Speakers: Alice Cochran, Kate Powers, Eva Chrysanthe

Staff responded to public comment.

Councilmembers provided comments.

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

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Resolution 15201- Resolution Adopting the Citywide Parks and Recreation Master Plan

- b. [Appointment of Cristine R. Alilovich to City Manager](#)
Resolution Appointing Cristine R. Alilovich City Manager, Effective June 1, 2023 and Approving and Authorizing the Mayor to Execute An Employment Agreement (CA)

Rob Epstein, City Attorney presented the Staff Report.

Mayor Kate invited public comment.

Speakers: Barry Taranto, Eva Chrysanthe, Lori Schifrin

Councilmembers provided comments.

Mayor Kate moved and Councilmember Llorens Gulati seconded to adopt the resolution.

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

Resolution 15202- Resolution Appointing Cristine R. Alilovich City Manager, Effective June 1, 2023 and Approving and Authorizing the Mayor to Execute An Employment

SAN RAFAEL SUCCESSOR AGENCY:

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

Member Kertz moved and Member Bushey seconded to approve the Consent Calendar.

1. Consent Calendar:

- a. [Successor Agency Quarterly Investment Report](#)
Acceptance of City of San Rafael Successor Agency Quarterly Investment Report for the Quarter Ending March 31, 2023 (Fin)
Accepted report

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

ADJOURNMENT:

Mayor Kate adjourned the meeting at 8:42 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2023

KATE COLIN, Mayor

Agenda Item 4.b

ORDINANCE NO. 2026

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING THE PARAMEDIC SERVICE SPECIAL TAX RATES WITHIN THE VOTER-APPROVED LIMITS, COMMENCING WITH FISCAL YEAR 2023-2024, FOR RESIDENTIAL UNITS AND NON-RESIDENTIAL STRUCTURES IN THE CITY OF SAN RAFAEL, COUNTY SERVICE AREA NO. 13, COUNTY SERVICE AREA NO. 19, AND THE MARINWOOD COMMUNITY SERVICES DISTRICT

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

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

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

WHEREAS, the current annual Paramedic Service Special Tax rate in the city limits of the City of San Rafael is \$104.00 per residential unit and \$0.140 per square foot of non-residential structures; and

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

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

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

WHEREAS, the City Council, after reviewing the proposed budget recommendation of the City Manager, finds that for the City of San Rafael, the basic rate is insufficient to cover the cost of providing the paramedic service to San Rafael residents; and

WHEREAS, the City of San Rafael annual Paramedic Service Special Tax rates should be adjusted to \$108.00 per residential unit, and remain at \$0.140 per square foot of non-residential structures; for the County Service Area No. 13 and County Service Area No. 19, the annual Paramedic Service Special Tax rates should remain at \$95.00 per residential

Agenda Item 4.b

unit, and remain at \$0.132 per square foot of non-residential structures; and that for Marinwood Community Services District, the annual Paramedic Tax rates should remain at \$85.00 per residential unit, and remain at \$0.11 per square foot of non-residential structures; these rates will cover the cost of providing paramedic services within these service areas for fiscal year 2023-2024; and

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

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

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

Division 1. Pursuant to San Rafael Municipal Code Section 3.28.060, the City Council hereby sets the tax rate for paramedic services within City limits commencing in fiscal year 2023-2024, at \$108.00 per year for each residential unit, and \$0.140 per square foot for non-residential structures.

Division 2. The City Council hereby sets the Paramedic Tax Rates for County Service Area No. 13 and County Service Area No. 19, commencing with fiscal year 2023-2024, at \$95.00 per year for each residential unit, and \$0.132 per square foot for each non-residential structure.

Division 3. The City Council hereby sets the Paramedic Tax Rates for Marinwood Community Services District, commencing with fiscal year 2023-2024, at \$85.00 per year for each residential unit, and at \$0.11 per square foot for each non-residential structure.

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

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

Agenda Item 4.b



KATE COLIN, Mayor

Attest:



LINDSAY LARA, City Clerk

The foregoing Ordinance was first read and introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 17th day of April 2023, 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 1st day of May 2023.

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



LINDSAY LARA, City Clerk

SUMMARY OF ORDINANCE NO. 2026

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING THE PARAMEDIC SERVICE SPECIAL TAX RATES WITHIN THE VOTER-APPROVED LIMITS, COMMENCING WITH FISCAL YEAR 2023-2024, FOR RESIDENTIAL UNITS AND NON-RESIDENTIAL STRUCTURES IN THE CITY OF SAN RAFAEL, COUNTY SERVICE AREA NO. 13, COUNTY SERVICE AREA NO. 19, AND THE MARINWOOD COMMUNITY SERVICES DISTRICT

This Summary concerns a proposed ordinance of the City Council of the City of San Rafael, designated as Ordinance No. 2026, which will set the Paramedic Service Special Tax rates for Fiscal Year 2023-2024 for properties in the City of San Rafael, County Service Area No. 13 (CSA No. 13), County Service Area No. 19 (CSA No. 19), and the Marinwood Community Services District (CSD) as detailed in the complete text of Ordinance No. 2026. Ordinance No. 2026 is scheduled for adoption by the San Rafael City Council at its regular meeting of May 1, 2023. The City Clerk has been directed to publish this Summary pursuant to City Charter and California Government Code section 36933(c)(1).

SUMMARY OF ORDINANCE

The City of San Rafael has adopted, with required voter approval, San Rafael Municipal Code (SRMC) Chapter 3.28, the Paramedic Service Special Tax, to be imposed annually upon residential units and non-residential structures within the City of San Rafael. In addition, pursuant to three separate agreements, San Rafael provides paramedic services to CSA No. 13, CSA No. 19, and Marinwood CSD. The City Council sets the annual tax rates within those jurisdictions by ordinance. Ordinance No. 2026 would set the annual Paramedic Service Special Tax rates for Fiscal Year 2023-2024 as follows:

<u>Jurisdiction</u>	<u>Residential Unit Rate</u>	<u>Nonresidential Structure Rate</u>
City of San Rafael:	\$108.00/residential unit	\$0.140/square foot of structures
CSA No. 13:	\$95.00/residential unit	\$0.132/square foot of structures
CSA No. 19:	\$95.00/residential unit	\$0.132/square foot of structures
Marinwood CSD:	\$85.00/residential unit	\$0.110/square foot of structures

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

/s/ Lindsay Lara
LINDSAY LARA
San Rafael City Clerk
Dated: 04/21/23



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: **COMMUNITY DEVELOPMENT**

Prepared by: **Alicia Giudice, Director**
Chris Hess, Assistant Director
Alexis Captanian, Housing Analyst

City Manager Approval: _____

TOPIC PERMANENT LOCAL HOUSING ALLOCATION (PLHA)

SUBJECT RESOLUTION RECOMMENDING PERMANENT LOCAL HOUSING ALLOCATION (PLHA) PROJECT FUNDING FOR THE CALENDAR YEAR 2023 TO THE MARIN COUNTY BOARD OF SUPERVISORS

RECOMMENDATION

- 1. Adopt a resolution recommending Permanent Local Housing Allocation (PLHA) project funding for the calendar year 2023 to the Marin County Board of Supervisors.

BACKGROUND

The Permanent Local Housing Allocation Program (PLHA) provides funding to local jurisdictions for housing and is part of the Building Homes and Jobs Act (SB2) approved by the Governor in 2017. PLHA aims to address the state’s housing shortage and high housing costs by providing an ongoing source of housing financing through real estate fees.

In February 2020, the California Department of Housing and Community Development (HCD) released the PLHA Program Notice of Funding Availability (NOFA) for approximately \$195 million in local government funding. Marin County is eligible for non-competitive PLHA funds because of its status as an Entitlement Community by the U.S. Department of Housing and Urban Development for the Community Development Block Grant (CDBG) program and because it has an approved Housing Element in compliance with the State Housing Law, at the time of application, and submits Annual Progress Reports approved by HCD. Funding recommendations are subject to final approval of PLHA funds by HCD.

On July 21, 2020, the Marin County Board of Supervisors passed a resolution to apply for PLHA grant funding through the non-competitive NOFA process. In August 2020, the Board also approved a five-year expenditure plan for the funds. This plan was developed in consultation with the Board of Supervisors Housing Subcommittee and in alignment with the Countywide Priority Setting Committee’s¹ (PSC) approved 2020-24 Consolidated Plan and Assessment of Impediments to Fair Housing Choice (AI).

¹ The Countywide Priority Setting Committee is made up of elected representatives of Marin cities and towns, a member of the Board of Supervisors, and community members representing the federal

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

Under the five-year plan, PLHA funds are matched with funds from the Marin County Affordable Housing Fund (Housing Trust). This activity was recommended by staff to ensure effective and efficient deployment of PLHA funds. Marin County Housing Trust funds can be applied to projects in all jurisdictions of Marin, and seeks collaborative funding from cities and towns where eligible projects are approved. When matched with PLHA, staff aim to distribute funding in each of the CDBG Planning Areas (County Other, San Rafael, and Novato) with funding dependent on the recommended project.

For the 2023 program year, the County has \$1,179,015 in PLHA funds to distribute. Together, these matched funds will support predevelopment, development, acquisition, and preservation of affordable housing, with an emphasis on projects serving those that earn an income at or under 60 percent Area Median Income (AMI), as stipulated in the PLHA Final Guidelines.

ANALYSIS:

All project applications were evaluated by County staff based on the PLHA criteria developed by HCD and on the PSC approved program goals.

HCD PLHA Criteria:

- Project readiness: applicant must have site control for development projects, land use entitlements, environmental review, and commitments of other required funding and resources.
- Priority for projects supporting individuals and households earning 60% AMI or below.

PSC Approved Program Goals:

In addition to the criteria set forth by HCD, the PSC approved the following PLHA program goals, which are informed by the HUD approved 2020-24 Consolidated Plan and Analysis of Impediments to Fair Housing Choice:

- Family Housing
- Rental Housing – Acquisition, New Construction, Rehabilitation
- Homeowner Housing – Acquisition, New Construction, Rehabilitation
- Special Needs Housing
- Land trust in eastern Marin that provides home ownership opportunities, with specific inclusion for African Americans

Additionally, in alignment with the PSC’s efforts on fair housing and equity, all applications include:

- A demographic assessment (race/ethnicity, people with disabilities, families) of the applicant’s existing housing projects in Marin.
- Demographics of staff and board members of the applicant organization(s).

Applications Received and Funding Recommendation

Between February 9 and March 15, 2023, the County released a NOFA for \$2,358,030² in PLHA/Marin Housing Trust funds. A total of nine (9) PLHA/Marin Housing Trust applications

protected classes under fair housing laws which includes race, color, national origin, religion, sex, familial status, and disability.

² This figure is inclusive of the Marin County Trust Fund match.

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 3

were received for projects across the county totaling \$13,216,060 in requests. One (1) of the applications received is for a project located in San Rafael:

3301 Kerner (Eden Housing) is a State Homekey project that will provide 40 apartments serving as supportive housing with wrap around services for formerly homeless persons with mental illness. The project is the adaptive reuse of an existing three-story office building in the Canal neighborhood. Eden Housing has requested \$1,000,000 in PLHA/Marin Housing Trust funds to address unanticipated design changes required to address a portion of the building that is situated in a floodplain. This project meets the regulatory requirements set forth by the PLHA program including readiness and site control. In addition, the project meets two of the program goals approved by the PSC, including the creation of new rental housing and housing that serves a special needs population. To-date, the County has contributed over \$20 million in General Fund and County Housing Trust funds towards this project, and the City of San Rafael has contributed approximately \$2.4 million.

To support these unanticipated costs, staff recommend funding \$500,000 in PLHA/Marin Housing Trust funds (\$250,000 in PLHA funds and \$250,000 in County Housing Trust funds), contingent on a \$250,000 match from the City of San Rafael.

FISCAL IMPACT: The PLHA/Marin Housing Trust fund award is contingent on a \$250,000 match from the City of San Rafael. Staff recommends that the City Council consider a funding request from Eden Housing for the project at 3301 Kerner through the current funding cycle for the City's Affordable Housing Trust Fund. Staff is scheduled to present funding recommendations to the City Council in June 2023, and City Council may appropriate the matching funds at that time.

OPTIONS:

1. Approve the PLHA funding as recommended.
2. Defer to the Countywide Priority Setting Committee to provide the recommendation for the San Rafael Planning Area applications.
3. Do not approve the recommendation and provide direction to staff.

ACTION REQUIRED:

Adopt a resolution recommending Permanent Local Housing Allocation (PLHA) project funding for the calendar year 2023 to the Marin County Board of Supervisors.

ATTACHMENTS:

- Attachment 1 Resolution
- Attachment 2 PLHA Guidelines
- Attachment 3 Funding Application

RESOLUTION NO.

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL RECOMMENDING
PERMANENT LOCAL HOUSING ALLOCATION (PLHA) PROJECT FUNDING FOR
THE FISCAL YEAR 2023-24 TO THE MARIN COUNTY BOARD OF SUPERVISORS**

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

WHEREAS in September 2017, the Governor signed into law Senate Bill 2, the “Building Homes and Jobs Act”; and

WHEREAS in February 2020, the California Department of Housing and Community Development (HCD) released the PLHA Program Notice of Funding Availability (NOFA) for ongoing local government provision of housing financing through real estate fees; and

WHEREAS in July 2020, the Marin County Board of Supervisors passed a resolution to apply for PLHA grant funding through the non-competitive NOFA process; and

WHEREAS in August 2020, the Marin County Board of Supervisors approved a 5-year expenditure plan for the funds; and

WHEREAS in September 2021, the Countywide Priority Setting Committee approved program goals for projects; and

WHEREAS on May 1, 2023, the City Council reviewed the submitted applications in accordance with the required selection process;

NOW, THEREFORE IT IS HEREBY RESOLVED that the City Council recommends to the Marin County Board of Supervisors that the \$250,000 in PLHA funds available for allocation by the City of San Rafael be distributed to Eden Housing’s 3301 Kerner project, subject to adjustments necessary to accommodate any changes in the County of Marin’s final allocation from the California Department of Housing and Community Development (HCD).

I, LINDSAY LARA, City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City held on the 1st day of May 2023, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Lindsay Lara, City Clerk

Permanent Local Housing Allocation Final Guidelines



**Gavin Newsom, Governor
State of California**

**Alexis Podesta, Secretary
Business, Consumer Services and Housing Agency**

**Douglas R. McCauley, Acting Director
California Department of Housing and Community Development**

2020 West El Camino Avenue, Suite 150
Sacramento, CA 95833

October 2019

The matters set forth herein are regulatory mandates, and are adopted in accordance with the authorities set forth below:

Quasi-legislative regulations ... have the dignity of statutes ... [and]... delegation of legislative authority includes the power to elaborate the meaning of key statutory terms...

Ramirez v. Yosemite Water Co., 20 Cal. 4th 785, 800 (1999)

In consultation with stakeholders, the California Department of Housing and Community Development (Department) may adopt Guidelines to implement this Section, including determining allocation methodologies. Any guideline, rule, policy, or standard of general application employed by the Department in implementing this chapter shall not be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Title 2 Government Code, Part 1 of Division 3).

NOTE: Authority Cited: Health and Safety Code Section 50470, subdivision (d).

The Department reserves the right, at its sole discretion, to suspend or amend the provisions of these Guidelines, including, but not limited to, grant award amounts.

INTRODUCTION

Chapter 364, Statutes of 2017 (SB 2, Atkins) was part of a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. Specifically, it establishes a permanent source of funding intended to increase the affordable housing stock in California. The revenue from SB 2 will vary from year to year, as revenue is dependent on real estate transactions with fluctuating activity. The legislation directs the California Department of Housing and Community Development (Department) to use 70 percent of the revenue collected, beginning in calendar year 2019, to provide financial assistance to local governments for eligible housing-related projects and programs to assist in addressing the unmet housing needs of their local communities. This program is hereafter referred to as the Permanent Local Housing Allocation (PLHA) program.

Guidelines for the PLHA program are organized into five Articles as follows:

Article I. General provisions: This article includes information on the purpose of the Guidelines, program objectives, and definitions used throughout the document.

Article II. Program funding: This article describes allocation formulas and methodologies, and award amounts.

Article III. Formula allocation component: This article describes the requirements for Applicants to apply for funds under the formula allocation of the PLHA program.

Article IV. Competitive allocation component: This article describes requirements and uses for PLHA competitive allocation funds.

Article V. Administration: This article describes administrative functions such as terms, non-performance remedies, and reporting and monitoring requirements.

Permanent Local Housing Allocation (PLHA) Program: 2019 Guidelines

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ARTICLE I. GENERAL PROVISIONS

Section 100. Purpose and Scope

- (a) These Guidelines (hereinafter “Guidelines”) implement, interpret, and make specific Chapter 364, Statutes of 2017 (SB 2, Atkins - hereinafter “SB 2”) as authorized by Health and Safety Code (HSC) Section 50470, which created the Building Homes and Jobs Trust Fund and the PLHA program. The principal goal of this program is to make funding available to eligible local governments in California for housing-related projects and programs that assist in addressing the unmet housing needs of their local communities. Twenty percent of the funding in the Building Homes and Jobs Trust Fund is required to be expended for Affordable Owner-Occupied Workforce Housing, and the program prioritizes investments that increase the supply of housing to households that are at or below 60 percent of the Area Median Income (AMI), adjusted for household size.
- (b) These Guidelines establish terms, conditions, and procedures for local governments to submit applications to the Department for funds from the PLHA program’s three components, as listed below:
 - (1) Entitlement formula component per HSC 50470(b)(2)(B)(i)(I)
 - (2) Non-entitlement formula component per HSC 50470(b)(2)(B)(i)(II)
 - (3) Non-entitlement competitive grant program component per HSC 50470(b)(2)(B)(i)(I) (eligible Applicants are the same as for component 2 above)
- (c) The non-entitlement competitive grant program component prioritizes assistance to persons experiencing or At risk of homelessness.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(A), subdivision (b)(2)(B)(i) and subdivision (b)(2)(B)(ii)(I-V).

Section 101. Definitions

All terms not defined below shall, unless their context suggests otherwise, be interpreted in accordance with the meanings of terms described in HSC Section 50470.

- (a) “Accessory dwelling unit” (ADU) means a dwelling unit which is attached, detached or located within the living area of the existing dwelling or residential dwelling unit and which provides complete independent living facilities for one or more persons pursuant to Government Code (GC) Section 65852.2 and 65852.22. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling. An Accessory dwelling unit also includes the following: an efficiency unit, as defined in Section 17958.1 of the HSC, or a manufactured home, as

defined in Section 18007 of the HSC.

(b) "Activity" means any single eligible undertaking carried out as part of an Applicant's allocation(s) under the Program.

(c) "Affordable" means a housing unit that satisfies at least one of the following criteria:

1. If the unit is being rented to low-income, Very low-income or Extremely low-income households, it complies with the Multifamily Housing Program guidelines Section 7312 and the Section 7301 definition of "Affordable Rent"; or
2. If the unit is being sold, it is offered at an "Affordable housing cost", as published in the Fannie Mae Selling Guide, Part B, Debt to Income Ratios, as updated annually (<https://www.fanniemae.com/content/guide/selling/b3/6/02.html#DTI.20Ratios>), and it complies with the income limits stated in the definitions of Moderate-Income and Lower-Income in this section; or
3. If the unit is being rented to Moderate-Income households, it is available at a gross rent, including a utility allowance, that does not exceed 30 percent of the applicable income eligibility level, and complies with the definition of Moderate-Income in these guidelines

(d) "Affordable Owner-Occupied Workforce Housing" (AOWH) means owner-occupied housing per HSC Section 50092.1 that is affordable to persons and families of low or moderate income, as that term is defined in HSC Section 50093, except in High-cost areas where Moderate-income shall include households earning up to 150 percent of AMI.

(e) "Annual Progress Report" (APR) means the Housing Element APR required by GC Section 65400 on the prior year's activities and due to the Department April 1 of each year.

(f) "Annual Report" means a form issued by the Department and completed by a Local government awarded PLHA funds on which the Local government documents the uses and expenditures of any allocated funds and outcomes achieved.

(g) "Applicant" means an eligible Local government applying for the program to administer one or more eligible activities. Applicant also means a Local or Regional Housing Trust Fund delegated by an eligible Local government to apply for the program and administer its allocation in accordance with all program rules.

- (h) “Area Median Income” or “AMI” means the most recent applicable county median family income published by the Department, available at the following link:
<http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>
- (i) “At risk of homelessness” means the same as defined in Title 24 Section 578.3 of the Code of Federal Regulations and also includes any household receiving rental assistance funded by the California Emergency Solutions and Housing (CESH) program or the California Homeless Emergency Aid Program (HEAP).
- (j) “Capitalized Reserve for Services” means the reserve funded by the Local government pursuant to Section 301(a)(5) to address project supportive service budget deficits attributable to shortfalls in service funding sources.
- (k) “Comprehensive Housing Affordability Strategy” or “CHAS” means annual data compiled by the United States Census Bureau for the U.S. Department of Housing and Urban Development (HUD) to document the extent of housing problems and housing needs, particularly for low-income households.
- (l) “Community Development Block Grant” or “CDBG” means the program created pursuant to Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq., as amended.
- (m) “Department” means the California Department of Housing and Community Development.
- (n) “Extremely Low Income” has the meaning set forth in HSC Section 50106, which is a maximum of 30 percent of AMI. Grantees shall utilize income limits issued by the Department at the following link:
<http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.
- (o) “Fund” means the Building Homes and Jobs Trust Fund pursuant to HSC Section 50470.
- (p) “High-cost area” means those counties defined as high cost by the Federal Housing Finance Agency (at: <https://www.fhfa.gov/DataTools/>) and those counties for which HUD adjusted the Very low income and low-income rents due to high costs (at: https://www.huduser.gov/portal/pdrdatas_landing.html), as published by the Department in the annual PLHA Notice of Funding Availability.
- (q) “Local government” means any city, including a charter city, any county, including a charter county, or a city and county, including a charter city and county.

- (r) "Local Housing Trust Fund" or "Regional Housing Trust Fund" means a public, joint public and private fund or charitable nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code, which was established by legislation, ordinance, resolution (including nonprofit articles of incorporation), or a public-private partnership organized to receive specific revenue to address local or regional housing needs.
- (s) "Low or Lower Income" has the meaning set forth in HSC Section 50079.5, which is a maximum of 80 percent of AMI. Grantees shall utilize income limits issued by the Department at the following link:
<http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.
- (t) "Moderate-Income" has the meaning set forth in HSC Section 50093, which is a maximum of 120 percent AMI, or in High-cost areas, 150 percent of AMI. Grantees shall utilize income limits issued by the Department at the following link:
<http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.
- (u) "Non-entitlement local government" means a Local government in an area which is not a metropolitan city or part of an urban county, a Local government that, as of September 1, 2017, was an incorporated city with a population of less than 50,000 or a county with an unincorporated area population of less than 200,000 persons which had not entered into a three-year Urban County Cooperation Agreement, or a Local government that was not otherwise entitled to receive CDBG funds directly from HUD.
- (v) "Operating subsidies" means payments to owners of affordable housing developments that make the housing more affordable by covering a portion of the ongoing costs of operating the development. Such payments would have the same effect as rental assistance.
- (w) "Owner-occupied" means a dwelling which is occupied by the owner and includes a single family dwelling or a dwelling unit in a stock cooperative, as defined by Business and Professions Code (BPC), Section 11003.2, a community apartment project, as defined by BPC Section 11004, or a condominium project, as defined by subdivision (c) of BPC Section 11004. 5.
- (x) "Plan" means the document submitted by the Applicant to the Department as part of a complete application in which the Applicant proposes to use allocated funds for at least one eligible Activity. The Plan shall have a term of five years. In succeeding years, the Local government is required to obtain the approval of the Department for any amendments made to the Plan, as set forth in Section 302(c)(5).
- (y) "Permanent Local Housing Allocation Program", "Program", or "PLHA" means the program developed to annually allocate 70 percent of the moneys deposited into the Fund pursuant to HSC Section 50470(b)(2)(B)(i).

(z) “Permanent supportive housing” has the same meaning as in HSC Section 50675.14, that is, housing with no limit on the length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing residents in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. Permanent supportive housing may include associated facilities if used to provide services to housing residents. Permanent supportive housing does not include “health facility” as defined by HSC Section 1250 or any “alcoholism or drug abuse recovery or treatment facility” as defined by HSC Section 11834.02 or “Community care facility” as defined in HSC Section 1502, “Mental health rehabilitation centers” as defined in Section 5675 of the Welfare and Institutions Code (WIC), or other residential treatment programs.

(aa) “Regional Housing Needs Allocation” or “RHNA” means the share of the regional housing need represented by persons at all income levels within the area significantly affected by the general plan of the city or county allocated to an Applicant Local government pursuant to GC Section 65584(b).

(bb) “Sponsor” means the legal entity or combination of legal entities with continuing control of a Rental Housing Development. Where the borrowing entity is or will be organized as a limited partnership, Sponsor includes the general partner or general partners who have effective control over the operation of the partnership, or, if the general partner is controlled by another entity, the controlling entity. Sponsor does not include the seller of the property to be developed as the rental housing Project, unless the seller will retain control of the Project for the period necessary to ensure Project feasibility as determined by the Department.

(cc) “Very Low Income” has the meaning set forth in HSC Section 50105, which is a maximum of 50 percent of AMI. Grantees shall utilize income limits issued by the Department at the following link:
<http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470.5 and 50470, subdivision (b)(2).

ARTICLE II. PROGRAM FUNDING

Section 200. Allocations

(a) SB 2 created a dedicated revenue source for affordable housing and directed the Department to make available 70 percent of the moneys in the Building Homes and Jobs Trust Fund, collected on and after January 1, 2019, to Local governments through the following allocations:

(1) Ninety percent of the moneys available shall be allocated based on the formula used under Federal law to allocate CDBG funds within California. This is the formula specified in Title 42 United States Code (USC), Section 5306.

(A) The amount of funds awarded to each Local government eligible for the entitlement formula component shall be determined by the 90 percent of PLHA funds available pursuant to this paragraph (1) and the percentage of funds received by the entitlement Local government in the CDBG federal fiscal year 2017 allocation process performed by HUD.

(B) Through the formula specified in paragraph (1), the percentage of funds allocated to Non-entitlement local governments shall be distributed to Non-entitlement local governments through a competitive grant program.

(2) Ten percent of the moneys available shall be allocated equitably among Non-entitlement local governments. The equitable allocation awarded to each Local government eligible for the Non-entitlement formula component shall be based on the sum of: (1) 50 percent of the funding available for the Non-entitlement formula component divided by the number of local governments eligible for the Non-entitlement formula component and (2) 50 percent of the funding allocated in proportion to each Non-entitlement local government's share of the total most severe housing need in California's Non-entitlement local governments, based upon the most recent HUD Comprehensive Housing Affordability Strategy.

(b) After funds are appropriated by the Legislature as part of the budget act, the Department will issue one or more Notices of Funding Availability (NOFA). Local governments shall submit an application under the NOFA pertaining to the specific allocation for which the Local government is eligible.

(c) It is recommended that Local governments that were urban counties in accordance with the distribution of funds pursuant to the formula specified in 42 USC, Section 5306 for the federal fiscal year 2017 provide a proportional share of their allocations to Local governments within their county with which they had a three-year Urban County Cooperation Agreement as of September 1, 2017, provided that these Local governments meet the threshold requirements of the PLHA and expend sub-allocated funds for eligible activities within the deadlines of the Standard Agreement governing the sub-allocation.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B).

Section 201. Award Amounts

(a) The formula allocation amounts derived pursuant to the formulas in Section 200 will be announced in the NOFA.

- (b) The maximum application amount and the minimum application amount for the competitive allocation will be stated in the NOFA.
- (c) An Applicant may apply for its formula allocation from the current and two prior NOFAs for which it did not receive an award, provided that the award meets the requirements of Section 304(a).

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B).

ARTICLE III. FORMULA ALLOCATION COMPONENT

Section 300. Eligible Applicants

- (a) Eligible Applicants for the entitlement formula component described in Section 100(b)(1) are limited to the metropolitan cities and urban counties allocated a grant for the federal fiscal year 2017 pursuant to the federal CDBG formula specified in 42 USC, Section 5306.
- (b) Eligible Applicants for the non-entitlement formula component described in Section 100(b)(2) and the competitive grant program component described in Section 100(b)(3) are limited to the Non-entitlement local governments.
- (c) A Local government may delegate another Local government to submit an application and administer on its behalf its formula allocation of Program funds, provided that the Local governments enter into a legally binding agreement and the funds are expended for eligible Activities and consistent with Program requirements. The delegating Local government shall be identified in the application. The administering Local government shall be responsible for all Program requirements.
- (d) A Local government may delegate a Local or Regional Housing Trust Fund to submit an application and administer on its behalf its formula allocation of Program funds, provided that the Local government enters into a legally binding agreement with the Local or Regional Housing Trust Fund and the funds are expended for eligible Activities and consistent with Program requirements. The delegating Local government shall be identified in the application. The Local or Regional Housing Trust Fund shall be responsible for all Program requirements.
- (e) An Applicant shall not be eligible to receive a new allocation of PLHA funds if it has an uncommitted amount of formula PLHA funds greater than the following:
 - (1) Four times the pending annual allocation if the pending annual allocation is \$125,000 or less;
 - (2) \$500,000 if the pending annual allocation is greater than \$125,000 and less than \$500,000;

- (3) The amount of the pending annual allocation if the pending allocation is \$500,000 or more.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B).

Section 301. Eligible Activities

(a) Eligible Activities are limited to one or more of the following:

- (1) The predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is Affordable to Extremely low-, Very low-, Low-, or Moderate-income households, including necessary Operating subsidies.
- (2) The predevelopment, development, acquisition, rehabilitation, and preservation of Affordable rental and ownership housing, including Accessory dwelling units (ADUs), that meets the needs of a growing workforce earning up to 120 percent of AMI, or 150 percent of AMI in high-cost areas. ADUs shall be available for occupancy for a term of no less than 30 days.
- (3) Matching portions of funds placed into Local or Regional Housing Trust Funds.
- (4) Matching portions of funds available through the Low- and Moderate-Income Housing Asset Fund pursuant to subdivision (d) of HSC Section 34176.
- (5) Capitalized Reserves for Services connected to the preservation and creation of new Permanent supportive housing.
- (6) Assisting persons who are experiencing or At risk of homelessness, including, but not limited to, providing rapid rehousing, rental assistance, supportive/case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.
 - (A) This Activity may include subawards to Administrative Entities as defined in HSC Section 50490(a)(1-3) that were awarded CESH program or HEAP funds for rental assistance to continue assistance to these households.
 - (B) Applicants must provide rapid rehousing, rental assistance, navigation centers, emergency shelter, and transitional housing activities in a manner consistent with the Housing First practices described in 25 CCR, Section 8409, subdivision (b)(1)-(6) and in compliance with WIC Section 8255(b)(8). An Applicant allocated funds for the new construction, rehabilitation, and preservation of Permanent supportive housing shall incorporate the core

components of Housing First, as provided in WIC Section 8255, subdivision (b).

- (7) Accessibility modifications in Lower-income Owner-occupied housing.
 - (8) Efforts to acquire and rehabilitate foreclosed or vacant homes and apartments.
 - (9) Homeownership opportunities, including, but not limited to, down payment assistance.
 - (10) Fiscal incentives made by a county to a city within the county to incentivize approval of one or more Affordable housing Projects, or matching funds invested by a county in an Affordable housing development Project in a city within the county, provided that the city has made an equal or greater investment in the Project. The county fiscal incentives shall be in the form of a grant or low-interest loan to an Affordable housing Project. Matching funds investments by both the county and the city also shall be a grant or low-interest deferred loan to the Affordable housing Project.
- (b) A Local government that receives an allocation shall use no more than 5 percent of the allocation for costs related to the administration of the Activity(ies) for which the allocation was made. Staff and overhead costs directly related to carrying out the eligible activities described in Section 301 are “activity costs” and not subject to the cap on “administrative costs.” A Local government may share any funds available for administrative costs with entities that are administering its allocation.
 - (c) Two or more Local governments that receive PLHA allocations may expend those moneys on an eligible jointly funded project as provided for in Section 50470 (b)(2)(B)(ii)(IV). An eligible jointly funded project must be an eligible Activity pursuant to Section 301(a) and be located within the boundaries of one of the Local governments.
 - (d) Entitlement Local governments may use the flow of PLHA funds to incentivize private lender loans and to guarantee payments for some or all public agency bond financings for activities consistent with the uses identified in Section 301 “Eligible Activities”. This loan guarantee Activity must be identified and fully explained in the Applicant’s “Plan”.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivisions (b)(2)(B)(ii)(IV), (b)(2)(D)(i-x), and (b)(3).

Section 302. Threshold Requirements

Applicants must meet all the following threshold requirements for participation in the formula allocation:

- (a) **Housing Element compliance:** The Applicant and any delegating Local government, if applicable, must have a Housing Element that has been adopted by the Local

government's governing body by the application deadline and subsequently determined to be in substantial compliance with state Housing Element Law pursuant to GC Section 65585. A Local government's current Housing Element compliance status can be obtained by referencing the Department's website at <http://www.hcd.ca.gov/community-development/housing-element>.

- (b) **APR on the Housing Element submitted to the Department:** The Applicant and any delegating Local government, if applicable, must submit to the Department the APR required by GC Section 65400 for the current or prior year by the application deadline date.
 - (1) Please be advised that the Department will not accept other reports in lieu of the APR. Housing Authority Financial Reports, Redevelopment Reports, and other similar reports will not be accepted as meeting this requirement. If uncertain of the status of the report submittal for a Local government, please contact the Department for more information.
- (c) Submit, by the deadline specified in the NOFA, on a form made available by the Department, a complete application which shall meet the following minimum requirements:
 - (1) Application requests an allocation pursuant to Section 200 in order to carry out one or more of the eligible activities described in Section 301. Except for a jointly funded project as described in Section 301(c), any activities must be carried out within the jurisdiction of the Applicant Local government.
 - (2) Submission of the application is authorized by the governing boards of the Applicant.
 - (3) Certification in the resolution that, if the Local government proposes allocation of funds for any Activity to another entity, the Local government's selection process shall avoid conflicts of interest and shall be accessible to the public. For the purposes of this paragraph, "entity" means a housing developer or program operator; "entity" does not mean an administering Local government to whom a Local government delegates its PLHA formula allocation, pursuant to Section 300(d).
 - (4) A Plan detailing:
 - (A) The manner in which allocated funds will be used for eligible Activities.
 - (B) A description of the way the Local government will prioritize investments that increase the supply of housing for households with incomes at or below 60 percent of AMI. Programs targeted at households at or below 60 percent of AMI will be deemed to meet this requirement.

- (C) A description of how the Plan is consistent with the programs set forth in the Local government's Housing Element.
- (D) Evidence that the Plan was authorized and adopted by resolution by the Local government and that the public had an adequate opportunity to review and comment on its content.
- (E) The following for each proposed Activity:
 - (i) A description of each proposed Activity, pursuant to Section 301, and the percentage of funding allocated to it. The description shall specifically include the percentage of funds, if any, directed to AOWH.
 - (ii) The projected number of households to be served at each income level and a comparison to the unmet share of the RHNA at each income level.
 - (iii) A description of major steps/actions and a proposed schedule required for the implementation and completion of the Activity.
 - (iv) The period of affordability and level of affordability for each Activity. Rental Projects are required to have affordability periods of at least 55 years.
- (5) The Plan submitted in response to the NOFA shall be for a term of five years. Local governments shall obtain approval of the Department for amendments made to the Plan in each succeeding year of the term of the Plan. Reallocations of more than 10 percent of funds among Activities require amendment of the Plan, with approval granted by the governing body at a publicly noticed public meeting.
- (6) A certification that, if funds are used for the acquisition, construction, or rehabilitation of for-sale housing projects or units within for-sale housing projects, the grantee shall record a deed restriction against the property that will ensure compliance with one of the following requirements if the property is no longer the primary residence of the homeowner due to sale, transfer or lease, unless it is in conflict with the requirements of another public funding source or law:
 - (A) The PLHA loan and any interest thereon shall be repaid to the Local government's PLHA account. The Local government shall reuse the repayments consistent with Section 301; or
 - (B) The initial owner and any subsequent owner shall sell the home at an Affordable housing cost to a qualified Lower-Income or Moderate-Income household; or
 - (C) The homeowner and the Local government shall share the equity in the unit pursuant to an equity-sharing agreement. The grantee shall reuse the proceeds

of the equity-sharing agreement consistent with this section.

- (7) A certification that, if funds are used for the development of an Affordable Rental Housing Development, the Local government shall make the PLHA assistance in the form of a low-interest, deferred loan to the Sponsor of the Project. The loan shall be evidenced through a Promissory Note secured by a Deed of Trust, and a Regulatory Agreement shall restrict occupancy and rents in accordance with the Local government-approved underwriting of the Project for a term of at least 55 years.
- (8) A Program income reuse plan describing how repaid loans will be reused for eligible activities specified in Section 301.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii).

Section 303. Application Review

- (a) Applicants must submit a complete application by the deadline stated in the NOFA in order to be eligible for funding. Application forms provided by the Department will be available upon release of the NOFA and will require Applicants to submit the forms and other documents to demonstrate that the Local government has met threshold requirements.
- (b) The Department may request additional information to complete its review.
- (c) Applications recommended for funding are subject to conditions specified by the Department. Applicants will receive an official letter of award after the Department approves funding recommendations.
- (d) The Department may issue an Over-the-Counter formula allocation NOFA after completing the NOFA process so that Local governments who were not able to submit formula allocation applications by the application deadline will have another opportunity to do so.
- (e) If funding proposed in Local government Plans for AOWH activities is lower than 20 percent of the moneys available in the Fund, the Department may require Local governments to use a specific percentage of their annual formula allocations in some future year for AOWH activities as part of the annual funding process.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(A).

Section 304. Deadlines and Funding Requirements

- (a) The initial PLHA application, including the Plan, must be submitted within 48 months of the budget appropriation (for example, the budget appropriation for 2019 is July 1, 2019, so the application deadline is June 30, 2023).
- (b) Funds allocated to Local governments that do not submit a complete application by the deadline stated in subsection (a) will revert to the Housing Rehabilitation Loan Fund for the Multifamily Housing Program or for Department-administered technical assistance to Local governments.
- (c) A Local government may petition the Department to return any funds allocated to it to be used for the Multifamily Housing Program.
- (d) Except for predevelopment expenses for construction projects funded by PLHA and costs to develop and prepare the Plan and the PLHA application, no costs incurred more than one year prior to commitment by the Local government may be paid from PLHA funds. Reimbursement of expenses to prepare the Plan and the PLHA application are subject to the cap on administrative fees.
- (e) After the Standard Agreement and attachments have been finalized, the Local government will follow provided instructions for signing all required documents. The Local government must submit all supporting materials and a signed Standard Agreement within the timeline provided in the instruction.
- (f) After the Standard Agreement has been executed by the state, the Local government may submit a request for 100 percent of the funds allocated to be used for eligible expenditures for the Activity(ies) that received the award, and subject to the terms and conditions of the Standard Agreement.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(i) and subdivision (b)(2)(B)(ii)(VI).

ARTICLE IV. COMPETITIVE ALLOCATION COMPONENT

Section 400. Eligible Applicants

- (a) Eligible Applicants for the non-entitlement competitive allocation described in Section 100(b)(3) are limited to Non-entitlement local governments. For development of Rental Housing Projects, the Sponsor must be a co-Applicant.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(i)(I).

Section 401. Eligible Activities

- (a) Eligible Activities are limited to the following and must take place within the jurisdiction of the Applicant Local government:
- (1) Development of new multifamily rental housing that is Affordable to households at or below 60 percent of AMI or substantial rehabilitation of multifamily rental housing that will be Affordable to households at or below 60 percent of AMI, but which is not currently restricted as Affordable housing; or
 - (2) Assistance to persons who are experiencing or At risk of homelessness, including, but not limited to, through rapid rehousing, or rental assistance, supportive services and case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers, or new construction, rehabilitation, or preservation of permanent or transitional rental housing.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(i)(I)(ia), (b)(2)(B)(i)(I)(ib) and subdivision (b)(2)(B)(ii)(V).

Section 402. Threshold Requirements

Applicants must meet all the following threshold requirements for participation in the competitive allocation:

- (a) **Housing Element compliance:** The Applicant must have a Housing Element that has been adopted by the jurisdiction's governing body by the application deadline date and subsequently determined to be in substantial compliance with state Housing Element Law pursuant to GC Section 65585. A Local government's current Housing Element compliance status can be obtained by referencing the Department's website at <http://www.hcd.ca.gov/community-development/housing-element>.
- (b) **APR on the Housing Element submitted to the Department:** The Applicant must submit to the Department the APR required by GC Section 65400 for the current or prior year by the application deadline date.
- (1) Please be advised that the Department will not accept other reports in lieu of the APR. Housing Authority Financial Reports, Redevelopment Reports, and other similar reports will not be accepted as meeting this requirement. If uncertain of the status of the report submittal for a Local government, please contact the Department for more information.
- (c) Submit by the deadline specified in the NOFA, on a form made available by the Department, a complete application which shall meet the following minimum requirements:
- (1) Application requests a grant pursuant to Section 100(b)(3) in order to carry out one

or both of the eligible Activities set forth in Section 401.

- (2) Submission of the application is authorized by the governing board of the Applicant and by the developer co-applicant, if any.
- (3) Certification in the resolution that, if the Local government proposes allocation of funds for any Activity to another entity, the selection process shall avoid conflicts of interest, and shall be accessible to the public.
- (4) Demonstration of readiness, including site control for development Projects, land use entitlements, environmental review and commitments of other funding and resources required, as further set forth in the NOFA;
- (5) Underwriting requirements:
 - (A) Uniform Multifamily Regulations Subchapter 19 of Title 25, Division 1, Chapter 7 (commencing with Section 8300), as amended from time to time, and the Multifamily Housing Program Guidelines (commencing with Section 7300), as amended from time to time, are hereby incorporated by reference into this subchapter and shall apply to Rental Housing Developments receiving assistance under the PLHA competitive allocation. In the event of a conflict between the provisions of Subchapter 19 and these Guidelines, the provisions of these Guidelines shall prevail.
 - (i) Section 8312(c) of the Uniform Multifamily Regulations is hereby amended to read:
 - (c) For Projects utilizing 4 percent tax credits, Developer Fee payments shall not exceed the amount that may be included in Project costs pursuant to 4 CCR, Section 10327. In addition, the Developer Fee paid from development funding sources shall not exceed the following:
 - (1) For acquisition and/or rehabilitation Projects, or adaptive reuse Projects, the lesser of the amount of Developer Fee in Project costs or \$2,000,000.
 - (2) For new construction Projects, the base limit shall be the lesser of the amount that may be included in Project costs or \$2,200,000. To arrive at the final limit on Developer Fee paid from development funding sources, the base limit shall then be multiplied by a ratio that is the average of (i) the difference between 2 and the Project's high-cost ratio, as calculated pursuant to 4 CCR, Section 10317(i)(6) or successor language and (ii) 100 percent.
 - (ii) Section 8312(d) of the Uniform Multifamily Regulations shall not apply.
 - (iii) Section 8314(a)(1)(A) of the Uniform Multifamily Regulations is amended to read:
 - (A) Approved deferred Developer Fee, pursuant to Section 8312, provided that the aggregate of the Developer Fee paid from sources and paid as deferred shall not exceed \$3,500,000.

(B) Period of affordability: All assisted rental units shall be restricted for not less than 55 years.

(C) All development Projects shall demonstrate fiscal integrity.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii).

Section 403. Selection Criteria

(a) Applications submitted within a competitive funding round shall be evaluated using the following criteria. Total available points shall equal 100.

1. Priority Points – 25 points

A. Population - 5 points

(i) If the Applicant is a county that has a population of 200,000 or less within the unincorporated areas of the county, the Applicant shall receive all points.

B. Prior Award – 5 points

(i) If the Applicant did not receive an award based on the formula specified in 42 USC, Section 5306 in 2016, the Applicant shall receive all points.

And either C (i) or C (ii) or C (iii) below:

C. Activity

(i) Assistance for Homeless Persons through Program Activities – 15 points

(a) Applications to assist persons experiencing or At risk of homelessness, including, but not limited to, through programs providing rapid rehousing, or rental assistance, or operating assistance to navigation centers shall receive all points.

Or

(ii) Assistance to Homeless Persons through Development of Navigation Centers– 15 points

(a) Applications for construction of navigation centers shall receive all points.

Or

(iii) Assistance for Homeless Persons through Rental Projects – 15 points

(a) Applications for the new construction, rehabilitation, or preservation of permanent or transitional rental housing in which all or at least 10 percent of the units are restricted to occupancy by tenants who are homeless or At risk of homelessness shall receive all points.

2. Evaluation Criteria – 75 points

Precise scoring for these factors will be set forth in the NOFA.

A. Community Need – 30 points

(i) Applicants will receive up to a maximum of 30 points based on the rate of households experiencing the most severe housing need according to the most recent HUD CHAS dataset in the Applicant Local government. Applicants will receive points in proportion to this percentage.

B. Applicant Administrative Experience – 15 points

(i) Applicants with prior experience administering local, state or federal affordable housing or community development programs or who have entered into a contract with an entity with prior experience in the implementation of local, state or federal affordable housing or community development programs will receive up to 15 points.

C. Demonstrated Capacity – 30 points

(i) Capacity points will be based on:

(a) Sponsor experience in Affordable Rental Housing Development and ownership (Up to 30 points) or

(b) Navigation center development experience (for development of these facilities) (Up to 30 points) or

(c) Program Operator experience (for non-development Activities) (Up to 30 points)

(b) Where applications requesting funds for more than one eligible Activity pursuant to Section 401 are permitted by the NOFA, each Activity will receive a separate score for each rating factor, and have an individual Activity total. It is possible that one Activity may score highly enough to receive an award, and the other Activity does not.

(c) In the event of tied point scores and insufficient funding for both applications, the Department shall rank the tied applications as follows:

(1) If one of the tied applications is for an Affordable Rental Housing Development and the other is for a program Activity or development of a navigation center, the

- Affordable Rental Housing Development application will be selected for funding;
- (2) If one of the tied applications is for a navigation center and the other is for a program Activity, the navigation center will be selected for funding;
 - (3) If both of the tied applications are for Affordable Rental Housing Developments, the Project with the lowest weighted average affordability of Restricted Units will be selected;
 - (4) If both of the tied applications are for navigation centers, the facility that provides overnight shelter to the greatest number of people will be selected;
 - (5) If both of the tied applications are for programs, the Local government with the highest rate of households experiencing the most severe housing need according to the most recent HUD CHAS dataset will be selected.
- (d) In the event there are insufficient funds to fulfill the entire funding request for the next highest scored application (Application A), the Department will determine whether Application A is feasible without the full funding request. If Application A is not feasible without full funding, the Department may offer the remaining funds to the application whose score is immediately below Application A. If the remaining funds are insufficient to fulfill the funding request for that application (Application B), the Department will again determine whether this application is feasible without the full funding request. If Application B is not feasible without the full funding request, the Department will perform the same analysis for the application whose score is immediately below Application B.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(i)(I)(ia) and subdivision (b)(2)(B)(ii)(V).

Section 404. Application Review

- (a) Applicants must submit a complete application by the deadline stated in the NOFA in order to be eligible for funding. Application forms provided by the Department will be available upon release of the NOFA and will require Applicants to submit the forms and other documents to demonstrate that the Local government has met threshold requirements. The application will require submission of documentation adequate to demonstrate that the application has earned the appropriate number of points.
- (b) The Department may request additional information to complete its review, provided that the new information would not affect scoring.
- (c) Applications recommended for funding are subject to conditions specified by the Department. Applicants will receive an official letter of award after the Department approves funding recommendations.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii).

Section 405. Deadlines and Funding Requirements

- (a) Applicants will be required to enter into a state Standard Agreement (Standard Agreement) that will set forth conditions for funding and milestones that are required to be met.
- (b) After the Standard Agreement and attachments have been finalized, the Local government will follow provided instructions for signing all required documents. The Local government must submit all supporting materials and a signed Standard Agreement within the timeline provided in the instructions or risk forfeiting the grant award.
- (c) Except for predevelopment expenses for construction projects funded by PLHA and the costs to develop and prepare the PLHA application, no costs incurred more than one year prior to commitment by the Local government may be paid from PLHA funds. Reimbursement of expenses to prepare the PLHA application is subject to the cap on administrative fees.
- (d) Grant funds shall not be disbursed until:
 - (1) the Department authorizes loan closing, in the case of development projects; or
 - (2) all general and special conditions have been complied with, in the case of other Activities.
- (e) If funds are used for the development of an Affordable Rental Housing Development, the Local government shall make the PLHA assistance in the form of a low-interest, deferred loan to the Sponsor of the project. The loan shall be evidenced through a Promissory Note secured by a Deed of Trust, and a Regulatory Agreement shall restrict occupancy and rents in accordance with the Department-approved underwriting of the project for at least 55 years.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii)(VI).

ARTICLE V. ADMINISTRATION

Section 500. Accounting Records

- (a) The grantee shall establish a separate ledger account for receipts and expenditures of grant funds and maintain expenditure details in accordance with the approved work plan, budget, and schedule. Separate bank accounts are not required.
- (b) The grantee shall maintain documentation of its financial records for expenditures incurred during the course of the PLHA Activity in accordance with generally accepted accounting principles. Such records shall be kept for at least five years after the close-out report is submitted to the Department.

- (c) The Department or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to the PLHA grant.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii)(III) and subdivision (b)(2)(B)(IV) and subdivision (b)(3).

Section 501. Audits/Monitoring of Project Files

- (a) Grantee shall maintain PLHA files which, at a minimum, should include the following information and reports:
 - 1) Project/Activity description
 - 2) Land/site Information
 - 3) Planning & zoning history (as appropriate)
 - 4) Records of public hearings and public comments
 - 5) Relocation needs (as appropriate)
 - 6) Contracts, loan and grant agreements, Standard Agreement
 - 7) Environmental records & reports/findings (as appropriate)
 - 8) Design/engineering reports & plans (as appropriate)
 - 9) Description of targeted beneficiaries, services to be provided, household incomes, special needs
 - 10) PLHA Activity costs, invoices, purchase orders, sources and uses of funds for PLHA Activities, terms & conditions of financings, draws and all supporting documentation, change orders (as appropriate)
 - 11) Activity schedule and amendments
 - 12) History of Plan amendments
 - 13) Procurement policy used for PLHA Activity(ies)
- (b) The grantee shall maintain such records for possible audit for a minimum of three years after the close-out report is submitted, unless a longer period of records retention is stipulated in the Standard Agreement.
- (c) The grantee shall be responsible for monitoring Rental Housing Developments that received PLHA funds for the term of the loan, including, but not limited to, the Projects' compliance with the occupancy and rent requirements set forth in the Regulatory Agreement, compliance with reserve requirements, and the compliance with habitability standards.
- (d) The grantee shall be responsible for monitoring AOWH loans to assure that the homes remain Owner-occupied.
- (e) If requested by the Department, the grantee shall obtain a report from a qualified,

licensed third party that certifies to the amounts of disbursement and identifies the specific Activities for which the disbursements were made. Such a report is permitted to be a component of the A-133 audit.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii)(IV) and subdivision (b)(3).

Section 502. Cancellation and Termination

- (a) In the event that it is determined, at the sole discretion of the Department, that the grantee is not meeting the terms and conditions of the Standard Agreement, the Department shall issue a notice to stop work. Immediately upon receiving the written notice to stop work, the grantee shall cease all work under the Standard Agreement. The Department has the sole discretion to determine the grantee's compliance with the terms and conditions after issuance of a stop work order, and to deliver a written notice to the grantee to resume work under this Standard Agreement.
- (b) The Department shall terminate the Standard Agreement if the grantee is not in compliance with the Guidelines or the terms and conditions of the Standard Agreement. At least 30 days prior to the effective date of the termination of the Standard Agreement, the Department shall provide written notice to the grantee of its intent to cancel the funding allocation. The notice shall specify the reason for early termination and may permit the grantee or the Department to cure any deficiency(ies) prior to the early termination date. The grantee will submit requested documents to the Department within 30 days of the early termination notice.
- (c) Failure to meet reporting requirements will result in notice to the grantee that it must satisfactorily cure any deficiencies within three months of the notice or it will forfeit the following year's PLHA formula allocation and be ineligible for a competitive award. The Local government will forfeit subsequent PLHA formula allocations and be ineligible for a competitive award until the Department determines that the Local government has met reporting requirements.
- (d) The Department may, as it deems appropriate or necessary, request the repayment of funds from a Local government or offset future years' funds, or pursue any other remedies available to it by law for failure to comply with the Guidelines and/or the terms and conditions of the Standard Agreement.
- (e) Co-Applicants may be adversely impacted by a notice to stop work and/or termination if one grantee is deemed by the Department to not meet the terms and conditions of the Standard Agreement, or fails to meet the reporting requirements outlined in Section 503.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii)(IV) and subdivision (b)(3).

Section 503. Reporting

- (a) The Department shall provide grantees with reporting formats and instructions.
- (b) Annual Reports are required from all grantees pursuant to HSC Section 50470(b)(2)(B)(ii)(III) each year by July 31 for the term of the Standard Agreement. The Annual Report shall document the uses and expenditures of all awarded allocations and outcomes achieved. This report must be signed by both the Local government's PLHA administrator and the Local government's City Manager (or his/her designee), or Chief Executive Officer (or his/her designee) or Chief Financial Officer (or his/her designee). The Annual Report must describe any proposed amendment(s) to the approved Activity and schedule.
- (c) Upon expenditure of all allocated funds and completion of the Activities funded by PLHA, the grantee shall submit a close-out report, which will be part of the Annual Report.
- (d) The Department may request additional information as needed to meet other applicable reporting or audit requirements.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii)(III) and subdivision (b)(2)(B)(ii)(IV).

2023-24 Super-NOFA Application for Affordable Housing Funds

Marin County Housing & Federal Grants Division

This application is for affordable housing developers in Marin County, California who would like to apply for multiple state, local, and federal funding sources simultaneously. Please refer to the Notice of Funding Availability (NOFA) released on February 6, 2023 for detailed information about qualifications and application requirements.

The following grant sources and amounts are available through this application:

1. **Marin County Affordable Housing Fund (HTF) and State Permanent Local Housing Allocation (PLHA)** - \$2.3 million
2. **Federal HOME-ARP** - \$2.4 million
3. **Federal CDBG Housing** - \$600 thousand

Applicant Information

Organization Name

Eden Housing

Website URL

<https://edenhousing.org/>

DUNS

058211947

Mailing Address

22645 Grand Street
Hayward, California, 94541

Project Contact Name

Kate Blessing-Kawamura

Title

Associate Director of Real Estate Development

Email Address

kate.blessing-kawamura@edenhousing.org

Phone Number

(510) 329-5102

Executive Director Name

Linda Mandolini

Executive Director Email Address

LMandolini@edenhousing.org

Is there a co-applicant organization?

No

Briefly describe your organization, including mission, programs, staff experience, and number of clients served. Describe the co-applicant organization, if applicable.

Eden Housing is one of the oldest and most experienced affordable housing non-profit organizations in California. Our mission is to create and sustain high-quality affordable housing communities that advance equity and opportunity for all. Since our inception in 1968, Eden has worked in partnership with cities and local community partners to develop, acquire, or rehabilitate more than 12,000 affordable homes in 170 properties throughout California, and currently provides homes to a diverse population of more than 22,000 lower-income residents.

Eden works in 15 counties, including the County of Marin, where we own and operate The Fireside and Warner Creek. As a mission-driven non-profit, we serve low-income families, seniors, and people living with disabilities. Eden's work goes beyond building high quality buildings, as we strive to create strong communities for the residents who live in our housing and a permanently affordable, high-quality asset for the cities we partner with. Our vision is for everyone to have access to safe, decent, affordable housing. We believe that housing is a basic human necessity that is essential to everyday life and future success. We serve very low, low and moderate-income families, seniors, veterans, people living with physical, mental, or developmental disabilities, and the formerly homeless.

Under the Eden Housing umbrella, Eden Housing Management, Inc. (EHMI) provides quality onsite management and maintenance of our affordable homes, and Eden Housing Resident Services, Inc. (EHRSI) offers free onsite support services and programs for residents. In 2022, Eden Housing brought on John Stewart Company (JSCo) as the property management agent for several of its upcoming permanent supportive housing projects, including 3301 Kerner, to accommodate a growing pipeline.

Have there been any recent or upcoming leadership transitions?

Chief Operating Officer, Oyeshola ("Shola") Olatoye joined Eden in October of 2022. Shola previously served as director of Housing and Community Development for the City of Oakland. Under her leadership, Oakland's City Council approved HCD's two-year Strategic Action Plan, which focused the department's resources on protecting, preserving and producing affordable housing. During her tenure, the City of Oakland won six state Homekey awards resulting in more than 400 new permanent deeply affordable units. Shola also launched the city's federal \$48M Emergency Rental Assistance program and served more than 3,000 Oaklanders who needed immediate rent relief. She also secured the department's research relationship with Stanford University's Impact Lab, resulting in new \$50K impact grant to develop new technology for residents to access affordable rental housing.

A nationally recognized housing leader, Shola has also held executive and senior-level posts at Suffolk Construction, Enterprise Community Partners, HSBC Bank, and HR&A Advisors. In 2014, Mayor Bill de Blasio appointed her as Chair and CEO of the New York City Housing Authority, a role she held for four years. She conducts frequent speaking engagements, including as a panelist at Harvard's T.H. Chan School of Public Health, and was selected as one of four national Fellows for the UC Berkeley Turner Center for Housing Innovation in June 2021.

Shola is responsible for oversight of Property Operations (property management and resident services), Human Resources and Talent Development, and Business Technology.

Have there been any recent expansions or cutbacks in activities and/or budget? If so, please explain.

Eden Housing published a new Strategic Plan in 2020 that aims at the creation of 10,000 new homes in the next ten years. The four pillars of this strategic plan are: (1) Significantly increase housing for low-income Californians; (2) Support the stability and economic mobility of residents; (3) Embed commitment to racial, social and economic justice in all of our work; and (4) Invest in key

infrastructure to increase organizational agility and readiness for scale. As a part of its growth goals Eden plans to expand from a robust Northern California pipeline to a statewide development platform with the capacity to create more homes in high need communities.

If applicable, what is the organization’s standing with licensing or other accreditation authorities?

Eden and its related organizations are in compliance with any applicable licensing requirements.

How does your organization verify client income?

In general, Eden Housing uses the following procedure for determining resident eligibility and for certifying household income: (1) Each prospective resident shall complete an application form and return it to the Property Manager with signed permission for third party verification of income; (2) When an applicant's name nears the top of the waiting list, pertinent information will be confirmed as current and third-party verification letters are sent; (3) The manager shall conduct a personal interview with all members of the prospective household; (4) Third party verification forms will be used to compute income eligibility and a determination will be made concerning applicant household's ability to live harmoniously within the Project community; and (5) Previous landlord verification, credit checks, criminal checks and sex offender checks will be performed. Written notice will be sent advising applicants of their final eligibility status. These procedures may be revised for any units subject to Housing First policies.

General Project Information

Project Name

3301 Kerner

Project Address

3301 Kerner Blvd
San Rafael, California, 94901

Assessor’s Parcel Number (APN)

008-082-52

Funding Requests

Which funding source(s) are you seeking for this project? Please refer to the NOFA for a description of each funding source and eligible project types. Those applying for HOME-ARP funds are highly encouraged to apply for HTF/PLHA funds as well.

HTF/PLHA

HTF/PLHA Amount Requested

\$1,000,000

Project Details

Scope of Work: Describe the proposed project, including details such as property characteristics, proposed use of funds, and number of housing units involved. Explain how the project will benefit the community.

The site is located at 3301 Kerner Boulevard in San Rafael. This project is an adaptive reuse development of a four-story office building to provide 41 units of permanent supportive housing (32 studio units, 8 one-bedroom units, and 1 two-bedroom unit). Located in the Canal neighborhood of San Rafael, this project will provide critically-needed permanent supportive housing and supportive services

for homeless or formerly homeless households with mental illness.

The development will be 100% permanent supportive housing with 14 units for households with severe mental illness at or below 20% AMI through the No Place Like Home Program (NPLH) and 26 units for households at or below 30% AMI who will move from permanent supportive housing at Voyager Carmel Center to 3301 Kerner once construction is complete. One unrestricted two-bedroom unit is set aside for an on-site property manager. Building amenities include: a courtyard, community room, conference room, and offices for case managers and a property manager. The residential floors include a laundry facility on the second floor and trash chutes on every floor.

As of the date of this funding application, the project team is preparing to close on its construction financing and start construction in the next couple of weeks. In the last week, the project team learned that the building structure as currently designed is in a floodplain and that the finished floor of the first-floor residential units will need to be raised. Our request for \$1,000,000 in additional County funding will directly offset these unanticipated costs.

Describe the property's history leading up to this request. Include when the organization acquired/will acquire the property, any previous requests for County funding, attempts to secure other financing, etc.

The County of Marin received a Project Homekey award from the State of California to purchase an office building located on a 1-acre site at 3301 Kerner Boulevard in San Rafael. Project Homekey is a State program using Federal CARES Act funding to purchase existing properties – intended in large part to target hotels, but also allows for creative re-use of other property types, including office buildings as proposed for Kerner. The County closed escrow on the building in December 2020 and engaged Homeward Bound to run a temporary homeless shelter at the site until fall 2022. Kerner Canal, L.P., a single purpose entity controlled by Eden Housing, Inc., entered into a Purchase and Sale Agreement with the County in January 2023.

The project team has secured multiple sources of other financing. These include: \$25.8M in California Housing Accelerator (CHA) funding instead of tax credits; \$4.9M in capital and a \$2.7M Capitalized Operating Subsidy Reserve through the No Place Like Home (NPLH) Program; an \$899,250 County loan funded by Permanent Local Housing Allocation (PLHA), Local Housing Trust Fund (LHTF), and corresponding matching funds from the Affordable Housing Fund; an \$850,000 City of San Rafael loan; a \$1.235M sponsor loan leveraging multiple grants (including a \$200,000 predevelopment grant from the County); accrued deferred interest from soft loans; and a \$19.6M 20-year operating subsidy from the County. The project is currently ineligible for project-based rental subsidy due to its location in a HUD-impacted census tract, which is why the County's ongoing support is essential to the project's viability.

The project team is preparing to close on its construction financing, acquire the property from the County, and start construction in the next couple of weeks. In the last week, the project team learned that the building structure as currently designed is in a floodplain and that the finished floor of the first-floor residential units will need to be raised to comply with local floodplain requirements for residential structures. Our request for \$1,000,000 in additional County funding will directly offset these unanticipated costs. The project team still intends to close and start construction in the next couple of weeks and incorporate much-needed additional funding into the project's capital stack post-closing.

Describe any nearby amenities, such as parks, public transportation, grocery stores, health care facilities, schools, childcare, libraries, parks/open space, etc. that residents of the project are/would be able to use.

The building is in an ideal location within walking distance to public transportation, grocery stores, retail services, and recreation. The site has close connections to the Marin Transit bus transportation, and is within 0.5 miles of Cardenas Market, Pickleweed Park, and the Marin Health and Wellness Campus / Behavioral Health Clinic. The site's proximity to the Marin Health and Wellness Campus / Behavioral Health Clinic will allow residents housed under the NPLH program close access to supportive services.

The Marin Transit bus stop is a short 14 min ride to the San Rafael Transit Center which provides train and bus access to several destinations within Marin and Sonoma County as well as the larger Bay

Area. The station is a major transfer point for Sonoma-Marín Area Rail Transit (SMART) and bus routes in the North Bay, with connections to San Francisco, the East Bay, as well as airports. In addition to SMART, the station is also served by several regional and intercity bus operators which include Golden Gate Transit, Greyhound, Marin Transit, Sonoma County Transit, and Sonoma County Airport Express.

Select the known environmental issues of the proposed project site, and/or adjacent properties if relevant.

Flood zone

Notes or clarifying information on environmental issues:

As noted above, it has come to light very recently that the building is in a floodplain and that the first-floor residential units will need to be raised to comply with local floodplain requirements for residential structures. Our request for \$1,000,000 in additional County funding will directly offset these unanticipated costs.

Have you begun any state or federal environmental review procedures for the proposed project?

No

What is the anticipated timeline for the environmental review(s)?

Pursuant to Health and Safety Code section 50675.1.1, projects acquired through Project Homekey are exempt from CEQA. The project does not have any federal funding and therefore is not required to complete NEPA.

Who is the staff member that will supervise and manage the proposed project? Describe their past experience with project management.

Cory Hiraga, Project Developer, is leading the project management of this project and oversees the day-to-day responsibilities across all stages including entitlements, design, financing, and construction. Cory has experience providing project management, planning, and construction management for affordable housing new construction and acquisition/rehab projects. In addition to 3301 Kerner, he currently manages a 176-unit family project in Hayward, CA that has closed on its construction financing and is about to break ground.

Kate Blessing-Kawamura, Associate Director of Real Estate Development, is supervising this project and has managed new construction and preservation projects at various stages of development. Since joining Eden, she financed and begun construction of a 62-unit family project in San Leandro, CA; planned the substantial rehabilitation of a 200-unit, 10-acre project in Santa Rosa, CA; led a robust community engagement process and obtained entitlements for a 50-unit mixed use development in Palo Alto; and obtained entitlements and closed on the construction financing for a 176-unit family project in Hayward, CA.

Susie Criscimagna, Senior Director of Real Estate Development, is also supervising this project and is experienced with managing affordable housing projects in all stages of development. She supervises project management staff, providing training and guidance on affordable housing development. She has worked on the development of several other affordable housing projects with Eden Housing as a project manager or supervising staff, including a 66-unit development in Dublin, 130-unit development in Alameda, and 62-unit project in San Leandro.

Will the project involve hiring an external property management company?

Yes

Describe the property management company. Include the company name and the number of affordable housing sites and units that it currently manages.

Property management will be provided by The John Stewart Company. In 2022, Eden Housing brought on John Stewart Company (JSCo) as the property management agent for several of its upcoming permanent supportive housing projects to accommodate a growing pipeline. Founded in 1978 to provide high quality property management to affordable housing in the Bay Area, JSCo has developed into a full-service housing management, development, and consulting organization and is the largest affordable housing manager in California. JSCo has extensive permanent supportive housing management experience. The John Stewart Company currently manages 100+ PSH properties across the state of California within their portfolio of 450+ properties containing over 34,000 residential units.

If awarded funding, you will need to draft and submit an Affirmative Marketing Plan for this project. The plan would describe how you will market the project to different groups of people based on protected characteristics such as race, color, national origin, religion, sex (including sexual orientation and gender identity), familial status, and disability. Please refer to the Affirmative Marketing tab of the [Federal Grants website](#) for more information.

Describe any prior experience with affirmative marketing or similar initiatives.

The marketing and management of the project will ensure that occupancy shall be open to all persons regardless of race, color, ancestry, religion, national origin, sex, marital status, age, physical handicap, or other arbitrary factors. Affirmative marketing will be used to actively promote the goals of fair housing. The units will be marketed in a variety of local publications, online, and through major employers, local libraries, community centers, service organizations and schools. The marketing plan will include specific strategies for targeted outreach to minority populations and difficult to reach groups. Referrals will be accepted from Marin Coordinated Entry System and Marin Health and Human Services. All advertisements will include the prominent use of Equal Housing Opportunity logos, slogans and/or statements of intent to affirmatively market the units.

Annually, The John Stewart Company will analyze the race, ethnicity, and other categories of current tenants and the applicants on the waiting list to measure the success of our marketing efforts before starting its marketing. Thereafter, The John Stewart Company will annually review the affirmative marketing for 3301 Kerner to ensure that its marketing efforts are targeting the persons least likely to apply to ensure a balance of the applicants on the waiting list and the residents. The Compliance Manager will review the demographic data for the housing area to determine if the housing area must be extended to ensure that The John Stewart Company is conducting outreach to under-represented populations before doing any future marketing.

All projects funded by HUD programs must Affirmatively Further Fair Housing. This is defined as combating housing discrimination and taking meaningful actions to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to housing opportunities based on protected characteristics: race, color, national origin, religion, sex (including sexual orientation and gender identity), familial status, and disability.

Describe any past community engagement activities for this project, and future plans for community engagement.

In July 2021 a mural was unveiled by the Canal Arts Initiative on the 3301 Kerner building as a welcome sign to the Canal neighborhood of San Rafael. Eden intends to preserve the mural and engage with the Canal Art Initiative on the possibility of commissioning another mural on the building. It is our hope that the Kerner building not only provides permanent supportive housing but also supports the community in which the building is located.

Eden also intends to hold multiple community meetings with neighbors, community organizations, and

the business community during construction, lease-up, and operation of the property. We have already engaged with community organizations such as Resilient Shore and the Canal Alliance. Eden is invested in this project and in the Canal neighborhood of San Rafael and its many stakeholders.

Demographics and Unit Information

In the table below, enter the existing or anticipated number of units based on income level and bedroom count. Refer to the [Current Marin County Income Limits](#) to determine income level.

Anticipated Unit Count by Bedrooms and Income Level

	Extremely Low	Very Low	Low	Moderate	Market Rate	TOTAL UNITS
Studio	32					32
1 bed	8					8
2 bed					1	1
3 bed						0
4 bed						0
Other						0
TOTAL UNITS	40	0	0	0	1	41

Notes or clarifying information on the unit count:

Per near-final draft PLHA/AHF loan docs as of the date of this application, the County intends to restrict 40 units at Extremely Low Income. The two-bedroom manager's unit will be unrestricted.

In the table below, enter the demographics of the people who live (or will live) in the proposed housing project. If unknown, use the demographics of households within similar existing Marin complexes as the proposed project, within the organization's purview. Specify the number of Hispanic/Latino residents in its stand-alone column. The "Total" column must include the number of Hispanic/Latino residents as part of the sum.

Are these numbers specific to the proposed project, or to a similar existing Marin complex?

Similar existing Marin complex

Demographic Information

	Total Number of Persons	Persons Identifying as Hispanic/Latino
White	77	
Black/African American	8	
Asian	15	
American Indian/Alaskan Native		
Native Hawaiian/Other Pacific Islander		

	Total Number of Persons	Persons Identifying as Hispanic/Latino
American Indian/Alaskan Native & White		
Asian & White		
Black/African American & White		
American Indian/Alaskan Native & Black.African American		
Other Multi-Racial		
Other/Not Disclosed	8	8
TOTAL (Unduplicated)	108	8

Fill in a number for each of the fields below. For new construction, or if you are unsure, please put 0.

Families

17

Female-headed households

61

Households that include person(s) with a disability

13

Notes or clarifying information on demographics:

This is aggregated demographic data from two Eden properties in Marin County from 2022.

The Race/Ethnicity fields above do not directly align with the data fields from our records. See below.

Race/Ethnicity

White 77
 Latinx 8
 Black 8
 API 15
 Total 108

Project Planning

Select the current phase of the proposed project.

Building

Describe the project timeline and specify a real or estimated completion date for each milestone below. Add/explain any additional milestones as needed.

For acquisition projects:

Appraisal

Monday, April 4, 2022

Written Offer

Monday, January 1, 1900

Purchase Option Agreement Signed

Tuesday, January 10, 2023

Inspections

Monday, January 1, 1900

Negotiations

Monday, January 1, 1900

Closing

Thursday, March 30, 2023

Explain any additional milestones for Acquisition Projects below:

The project team is preparing to close on its construction financing, acquire the property from the County, and start construction in the next couple of weeks.

For fields that are not applicable to the project, I used this date: January 1, 1990.

For new construction and/or rehabilitation projects:**Define scope of work/finish design**

Friday, December 9, 2022

Complete planning and environmental review

Monday, January 1, 1900

Release bid package

Sunday, January 15, 2023

Select contractor

Tuesday, February 1, 2022

Finalize contract

Friday, March 24, 2023

Obtain building permits

Monday, April 3, 2023

Start construction

Monday, April 3, 2023

Complete construction

Sunday, September 1, 2024

Explain any additional milestones for New and/or Rehabilitation Projects below:

The project team is preparing to close on its construction financing, acquire the property from the County, and start construction in the next couple of weeks. The building permit will be issued immediately after closing.

For fields that are not applicable to the project, I used this date: January 1, 1990.

Will you be seeking Project Based Section 8 Vouchers for this project?

No

Please be aware that if Project Based Section 8 Vouchers (PBV) are committed to the project, the environmental review process and subsidy layering must be completed before the acquisition is complete or construction commences. Actions taken prior to PBV being committed are not subject to this requirement.

Describe the type of site control that your organization has for the proposed property. If this request includes funds for acquisition, summarize the acquisition terms, price, contingencies, and conditions.

Kerner Canal, L.P., a single purpose entity controlled by Eden Housing, Inc., entered into a Purchase and Sale Agreement with the County in January 2023. The project anticipates closing on its construction financing and acquiring the property from the County in the coming weeks.

Expanding on the Scope of Work, please describe the rehabilitation that is proposed for the property and how it will address specific conditions (i.e., replacement needs, deferred maintenance, existing building violations, required seismic upgrades, building or health code problems). Please describe any other existing rehabilitation needs that are not included in the project scope and explain their exclusion.

The redesign includes utility upgrades and site improvements including accessible parking and paths of travel and localized grading and drainage as deemed necessary. The patio courtyard will be redeveloped and a portion of the landscape will be replaced or new planting designed and coordinated with existing irrigation. A portion of the top level of the parking garage will be designed as an outdoor open space and gardening area.

The redesign will also include structural upgrades to the building and new construction to the extent required by the City of San Rafael. The mechanical, electrical, and plumbing (MEP) systems will be redesigned for the new residential building program to residential type V- 1hr codes and sprinkler and Emergency Systems Specifications. The MEP system required upgrades will be integrated into the existing building systems.

As noted above, it has come to light very recently that the building is in a floodplain and that the first-floor residential units will need to be raised to comply with local floodplain requirements for residential structures. Our request for \$1,000,000 in additional County funding will directly offset these unanticipated costs.

Describe the accessibility of the building. Do you plan to make accessibility improvements?

The Project will comply with the Tier 2 California Housing Accelerator Program Guidelines, most recently amended August 31, 2022. Under these Housing Accelerator Guidelines, adaptive reuse projects are considered rehabilitation projects. As noted above, site improvements include improvements to accessible parking and paths of travel.

How will the rehabilitation be staged to minimize risk and inconvenience to the residents? If certain systems or parts of residents' units will be temporarily inoperable or unusable (e.g., kitchen or bathroom) during construction, what is the estimated duration of such interruptions? What mitigations will you provide?

Not applicable. There are no current residents of the building.

Describe in detail any temporary relocation of existing tenants at the site due to proposed rehab activities. Explain why relocation is needed and provide the estimated duration and number of impacted tenants. If known, identify which laws (local, state, federal) must be followed in carrying out the relocation.

Not applicable. There are no existing tenants.

Financing Plan

What is the status of all proposed project funding sources as of the date of this application?

California Housing Accelerator (CHA) - \$25,824,201 - Committed
NPLH - \$4,981,492 - Committed
Marin County (PLHA + LHTF+ AHF) - Existing - \$899,250 - Committed
City of San Rafael (AHTF) - \$850,000 - Committed
Sponsor Loan (HPN + MCF + County) - \$1,235,000 - Committed
Accrued Interest on Committed Soft Loans - \$78,325 - Committed
Marin County (PLHA + AHF) - Requested - \$1,000,000 - Applied For
Accrued Interest on Marin County (PLHA + AHF) - Requested - \$37,918 - Applied For

What is the timing and likelihood for obtaining commitments of anticipated funding sources?

All of the sources above have been committed to the project, with the exception of the \$1,000,000 in additional County funding requested and associated accrued interest.

In the event that any funding sources are not obtained or are committed at lower levels than requested, what alternatives will be pursued?

The project is considering approaching other funders, such as the Marin Community Foundation, for additional funding.

For each item in your project budget, to be attached to this application, please explain how the budgeted amount was derived, whether costs are estimated or bid, and any other relevant information that justifies the budgeted expense (e.g., cost per square foot, percentage of other costs, estimated number of work hours).

Acquisition Costs: Based off of actual anticipated closing costs for our upcoming closing.

Hard Costs: Based off of hard bids from our contractor and subcontractors.

Soft Costs: Based off of actual predevelopment costs already incurred, invoices for impact and permit fees, and anticipated costs for our upcoming closing.

Costs of issuance/financing fees: Based off of actual and estimated fees for our upcoming closing.

Is your organization receiving any other Marin County funding for this project?

Yes

Please describe. Include a brief overview of the goals and accomplishments achieved through this funding.

The project has \$899,250 in PLHA, LHTF, and AHF soft loan debt from the County of Marin committed. In addition, the County of Marin provided a \$200,000 predevelopment grant to Eden Housing for this project, which is being structured as a larger sponsor loan for the project. These committed funds have reduced the accrued predevelopment interest expense for the project and provided indispensable soft financing to get us to construction closing.

Does your organization have unspent funds that were previously awarded by the County (for any project)?

Yes

What is your timeline for expending the fund balance?

The funds outlined above will be expended at our construction closing in the coming weeks.

Attachments

Please closely review the Notice of Funding Availability (NOFA) for instructions on which documents you must attach. The County requires specific attachments for each funding type (HTF/PLHA, HOME-ARP, CDBG Housing). Please label your attachments in this manner: "2023-24 [Document Name] for [Organization Name]- [Project Name]."

 2023-2024 Board for Eden - 3... .pdf	 2023-2024 Budget for Eden -pdf
 2023-2024 Const S&U for Ede...pdf	 2023-2024 FS (19-20) for Ede...pdf
 2023-2024 FS (20-21) for Ede...pdf	 2023-2024 IRS Exempt for Ed... .pdf
 2023-2024 Op Budget and Ca...pdf	 2023-2024 Perm S&U for Ede... .pdf
 2023-2024 Project Schedulexlsx	 2023-2024 Site Control for Ed...pdf

Certification

Please review your responses above for accuracy.

Name of Person Completing this Application

Kate Blessing-Kawamura

Title of Person Completing this Application

Associate Director of Real Estate Development

By checking this box,

I hereby certify that the information in this application is true and accurate to the best of my knowledge.

INCUMBENCY CERTIFICATE
Eden Housing, Inc.

The persons named below are the members of the Board of Directors of the corporation named above and/or are the Officers duly elected or appointed to the offices set forth opposite their names.

NAME	OFFICE	CURRENT TWO-YEAR TERM (OFFICERS) CURRENT TERM (DIRECTORS)
Jim Kennedy	Chair Director	January 2022- January 2024* January 2021 - January 2025*
Rudy Johnson	Vice Chair Director	January 2022 - January 2024* January 2022 - January 2026*
Amy Neches	Treasurer Director	January 2022 – January 2024* January 2020 – January 2024*
Cheryl O’Connor	Secretary Director	January 2022 – January 2024* January 2023 – January 2026
Calvin Whitaker	Assistant Secretary Director	January 2023 – January 2024 January 2020 - January 2024*
Annette Billingsley	Director	January 2020 - January 2024*
Nicholas Randall	Director	January 2020 – January 2024 *
John Gaffney	Director	January 2020 - January 2024*
Doug Kuerschner	Director	January 2022 - January 2024*
Grace Li	Director	January 2023 - January 2026
Joe Postigo	Director	January 2022 - January 2024*
Sean Callum	Director	January 2023 – January 2026
Sheila Burks	Director	January 2020 – January 2024*
Candice Gonzalez	Director	January 2022 – January 2026*
David Garcia	Director	January 2022 – January 2026*
Ali Solis	Director	January 2023 – January 2026
Kara Douglas	Director	January 2023– January 2026

Linda Mandolini, President (non-voting), serves at the will of the Board and is authorized to sign on behalf of the Corporation.

*The bylaws were amended in 2022 to include a new term limit structure, shifting from three 4-year terms to four 3-year terms for directors, and one 3-year term for officers. Director terms marked with an asterisk were legacy terms from the prior structure and will be transitioned to the new structure upon current term expiration.

As of January 27, 2023



Base Scenario			
	<i>Units Managed / Added</i>	<i>Units Added</i>	<i>Units Added</i>
	9,365	9,560	9,682
EDEN HOUSING	195	122	161
2023 CORPORATE BUDGET			
CASH BASIS	2023 Budget	2024 Projections	2025 Projections
Developer Fee	17,679,187	12,594,361	15,077,873
Service Program Fees	6,410,048	6,602,349	6,800,420
Property Management & Services Fee	12,120,196	12,547,033	13,030,491
Asset Management Fees	1,943,719	1,999,564	1,999,564
Affiliate Loans-Notes Receivables	4,840,759	4,616,969	4,473,934
Distributable Cash From Properties	2,443,739	4,659,247	4,659,247
Portfolio Distributions	9,228,217	11,275,780	11,132,745
Grants & Contributions	1,466,490	1,226,490	1,226,490
Dividend & Interest Income	934,538	934,000	934,000
Investment Gains (Losses)	(915,000)	-	-
Other Income	1,486,028	2,160,490	2,160,490
Total Cash Revenue	\$ 46,923,676	\$ 45,180,013	\$ 48,202,019
Payroll Expense	29,180,078	30,960,860	32,783,544
	68%	68%	69%
Operating Expenses	7,172,373	7,453,256	7,685,853
Service Program Expenses	6,466,342	6,602,349	6,800,420
Service Program Expenses			
Office Improvements	9,500	9,975	10,474
Debt Service	137,912	164,831	130,625
MGP Expenses	208,003	208,003	208,003
Other Expenses	355,414	382,808	349,101
Total Cash Expenses	43,174,208	45,399,273	47,618,918
Net Cash Income, Recurring	\$ 3,749,468	\$ (219,260)	\$ 583,101

SOURCES OF FUNDS - PERMANENT

	AMOUNT	TOTAL INTEREST COST	OID INTEREST RATE	AMORT (Yr)	COMMENTS
					<i>Total Permanent Debt:</i>
NPLH	4,981,492	3.000%	1.903%	55.0	<i>Per Unit: 121,500</i>
City of San Rafael HTF Loan	850,000	3.000%	1.788%	55.0	<i>Per Unit: 20,732</i>
Accrued Deferred Interest - City of San R	22,309				
Sponsor Loan (HPN/MCF/County)	1,235,000	3.000%	1.788%	55.0	<i>Per Unit: 30,122</i>
Accrued Deferred Interest - Sponsor Loan	32,414				
Marin County Loan (PLHA/AHF/LHTF)	899,250	3.000%	1.788%	55.0	<i>Per Unit: 21,933</i>
Accrued Deferred Interest - Marin County	23,602				
Addl Marin Co Funds (requested)	1,000,000	3.000%	1.788%	55.0	<i>Per Unit: 24,390</i>
Accrued Deferred Interest - Addl Marin Co	37,918				
HCD - CA Housing Accelerator Pgm Loan	<u>25,824,201</u>	0.000%	0.000%	20.0	<i>Per Unit: 629,859</i>
TOTAL SOURCES	34,906,185				
<i>Surplus/(Shortfall)</i>	<i>(0)</i>				

PERMANENT LOAN INTEREST RATE	TRANCHE A	TRANCHE B	INVESTOR EQUITY STACK	OTHER ASSUMPTIONS
Base Rate	3.800%	4.830%		
Cushion	1.000%	0.000%	LIHTC Equity (Federal+Sta)	0 Current AFR: 2.14%
MIP	0.000%	0.000%	Historic Tax Credit	0 AFR Month: 3/1/22
GNMA/Servicing	0.000%	0.000%	Investment Tax Credit (Sol)	0 AFR Cushion: 0.75%
Issuer	0.050%	0.050%	4,000 Issuer min/	Subtotal LP Equity 0 Total U/W AFR: 2.89%
Trustee	0.000%	0.000%	0 per annum	
Rating	0.000%	0.000%	0 per annum	
Remarketing	0.000%	0.000%	0 per annum	
Rebate Analyst	0.000%	0.000%	0 per annum	
Total	4.850%	4.880%	CA Certificated Credit Sale	0
			Total Investor Equity	0

SOURCES OF FUNDS - CONSTRUCTION

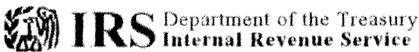
	AMOUNT	INTEREST RATE	TERM (Mos.)	COMMENTS
Conventional Construction Loan	28,832,404	8.226%	25	
City of San Rafael HTF Loan	850,000	3.000%	25	
Accrued Deferred Interest - City of San R	22,309			
Sponsor Loan (HPN/MCF/County)	1,235,000	3.000%	25	
Accrued Deferred Interest - Sponsor Loan	32,414			
Marin County Loan (PLHA/AHF/LHTF)	899,250	3.000%	25	
Accrued Deferred Interest - Marin County	23,602			
Addl Marin Co Funds (requested)	1,000,000	3.000%	25	
Accrued Deferred Interest - Addl Marin Co	37,918			
Donated Land	0			
Costs Deferred Until Conversion	<u>1,973,290</u>			<i>See page 2 - right column</i>
TOTAL SOURCES	34,906,185			<i>Syndication Costs 89,670</i>
<i>Surplus/(Shortfall)</i>	<i>0</i>			<i>Net Equity for TCAC (89,670)</i>
Sources Less Deferred To Conversion:	32,932,896			<i>Less Costs Deferred to Conv. 34,906,185</i>

CONSTRUCTION LOAN INTEREST RATE	CONSTRUCTION LOAN VALUATION	TAX-EXEMPT BOND DATA
1 mo term		
Index Type: SOFR	Restricted NOI	530,575
Current Index: 4.78%	OAR	5.00%
Spread: 2.20%	FMV per NOI	10,611,503
Base Interest Rate (not including cushion)	Agg. Credit Value @ 0.00	0
Cushion - Total 1.25%	Perm-Only Soft Debt	<u>30,805,693</u>
Interest Rate (All-In) 8.23%	Total Value	41,417,196
	LTV:	80.00%
*Cushion includes 1% Bank Underwriting		CDLAC Per-Unit Limit
Cushion and 0.25% cushion to close	Max. Const. Loan Amount	33,133,757
	Commitment Amount	TBD
		CDLAC 55% Limit
		17,516,742

Kerner Street

Uses of Funds

	Res Cost:		100.00%		COST ALLOCATIONS						LIHTC ELIGIBLE BASIS		OTHER BASIS & COST ALLOCATIONS			
	TOTAL	Per Unit	Residential	Total Non-Residential	Assuming 266 Election?			Expensed	Amortized	Constr./Rehab	Acquisition	Deferred to Completion or Perm Conv.	Land/Basis for 50% Test	Historic Rehab Tax Credit Basis	ITC Tax Credit Basis (Solar PV)	
					Yes	No	Non-Resid.									Depreciable
ACQUISITION COSTS																
<i>Total Purchase Price - Real Estate:</i>																
	0															
Title/Recording/Escrow - Acquisition	30,000	732	30,000	0	30,000	0	0			0	0	30,000				
Legal - Acquisition	20,000	488	20,000	0	20,000	0	0			0	0	20,000				
Other Acquisition Costs/Transfer Tax	22,010	537	22,010	0	22,010	0	0			0	0	22,010				
HARD COSTS																
Total Construction Contract:																
	21,754,090															
NEW CONSTRUCTION																
Hard Costs-Unit Construction	18,766,975	457,731	18,766,975	0	18,766,975	0			18,766,975		0	18,766,975	18,766,975			
GC - General Conditions	1,223,941	29,852	1,223,941	0	1,223,941	0			1,223,941		0	1,223,941	1,223,941			
GC - Overhead & Profit	968,047	23,611	968,047	0	968,047	0			968,047		0	968,047	968,047			
GC - Insurance	406,580	9,917	406,580	0	406,580	0			406,580		0	406,580	406,580			
GC - Bond Premium	124,413	3,034	124,413	0	124,413	0			124,413		0	124,413	124,413			
Contingency - Escalation (GC)	264,134	6,442	264,134	0	264,134	0			264,134		0	264,134	264,134			
Contingency - Owner's Construction	2,175,409	53,059	2,175,409	0	2,175,409	0			2,175,409		0	2,175,409	2,175,409			
REHAB																
SOFT COSTS																
Architecture - Design	931,481	22,719	931,481	0	931,481	0			931,481		0	931,481	931,481		0	
Design/Engineering	74,000	1,805	74,000	0	74,000	0			74,000		0	74,000	74,000		0	
Phase III/Toxics Report	44,000	1,073	44,000	0	44,000	0			44,000		0	44,000	44,000		0	
Special Inspections/Testing	85,000	2,073	85,000	0	85,000	0			85,000		0	85,000	85,000		0	
Prevailing Wage Monitor	72,000	1,756	72,000	0	72,000	0			72,000		0	72,000	72,000		0	
Owner's Rep / Construction Supervision	126,000	3,073	126,000	0	126,000	0			126,000		0	126,000	126,000		0	
Consultant: Asbestos Monitoring	4,000	98	4,000	0	4,000	0			4,000		0	4,000	4,000		0	
Local Development Impact Fees	818,111	19,954	818,111	0	818,111	0			818,111		0	818,111	818,111		0	
Local Permits/Fees	102,124	2,491	102,124	0	102,124	0			102,124		0	102,124	102,124		0	
Real Estate Taxes During Const	16,174	394	16,174	0	16,174	0		0	16,174		0	16,174	16,174		0	
Insurance During Const	800,000	19,512	800,000	0	800,000	0			800,000		0	800,000	800,000		0	
Appraisal	5,500	134	5,500	0	5,500	0			5,500		0	5,500	5,500		0	
Market/Rent Comp Study	11,000	268	11,000	0	11,000	0		11,000	0		0	0	0		0	
Soft Cost - Soft Lenders Fees & Expenses	10,000	244	10,000	0	10,000	0			10,000		0	10,000	10,000		0	
Soft Cost Contingency	361,881	8,826	361,881	0	361,881	0			361,881		0	361,881	361,881		0	
Predev. Loan Interest/Fees	2,000	49	2,000	0	2,000	0	2,000		0	0	0	0	0		0	
Construction Loan Interest	3,429,352	83,643	3,429,352	0	1,848,095	0	1,581,257		1,848,095	0	0	1,848,095	1,848,095		0	
Accrued Interest - City of San Rafael HTF Loan	22,309	544	22,309	0	11,982	0	10,327		11,982	0	0	11,982	11,982		0	
Accrued Interest - Sponsor Loan (HPN/MCF/C)	32,414	791	32,414	0	17,409	0	15,004		17,409	0	0	17,409	17,409		0	
Accrued Interest - Marin County Loan (PLHA/A)	23,602	576	23,602	0	12,676	0	10,925		12,676	0	0	12,676	12,676		0	
Accrued Interest - Addl Marin Co Funds (request)	37,918	925	37,918	0	25,630	0	12,288		25,630	0	0	25,630	25,630		0	
Lender Fees - HCD - CA Housing Accelerator f	40,000	976	40,000	0	0	0	0	40,000	0	0	0	0	0		0	
Title/Recording/Escrow - Construction	59,996	1,463	59,996	0	59,996	0			59,996		0	59,996	59,996		0	
Title/Recording/Escrow - Permanent	15,000	366	15,000	0	0	0		15,000	0	15,000	0	0	0		0	
Legal (Owner): Construction Closing	50,000	1,220	50,000	0	50,000	0			50,000		0	50,000	50,000		0	
Permanent Closing	20,000	488	20,000	0	0	0		20,000	0	20,000	0	0	0		0	
Organization of Ptnshp	6,670	163	6,670	0	0	0		6,670	0	0	0	0	0		0	
Syndication Consulting/Consulting	63,000	1,537	63,000	0	63,000	0			0	2,500	0	0	0		0	
Audit/Cost Certification	20,000	488	20,000	0	0	0		20,000	0	0	0	0	0		0	
Marketing	64,755	1,579	64,755	0	0	0		64,755	0	0	0	0	0		0	
Furnishings Not in Contract	220,000	5,366	220,000	0	220,000	0			220,000		0	0	0		0	
Capitalized Replacement Reserve	41,000	1,000	41,000	0	41,000	0			0	41,000	0	0	0		0	
Capitalized Operating Reserve (6 mos.)	497,531	12,135	497,531	0	497,531	0			497,531		0	497,531	497,531		0	
Capitalized NPLH COSR Transition Reserve	133,825	3,264	133,825	0	133,825	0			133,825		0	133,825	133,825		0	
Marin Co Subsidy - HCD TR Fee	146,623	3,576	146,623	0	146,623	0			146,623		0	146,623	146,623		0	
Developer Fee	2,200,000	53,659	2,200,000	0	2,200,000	0			2,200,000	0	1,100,000	2,200,000	2,200,000		-	
COSTS OF ISSUANCE/FINANCING FEES																
Construction Lender Origination Fee	187,411	4,571	187,411	0	100,997	0		86,414	100,997	0	0	100,997	100,997		0	
Construction Lender Expenses	60,000	1,463	60,000	0	32,334	0		27,666	32,334	0	0	32,334	32,334		0	
Construction Lender Counsel	70,000	1,707	70,000	0	37,723	0		32,277	37,723	0	0	37,723	37,723		0	
Subtotal - Financing/Costs of Issuance	317,411	7,742	317,411	0	0	171,054	0	0	146,356	171,054	0	0	171,054	171,054	0	
TOTAL DEVELOPMENT COSTS	34,906,185	851,370	34,906,185	0	953,990	31,996,613	0	1,716,557	239,026	31,996,613	0	1,973,290	31,848,623	31,776,613	0	
<i>TDC Per Unit</i>	<i>851,370</i>	<i>100.00%</i>														
<i>TDC Net of accrued interest:</i>	<i>34,749,943</i>															
<i>TDC TCAC</i>	<i>34,816,515</i>		<i>34,816,515</i>													



Department of the Treasury
Internal Revenue Service

P.O. Box 2508
Cincinnati OH 45201

In reply refer to: 0248323016
May 14, 2009 LTR 4168C E0
23-1716750 000000 00 000
00018272
BODC: TE

EDEN HOUSING INC
22645 GRAND ST
HAYWARD CA 94541-5031



017492

Employer Identification Number: 23-1716750
Person to Contact: Yvette Davis
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your request of May 05, 2009, regarding your tax-exempt status.

Our records indicate that a determination letter was issued in August 1986, that recognized you as exempt from Federal income tax, and discloses that you are currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records also indicate you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section(s) 509(a)(1) and 170(b)(1)(A)(vi).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely yours,

A handwritten signature in cursive script that reads "Michele M. Sullivan".

Michele M. Sullivan, Oper. Mgr.
Accounts Management Operations I



Department of the Treasury
Internal Revenue Service

P.O. Box 2508
Cincinnati OH 45201

In reply refer to: 0248323016
May 14, 2009 LTR 4168C E0
94-2946400 000000 00 000
00018275
BODC: TE

EDEN HOUSING MANAGEMENT INC
22645 GRAND ST
HAYWARD CA 94541-5031



017491

Employer Identification Number: 94-2946400
Person to Contact: Yvette Davis
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your request of May 05, 2009, regarding your tax-exempt status.

Our records indicate that a determination letter was issued in November 1986, that recognized you as exempt from Federal income tax, and discloses that you are currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records also indicate you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section 509(a)(3).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely yours,

Michele M. Sullivan, Oper. Mgr.
Accounts Management Operations I



Department of the Treasury
Internal Revenue Service

P.O. Box 2508
Cincinnati OH 45201

In reply refer to: 0248323016
May 14, 2009 LTR 4168C E0
94-3315887 000000 00 000
00018276
BODC: TE

EDEN HOUSING RESIDENT SERVICES INC
% LORI GANZ
22645 GRAND ST
HAYWARD CA 94541-5031



017490

Employer Identification Number: 94-3315887
Person to Contact: Yvette Davis
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your request of May 05, 2009, regarding your tax-exempt status.

Our records indicate that a determination letter was issued in March 2000, that recognized you as exempt from Federal income tax, and discloses that you are currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records also indicate you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section 509(a)(3).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely yours,

Michele M. Sullivan, Oper. Mgr.
Accounts Management Operations I

Kerner Street

Base Year Income & Expense

INCOME		
Scheduled Gross Income - Residential		189,600
Total Gross Rental Subsidy Income - Marin County Carmel Units		156,000
Total Operating Subsidy Income - NPLH COSR		133,825
Vacancy Loss - Residential	10.0%	(18,960)
Vacancy Loss - Marin County Carmel Units	10.0%	(15,600)
EFFECTIVE GROSS INCOME		444,865
EXPENSES - RESIDENTIAL		
Administrative		
Advertising	500	
Legal	5,000	
Accounting/Audit	15,491	
Security	245,400	
Other: Misc. Admin	25,540	
Total Administrative		291,931
Management Fee		36,900
Utilities		
Electricity	16,500	
Water/Sewer	51,700	
Total Utilities		68,200
Payroll/Payroll Taxes		
On-Site Manager/Office Admin	126,220	
Maintenance Payroll	53,500	
Payroll Taxes/Benefits	61,441	
Total Payroll/Payroll Taxes		241,161
Insurance		97,024
Maintenance		
Painting	1,700	
Repairs	17,100	
Trash Removal	19,000	
Exterminating	4,500	
Grounds	9,000	
Elevator	8,000	
janitorial contract/supplies/uniforms	33,790	
Total Maintenance		93,090
Other		
Misc. Tax/License	2,850	
Total Other		2,850
Resident Services		
Tenant Services	121,484	
Total Resident Services		121,484
Replacement Reserve		20,500
Real Estate Taxes		1,000
TOTAL EXPENSES - RESIDENTIAL		974,140
<i>Per Unit Per Annum (incl. Reserves)</i>	23,760	
<i>Per Unit Per Annum (w/o taxes/res/svc)</i>	20,272	
<i>TCAC Minimum (w/o taxes/res/svc)</i>	5,500	
TOTAL EXPENSES - COMMERCIAL		0
NET AVAILABLE INCOME		(529,275)
Less: Mandatory Annual HCD Payment (Grossed Up for DSCR Factor)	1.00	(20,922)
Operating Subsidy Income - Marin Co OpEx Subsidy		530,575
ADJUSTED NET AVAILABLE INCOME: TOTAL		(19,622)
ADJUSTED NET AVAILABLE INCOME: NET OF OP SUBSIDY		(824,422)
Debt Service Coverage Ratio		1.00
AVAILABLE FOR DEBT SERVICE (NET OF OP SUBSIDY)		(824,422)
AVAILABLE FOR DEBT SERVICE (OP SUBSIDY OVERHANG)		804,800
NET AVAILABLE INCOME AFTER SENIOR DEBT SERVICE		(19,622)

Kerner Street

15-Year Cash Flow

Version: Closing

Assumptions		2.00%	Rent Increase - Section 8	2.00%	Perm Loan - % Debt Svc Yr	0.0%																											
Rent Increase: Residential Tenant Rent:	2.00%	Rent Increase - Section 8	2.00%	Perm Loan - % Debt Svc Yr	0.0%																												
Rent Increase: Commercial Rents	2.00%	Rent Increase - Marin County	2.00%	Perm Loan - % Debt Svc Yr	0.0%																												
Expenses Increase:	3.00%	Rent Increase - Test C	2.00%	Perm Loan - % Debt Svc Yr:	66.7%																												
Reserve Increase:	0.00%	Rent Increase - Test D	2.00%	Perm Loan - % Debt Svc Yr:	100.0%																												
				Perm Loan - % Debt Svc Yr:	100.0%																												
Credit Period Year:	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30		
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053		
GROSS POTENTIAL INCOME - RESIDENTIAL	0	45,473	190,509	194,320	198,206	202,170	206,214	210,338	214,545	218,835	223,212	227,676	232,230	236,875	241,612	246,444	251,373	256,401	261,529	266,759	272,094	277,536	283,087	288,749	294,524	300,414	306,423	312,551	318,802	325,178	331,682		
Draw from NPLH COSR	0	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825	133,825		
Incremental Income: Marin County Carmel Unit	3,617,633	(thru Y20)	0	37,415	156,748	159,883	163,081	166,343	169,669	173,063	176,524	180,055	183,656	187,329	191,075	194,897	198,795	202,771	206,826	210,963	215,182	219,485	223,875	228,353	232,920	237,578	242,330	247,176	252,120	257,162	262,305	267,552	272,903
Vacancy Loss - Residential	10.0%	0	(4,547)	(19,051)	(19,432)	(19,821)	(20,217)	(20,621)	(21,034)	(21,454)	(21,884)	(22,321)	(22,768)	(23,223)	(23,687)	(24,161)	(24,644)	(25,137)	(25,640)	(26,153)	(26,676)	(27,209)	(27,754)	(28,309)	(28,875)	(29,452)	(30,041)	(30,642)	(31,255)	(31,880)	(32,518)	(33,168)	
Vacancy Loss - Marin County Carmel Units	10.0%	0	(3,741)	(15,675)	(15,988)	(16,308)	(16,634)	(16,967)	(17,306)	(17,652)	(18,005)	(18,366)	(18,733)	(19,108)	(19,490)	(19,879)	(20,277)	(20,683)	(21,096)	(21,518)	(21,949)	(22,388)	(22,835)	(23,292)	(23,758)	(24,233)	(24,718)	(25,212)	(25,716)	(26,231)	(26,755)	(27,290)	
GROSS EFFECTIVE INCOME	0	208,424	446,357	452,608	458,984	465,487	472,120	478,886	485,787	492,826	500,006	507,330	514,800	522,420	530,191	538,119	546,205	554,452	562,865	571,446	580,198	455,300	464,406	473,694	483,168	492,831	502,688	512,742	522,997	533,457	544,126		
TOTAL EXPENSES	0	228,719	960,502	989,317	1,018,996	1,049,566	1,081,053	1,113,485	1,146,889	1,181,296	1,216,735	1,253,237	1,290,834	1,329,559	1,369,446	1,410,529	1,452,845	1,496,430	1,541,323	1,587,563	1,635,190	1,684,245	1,734,773	1,786,816	1,840,420	1,895,633	1,952,502	2,011,077	2,071,409	2,133,552	2,197,558		
NET OPERATING INCOME	0	(20,294)	(514,144)	(536,709)	(560,013)	(584,079)	(608,933)	(634,599)	(661,102)	(688,469)	(716,728)	(745,907)	(776,034)	(807,139)	(839,254)	(872,410)	(906,640)	(941,978)	(978,458)	(1,016,117)	(1,054,992)	(1,228,945)	(1,270,367)	(1,313,122)	(1,357,252)	(1,402,801)	(1,449,814)	(1,498,335)	(1,548,413)	(1,600,095)	(1,653,432)		
REPLACEMENT RESERVE	20,500	0	4,917	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	20,500	
Mandatory Annual HCD Payment	0.42%	0	0	13,948	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	20,922	
NET REMAINING INCOME	0	(25,211)	(548,592)	(578,131)	(601,435)	(625,502)	(650,355)	(676,021)	(702,524)	(729,892)	(758,151)	(787,329)	(817,456)	(848,562)	(880,676)	(913,832)	(948,062)	(983,400)	(1,019,881)	(1,057,539)	(1,096,414)	(1,270,367)	(1,311,789)	(1,354,544)	(1,398,674)	(1,444,224)	(1,491,236)	(1,539,757)	(1,589,835)	(1,641,517)	(1,694,855)		
NET CASH FLOW	0	(25,211)	(548,592)	(578,131)	(601,435)	(625,502)	(650,355)	(676,021)	(702,524)	(729,892)	(758,151)	(787,329)	(817,456)	(848,562)	(880,676)	(913,832)	(948,062)	(983,400)	(1,019,881)	(1,057,539)	(1,096,414)	(1,270,367)	(1,311,789)	(1,354,544)	(1,398,674)	(1,444,224)	(1,491,236)	(1,539,757)	(1,589,835)	(1,641,517)	(1,694,855)		
Draw From Marin Co OpEx Subsidy	15,932,111	0	25,211	548,592	578,131	601,435	625,502	650,355	676,021	702,524	729,892	758,151	787,329	817,456	848,562	880,676	913,832	948,062	983,400	1,019,881	1,057,539	1,096,414	683,146	0	0	0	0	0	0	0	0		
Remaining Net Cash Flow	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	(587,221)	(1,311,789)	(1,354,544)	(1,398,674)	(1,444,224)	(1,491,236)	(1,539,757)	(1,589,835)	(1,641,517)	(1,694,855)		
TOTAL MARIN COUNTY SUBSIDY (rental income/OpEx)	19,549,745	62,626	705,341	738,014	764,516	791,844	820,025	849,084	879,048	909,946	941,806	974,658	1,008,531	1,043,458	1,079,471	1,116,603	1,154,888	1,194,363	1,235,062	1,277,025	1,320,289	683,146	0	0	0	0	0	0	0	0			
GP AMF	Annual Amt: 25,000 Inflator: 3.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Residual Receipts Loans	Total % 100.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
NPLH	64.44%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
City of San Rafael HTF Loan	11.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Sponsor Loan (HPN/MCF/County)	0.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Marin County Loan (PLHA/AHF/LHTF)	11.63%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Addl Marin Co Funds (requested)	12.94%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
HCD - CA Housing Accelerator Pgm Loan	0.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		

SOURCES OF FUNDS - PERMANENT

	AMOUNT	TOTAL INTEREST COST	OID INTEREST RATE	AMORT (Yr)	COMMENTS
					<i>Total Permanent Debt:</i>
NPLH	4,981,492	3.000%	1.903%	55.0	<i>Per Unit: 121,500</i>
City of San Rafael HTF Loan	850,000	3.000%	1.788%	55.0	<i>Per Unit: 20,732</i>
Accrued Deferred Interest - City of San R	22,309				
Sponsor Loan (HPN/MCF/County)	1,235,000	3.000%	1.788%	55.0	<i>Per Unit: 30,122</i>
Accrued Deferred Interest - Sponsor Loan	32,414				
Marin County Loan (PLHA/AHF/LHTF)	899,250	3.000%	1.788%	55.0	<i>Per Unit: 21,933</i>
Accrued Deferred Interest - Marin County	23,602				
Addl Marin Co Funds (requested)	1,000,000	3.000%	1.788%	55.0	<i>Per Unit: 24,390</i>
Accrued Deferred Interest - Addl Marin Co	37,918				
HCD - CA Housing Accelerator Pgm Loan	<u>25,824,201</u>	0.000%	0.000%	20.0	<i>Per Unit: 629,859</i>
TOTAL SOURCES	34,906,185				
<i>Surplus/(Shortfall)</i>	<i>(0)</i>				

PERMANENT LOAN INTEREST RATE	TRANCHE A	TRANCHE B	INVESTOR EQUITY STACK	OTHER ASSUMPTIONS
Base Rate	3.800%	4.830%		
Cushion	1.000%	0.000%	LIHTC Equity (Federal+Sta)	0 Current AFR: 2.14%
MIP	0.000%	0.000%	Historic Tax Credit	0 AFR Month: 3/1/22
GNMA/Servicing	0.000%	0.000%	Investment Tax Credit (Sol)	0 AFR Cushion: 0.75%
Issuer	0.050%	0.050%	Subtotal LP Equity	0 Total U/W AFR: 2.89%
Trustee	0.000%	0.000%		
Rating	0.000%	0.000%	CA Certificated Credit Sale	0
Remarketing	0.000%	0.000%	Total Investor Equity	0
Rebate Analyst	0.000%	0.000%		
Total	4.850%	4.880%		

SOURCES OF FUNDS - CONSTRUCTION

	AMOUNT	INTEREST RATE	TERM (Mos.)	COMMENTS
Conventional Construction Loan	28,832,404	8.226%	25	
City of San Rafael HTF Loan	850,000	3.000%	25	
Accrued Deferred Interest - City of San R	22,309			
Sponsor Loan (HPN/MCF/County)	1,235,000	3.000%	25	
Accrued Deferred Interest - Sponsor Loan	32,414			
Marin County Loan (PLHA/AHF/LHTF)	899,250	3.000%	25	
Accrued Deferred Interest - Marin County	23,602			
Addl Marin Co Funds (requested)	1,000,000	3.000%	25	
Accrued Deferred Interest - Addl Marin Co	37,918			
Donated Land	0			
Costs Deferred Until Conversion	<u>1,973,290</u>			<i>See page 2 - right column</i>
TOTAL SOURCES	34,906,185			<i>Syndication Costs 89,670</i>
<i>Surplus/(Shortfall)</i>	<i>0</i>			<i>Net Equity for TCAC (89,670)</i>
Sources Less Deferred To Conversion:	32,932,896			<i>Less Costs Deferred to Conv. 34,906,185</i>

CONSTRUCTION LOAN INTEREST RATE	CONSTRUCTION LOAN VALUATION	TAX-EXEMPT BOND DATA
1 mo term		
Index Type: SOFR	Restricted NOI	530,575
Current Index: 4.78%	OAR	5.00%
Spread: 2.20%	FMV per NOI	10,611,503
Base Interest Rate (not including cushion)	Agg. Credit Value @ 0.00	0
Cushion - Total 1.25%	Perm-Only Soft Debt	<u>30,805,693</u>
Interest Rate (All-In) 8.23%	Total Value	41,417,196
	LTV:	80.00%
*Cushion includes 1% Bank Underwriting		CDLAC Per-Unit Limit
Cushion and 0.25% cushion to close	Max. Const. Loan Amount	33,133,757
	Commitment Amount	TBD
		CDLAC 55% Limit
		17,516,742

Kerner Street

Uses of Funds

	Res Cost:		100.00%		COST ALLOCATIONS						LIHTC ELIGIBLE BASIS		OTHER BASIS & COST ALLOCATIONS			
	TOTAL	Per Unit	Residential	Total Non-Residential	Assuming 266 Election?			Expensed	Amortized	Constr./Rehab	Acquisition	Deferred to Completion or Perm Conv.	Land/Basis for 50% Test	Historic Rehab Tax Credit Basis	ITC Tax Credit Basis (Solar PV)	
					Yes	No	Non-Resid.									
ACQUISITION COSTS																
Total Purchase Price - Real Estate:																
0																
Title/Recording/Escrow - Acquisition	30,000	732	30,000	0	30,000	0	0			0	0	0	30,000			
Legal - Acquisition	20,000	488	20,000	0	20,000	0	0			0	0	0	20,000			
Other Acquisition Costs/Transfer Tax	22,010	537	22,010	0	22,010	0	0			0	0	0	22,010			
HARD COSTS																
Total Construction Contract:																
21,754,090																
NEW CONSTRUCTION																
Hard Costs-Unit Construction	18,766,975	457,731	18,766,975	0	18,766,975	0	0			18,766,975	0	18,766,975	18,766,975			
GC - General Conditions	1,223,941	29,852	1,223,941	0	1,223,941	0	0			1,223,941	0	1,223,941	1,223,941			
GC - Overhead & Profit	968,047	23,611	968,047	0	968,047	0	0			968,047	0	968,047	968,047			
GC - Insurance	406,580	9,917	406,580	0	406,580	0	0			406,580	0	406,580	406,580			
GC - Bond Premium	124,413	3,034	124,413	0	124,413	0	0			124,413	0	124,413	124,413			
Contingency - Escalation (GC)	264,134	6,442	264,134	0	264,134	0	0			264,134	0	264,134	264,134			
Contingency - Owner's Construction	2,175,409	53,059	2,175,409	0	2,175,409	0	0			2,175,409	0	2,175,409	2,175,409			
REHAB																
SOFT COSTS																
Architecture - Design	931,481	22,719	931,481	0	931,481	0	0			931,481	0	931,481	931,481		0	
Design/Engineering	74,000	1,805	74,000	0	74,000	0	0			74,000	0	74,000	74,000		0	
Phase III/Toxics Report	44,000	1,073	44,000	0	44,000	0	0			44,000	0	44,000	44,000		0	
Special Inspections/Testing	85,000	2,073	85,000	0	85,000	0	0			85,000	0	85,000	85,000		0	
Prevailing Wage Monitor	72,000	1,756	72,000	0	72,000	0	0			72,000	0	72,000	72,000		0	
Owner's Rep / Construction Supervision	126,000	3,073	126,000	0	126,000	0	0			126,000	0	126,000	126,000		0	
Consultant: Asbestos Monitoring	4,000	98	4,000	0	4,000	0	0			4,000	0	4,000	4,000		0	
Local Development Impact Fees	818,111	19,954	818,111	0	818,111	0	0			818,111	0	818,111	818,111		0	
Local Permits/Fees	102,124	2,491	102,124	0	102,124	0	0			102,124	0	102,124	102,124		0	
Real Estate Taxes During Const	16,174	394	16,174	0	16,174	0	0		0	16,174	0	16,174	16,174		0	
Insurance During Const	800,000	19,512	800,000	0	800,000	0	0			800,000	0	800,000	800,000		0	
Appraisal	5,500	134	5,500	0	5,500	0	0			5,500	0	5,500	5,500		0	
Market/Rent Comp Study	11,000	268	11,000	0	11,000	0	0		11,000	0	0	0	0		0	
Soft Cost - Soft Lenders Fees & Expenses	10,000	244	10,000	0	10,000	0	0			10,000	0	10,000	10,000		0	
Soft Cost Contingency	361,881	8,826	361,881	0	361,881	0	0			361,881	0	361,881	361,881		0	
Predev. Loan Interest/Fees	2,000	49	2,000	0	2,000	0	2,000			0	0	0	0		0	
Construction Loan Interest	3,429,352	83,643	3,429,352	0	1,848,095	0	1,581,257			1,848,095	0	1,848,095	1,848,095		0	
Accrued Interest - City of San Rafael HTF Loan	22,309	544	22,309	0	11,982	0	10,327			11,982	0	11,982	11,982		0	
Accrued Interest - Sponsor Loan (HPN/MCF/C)	32,414	791	32,414	0	17,409	0	15,004			17,409	0	17,409	17,409		0	
Accrued Interest - Marin County Loan (PLHA/A	23,602	576	23,602	0	12,676	0	10,925			12,676	0	12,676	12,676		0	
Accrued Interest - Addl Marin Co Funds (reque	37,918	925	37,918	0	25,630	0	12,288			25,630	0	25,630	25,630		0	
Lender Fees - HCD - CA Housing Accelerator f	40,000	976	40,000	0	0	0	0		40,000	0	0	0	0		0	
Title/Recording/Escrow - Construction	59,996	1,463	59,996	0	59,996	0	0			59,996	0	59,996	59,996		0	
Title/Recording/Escrow - Permanent	15,000	366	15,000	0	0	0	0		15,000	0	15,000	0	0		0	
Legal (Owner): Construction Closing	50,000	1,220	50,000	0	50,000	0	0			50,000	0	50,000	50,000		0	
Permanent Closing	20,000	488	20,000	0	0	0	0		20,000	0	0	0	0		0	
Organization of Ptnshp	6,670	163	6,670	0	0	0	0		6,670	0	0	0	0		0	
Syndication Consulting/Consulting	63,000	1,537	63,000	0	63,000	0	0			0	2,500	0	0		0	
Audit/Cost Certification	20,000	488	20,000	0	0	0	0			0	0	0	0		0	
Marketing	64,755	1,579	64,755	0	0	0	64,755			0	0	0	0		0	
Furnishings Not in Contract	220,000	5,366	220,000	0	0	220,000	0			220,000	0	0	0		0	
Capitalized Replacement Reserve	41,000	1,000	41,000	0	41,000	0	0			0	41,000	0	0		0	
Capitalized Operating Reserve (6 mos.)	497,531	12,135	497,531	0	497,531	0	0			497,531	0	497,531	497,531		0	
Capitalized NPLH COSR Transition Reserve	133,825	3,264	133,825	0	133,825	0	0			133,825	0	133,825	133,825		0	
Marin Co Subsidy - HCD TR Fee	146,623	3,576	146,623	0	146,623	0	0			146,623	0	146,623	146,623		0	
Developer Fee	2,200,000	53,659	2,200,000	0	2,200,000	0	0			2,200,000	0	1,100,000	2,200,000	2,200,000	-	
COSTS OF ISSUANCE/FINANCING FEES																
Construction Lender Origination Fee	187,411	4,571	187,411	0	100,997	0	86,414			100,997	0	100,997	100,997		0	
Construction Lender Expenses	60,000	1,463	60,000	0	32,334	0	27,666			32,334	0	32,334	32,334		0	
Construction Lender Counsel	70,000	1,707	70,000	0	37,723	0	32,277			37,723	0	37,723	37,723		0	
Subtotal - Financing/Costs of Issuance	317,411	7,742	317,411	0	0	171,054	0	0	146,356	171,054	0	0	171,054	171,054	0	
TOTAL DEVELOPMENT COSTS	34,906,185	851,370	34,906,185	0	953,990	31,996,613	0	1,716,557	239,026	31,996,613	0	1,973,290	31,848,623	31,776,613	0	
TDC Per Unit		851,370														
100.00%																
TDC Net of accrued interest:		34,749,943														
TDC TCAC		34,816,515														

3301 Kerner - 41 Units

Project Schedule

March-23	Marin County CDA Affordable Housing Funds - Application Deadline
March-23	Estimated Construction Closing
April-23	Estimated Construction Start
September-24	Estimated Temporary Certificate of Occupancy
January-25	Estimated 100% Occupancy
May-25	Estimated Permanent Conversion

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is made and entered into as of the 10th day of JANUARY, 2023, by and between COUNTY OF MARIN, a political subdivision of the State of California, (referred to hereinafter as "**Seller**") and Kerner Canal, L.P., a California limited partnership (referred to hereinafter as "**Buyer**").

WHEREAS, Seller owns that certain real property at 3301 Kerner Boulevard, San Rafael, County of Marin, California, and more particularly described in Exhibit "A" attached hereto, together with any and all improvements located thereon and all right, title and interest of Seller in and to any and all easements, rights of way, privileges, appurtenances, and rights of same belonging to, and inuring thereto (the "**Property**"). The Property is identified by the Marin County Assessor as APN: 008-082-52; and

WHEREAS, Seller purchased Property with California Department of Housing and Community Development (HCD) Homekey Grant Funds (Project Homekey); and

WHEREAS, pursuant to the requirements of Project Homekey, the Property is to be used as permanent supportive housing, as detailed in Standard Agreement Number 20-HK-00058 and the associated regulatory agreement entered into by HCD and Seller; and

WHEREAS, Seller has expressed an interest in selling the Property to Buyer, upon certain terms, covenants and conditions hereinafter set forth; and

WHEREAS, Buyer is interested in securing a purchase and sale agreement for the Property from Seller, subject to certain terms, covenants and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the mutual covenants of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **Effective Date**. This Agreement shall be effective as of the date this Agreement is fully signed and delivered by both Parties (the "**Effective Date**").
2. **Purchase and Sale of Property**.
 - (a) Seller agrees to sell to Buyer, and Buyer agrees to purchase the Property from Seller, upon the terms, covenants and conditions set forth in this Agreement.
 - (b) The purchase price for the Property during the term of this Agreement shall be equal to **ONE DOLLAR (\$1.00)** ("**Purchase Price**"). The Purchase Price shall be payable as follows:

- i. At Closing Buyer shall pay Seller the Purchase Price, subject to the adjustments set forth in this Agreement.
 - ii. No later than fourteen (14) days after the Effective Date Buyer shall deposit into Escrow Account No. 54605-21-02106 ("**Escrow**") at DOMA, 21060 Redwood Road, Suite 110, Castro Valley, CA 94546 (Escrow Officer, Suzanne Smith) ("**Title Company**") an original copy of this Agreement along with instructions, to be held by the Title Company as escrow agent. As used in this Agreement the term "**Effective Date**" shall mean the date that this Agreement is signed by both parties.
 - (c) The close of escrow will be handled by the Title Company (the "**Closing Agent**") and shall take place pursuant to escrow instructions issued by both Buyer and Seller along with the terms and conditions of this Agreement. The Closing Agent shall be responsible for: (i) preparing a closing checklist no later than fifteen (15) days prior to the Closing Date; (ii) a settlement statement for the review and approval of the parties; (iii) receiving the Purchase Price proceeds; (iv) disbursing the Purchase Price proceeds; (v) causing all documents to be recorded; and (vi) otherwise conducting the Closing. The Closing ("**Closing Date**") shall occur at the earliest date practicable or before December 31, 2023, whichever is sooner, subject to all **Contingencies** (as that term is defined in paragraph 4) being satisfied or specifically waived by Buyer.
 - (d) On the Closing Date, Seller shall deliver to Buyer a duly executed and acknowledged Grant Deed ("**Deed**") conveying title to the Property to Buyer; and such other documents or certificates as Title Company reasonably requests to effect the Closing and transfer of title to the Property as described herein.
 - (e) Buyer hereby agrees that Property shall be used as permanent supportive housing for people experiencing homelessness or at risk of homelessness according to Project Homekey and agrees to assume responsibility for assuring conformance with all aspects of the Standard Agreement Number 20-HK-00058 and the Regulatory Agreement between the Department of Housing and Community Development and Seller.
3. **Agreement Term.** The term of this Agreement begins on the Effective Date and terminates on December 31, 2023 unless otherwise mutually agreed to by the Parties and extended through written amendment to this Agreement.
4. **Contingencies.**

- (a) This Agreement, the Closing, and Seller's and Buyer's obligations hereunder shall be expressly contingent upon satisfying the contingencies set forth in paragraphs 4.(b)-(m) below (collectively, the "**Contingencies.**") Buyer and Seller agree to use their best efforts to ensure that the Contingencies are satisfied.
- (b) Seller has, at Seller's expense, obtained a Preliminary Report issued on November 21, 2022 by the Title Company for the Property, indicating known liens, encumbrances, restrictions, easements, and conditions of record. Said report is attached to this Agreement as Exhibit "A" and by reference made a part hereof. Any updates to said Preliminary Report will be provided to Buyer and Seller directly from the Title Company and automatically become an addendum to Exhibit "A".
- (c) Buyer has examined the Preliminary Report (Exhibit A) and will accept title to the Property subject to Schedule B exceptions as follows: Exceptions 1 through 13 and Exception 16 ("Permitted Exceptions"). Any Assessments or Community Facility Districts with outstanding obligations attributable to Seller shall be disclosed by Seller as prescribed herein.
- (d) Exceptions 14 and 15 shall be removed by the Title Company in cooperation with the Seller prior to Close of Escrow. Seller shall notify Buyer, within seven (7) days after the Effective Date of this Agreement, whether or not Seller will cure the objectionable title matters specified herein. If Seller is unable or unwilling to eliminate or cure all such objectionable title matters, or to make arrangements satisfactory to Buyer to have all such matters eliminated or cured prior to Closing, and provided that Buyer shall not thereafter waive such disapproved matters (in which case such matters shall then be deemed "Permitted Exceptions"), Buyer shall have the right to terminate this Agreement within seven (7) days after Buyer's receipt of Seller's written notice of these "Uncured Title Exceptions", whereupon all liability by reason of this Agreement shall cease except such liability as expressly survives termination. If Buyer does not terminate this Agreement within seven (7) days after Buyer's receipt of Seller's Uncured Title Exceptions notice, such title objections shall be deemed Permitted Exceptions. In the event that the Seller's written notice of Uncured Title Exceptions is or should have been provided after the fourteen (14) day Inspection period, this shall constitute a Change in Condition (as that term is defined in paragraph 5) and Buyer's rights under paragraph 9 herein shall apply.
- (e) Notwithstanding the provisions of paragraph 4.(c) above, the term "Permitted Exceptions" shall not include, and Seller's conveyance of title to the Property shall not be subject to, mechanics' or materialmen's liens, judgment liens, mortgages, deeds of trust, and other liens (excluding real property tax or assessment liens that are not yet due and payable) capable of being satisfied by the payment of a specified sum.

- (f) Intentionally Omitted
- (g) Buyer shall have ninety (90) days after the Effective Date to obtain and complete any additional investigations, inspections, reports, appraisals, and studies reasonably necessary to permit Buyer to determine that the Property is suitable for Buyer's potential uses of the Property and in a condition satisfactory to Buyer and also in compliance with any and all applicable laws and ordinances ("**Inspection Period**"). During this Inspection Period, Buyer may, at its sole discretion, terminate this Agreement. Throughout the Inspection Period, Buyer or its designated representatives or agents may enter upon the Property at times approved by the Seller upon providing not less than twenty-four (24) hours advance written notice, delivered via email directly to Seller in connection with Buyer's inspection of the Property.
- (h) Buyer shall have forty-five (45) days after the Effective Date to complete a review and investigation of all records, materials and information supplied by Seller as provided in paragraph 5. Disclosures.
- (i) If Buyer does not deliver a written termination notice to Seller prior to the expiration of the Inspection Period, the Inspection Period shall be conclusively presumed to have been satisfied or waived. If Buyer does send a written termination notice to Seller prior to the expiration of the Inspection Period, then this Agreement shall be deemed terminated except such liability as expressly survives termination.
- (j) If Buyer determines the Contingencies are not satisfied and does not waive such Contingencies on or before the dates indicated above for such Contingency, then Buyer may elect to terminate this Agreement by delivering written notice thereof to Seller, in which event (i) the Agreement shall be deemed terminated, and (ii) the parties shall have no further obligations to the other, except such obligations as expressly survive termination of the Agreement.
- (k) Buyer shall not permit any mechanics' or other liens to be filed against the Property by reason of labor or materials furnished to the Property at the direction or request of Buyer or its representatives, agents or contractors. If any such lien is filed against the Property, Buyer shall cause the lien to be discharged of record or bonded within thirty (30) days after notice to Buyer of the filing of any such lien.

- (l) Seller shall not permit any mechanics' or other liens to be filed against the Property by reason of labor or materials furnished to the Property at the direction or request of Seller or its representatives, agents or contractors. If any such lien is filed against the Property, even if such lien is filed after the close of escrow but relates to renovations, Seller shall cause the lien to be discharged of record or bonded within thirty (30) days after notice to Seller of the filing of any such lien.
- (m) Buyer hereby agrees that it shall work in good faith with County and HCD to add Buyer as a party to and thereby amend Standard Agreement Number 20-HK-00058 and the Regulatory Agreement between the HCD and Seller, to the extent required by HCD, and to conform with any other requirements mandated by HCD for full compliance with Project Homekey. Seller shall obtain written confirmation of HCD's approval of Seller's conveyance of the Property to Buyer, as required by the Standard Agreement Number 20-HK-00058.

If any condition precedent is not satisfied or waived by the party for whose primary benefit it exists, said benefited party may terminate this Agreement by written notice to the other party, in which event the Parties shall have no further obligation to each other under this Agreement.

- 5. **Disclosures.** Seller shall disclose and deliver to Buyer, within twenty (20) days following the Effective Date, copies of any and all rental agreements, leases, contracts for services, materials and supplies, liens, debts or other encumbrances and any other documents related to the Property to the extent available and in Seller's possession ("**Seller's Reports**").
- 6. **As-Is.** Except as otherwise expressly provided for herein, Buyer hereby acknowledges and agrees that the sale of the Property is and will be made on an "as is, where is" basis and that neither Seller, nor any representative, agent or employee of Seller has made, or will make, any representations, warranties or guaranties of any kind or character whatsoever with respect to the Property.
- 7. **Change in Condition.** All risk of loss related to the Property shall remain with Seller until close of Escrow. Provided, however, and notwithstanding any other provision in this Agreement, Buyer shall be responsible for any and all loss, harm or damage related to the Property to the extent Buyer or Buyer's agents or employees are a substantial factor in causing such loss, harm or damage. Any such loss, harm or damage

attributable to the Buyer shall not be deemed a "Change in Condition" that may give rise to Buyer's ability to terminate this Agreement.

8. **Buyer's Notice.** Seller shall immediately notify Buyer of and provide Buyer with all information related to a Changes in Condition during the term of this Agreement including but not limited to the following:
 - (a) Any damage or destruction to the Property or any portion thereof that occurs after the Effective Date of this Agreement.
 - (b) Receipt of any documents or information related to the Property's use, value, or control, including but not limited to liens, claims, lawsuits, notices.
 - (c) Any other event or information received or discovered by Seller that could affect the use, operation or value of the Property (each, a "Change in Condition").

9. **Buyer's Options.**
 - (a) Subject to paragraphs 4(c) and 15, if a material Change in Condition occurs, through no fault of Buyer, without limiting any of Buyer's other rights hereunder, Buyer shall have the right, at its option, to terminate this Agreement by written notice to Seller as set forth in written notice delivered to Seller by the earlier of the end of the Term or ten (10) business days after Seller notifies Buyer of the Change in Condition, to either to either (i) terminate this Agreement and neither party shall have any further liability or obligation to the other except for Buyer's obligations which are expressly intended to survive; or (ii) proceed with the purchase of the Property, and accept the Property without remedy for the Change in Condition, without any monetary credit, and without a reduction in the Purchase Price (except as set forth in this paragraph). If Buyer does not deliver any notice to Seller within such ten (10) business day period, Buyer shall be deemed to have elected option (ii). If Buyer terminates this agreement pursuant to this paragraph, this Agreement in whole shall terminate and the parties shall have no further obligation to each other under this Agreement except those obligations expressly stated to survive.
 - (b) In the case of an insured casualty, if Buyer does not terminate this Agreement and agrees to accept the Property in its then condition, without limiting any of Buyer's other rights hereunder, all proceeds of any insurance settlement or claim payable to Seller by reason of such Change in Condition shall be paid or assigned to Buyer.

10. **Prorations.** Real estate taxes and assessments, if any, will be prorated as of the date of Closing, based upon the last actual tax bills available. If the actual tax bills are not available for the current tax fiscal year, then prorations will be based on the tax bills for

the prior tax fiscal year and, upon the request of either party, the parties will re-prorate and adjust the tax prorations when the tax bills for the current tax fiscal year of Closing become available.

11. **Costs/Closing Credit.** Seller shall pay all fees associated with the preparation of any title commitment. Buyer shall pay the premium for a standard owner's policy of title insurance, any additional premium required for the policy of title insurance and the cost of any endorsements requested by Buyer. Seller shall also pay for all fees incurred for recording the Deed and preparing any survey map that may be desired by Seller, and any state and local transfer and conveyance taxes and fees. Each party shall pay its own attorneys' fees.
12. **Seller's Certificate.** Seller hereby makes the following representations to Buyer:
 - (a) Seller is a government entity, validly existing and in good standing under the laws of the State of California.
 - (b) Seller has the full power, authority and legal right to execute and deliver this Agreement and to consummate the transactions and perform its obligations as contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action, and this Agreement has been duly and validly executed and delivered by Seller.
13. **Buyer's Certificate.** Buyer hereby makes the following representations to Seller:
 - (a) Buyer has the full power, authority and legal right to execute and deliver this Agreement and to consummate the transactions and perform its obligations as contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action, and this Agreement has been duly and validly executed and delivered by Buyer.
 - (b) Buyer is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended.
 - (c) For purposes of California Health and Safety Code Section 25359.7, the delivery from Seller to Buyer of the Seller's Reports constitute written notice to Buyer under such code section.
 - (d) Buyer shall exercise good faith efforts in conducting Buyer's due diligence in connection with the transaction contemplated by this Agreement.

such notice or communication shall be effective when delivered to the recipient or upon refusal of such delivery.

17. **Broker's Commission.** The parties represent that they have not dealt with any broker, agent, or finder in connection with this transaction. Each party hereby warrants and represents to the other that no person or entity can properly claim a right to a commission, broker's fee or other compensation based on contacts or understandings between such claimant and Seller or Buyer. Each party hereto agrees to indemnify, defend and hold the other party harmless from any Loss and Expense arising from any claims or demands of any broker, agent or finder with whom such party has dealt for any commission or fee alleged to be due in connection with this transaction. The terms and provisions of this paragraph shall survive the Closing and transfer of title.
18. **Casualty Loss.** As used herein, the term "**Casualty Loss**" means any destruction by fire, storm or other casualty of the Property or a portion thereof, in each case, prior to Closing. Seller shall promptly give Buyer written notice ("**Casualty Notice**") of any Casualty Loss of which Seller becomes aware. In the event of a Casualty Loss in excess of \$100,000, Buyer shall have the option, which must be exercised within thirty (30) days after its receipt of the Casualty Notice, to terminate this Agreement or to proceed with the Closing. If Buyer then elects to terminate this Agreement, all rights, duties, obligations and liabilities created hereunder shall cease except such liability as expressly survives termination. If Buyer elects to proceed with Closing, whether or not the Casualty Loss exceeds \$100,000, it shall acquire the Property in accordance with the terms hereof and Seller shall transfer to Buyer all of its rights to insurance proceeds, claims, awards and other payments arising out of such Casualty Loss and pay to Buyer all sums paid to Seller as insurance proceeds, awards or other payments arising out of such Casualty Loss. Seller shall at all times keep the Property insured for the full insurable value thereof. The terms and provisions of this Section 18 shall survive the Closing.
19. **Remedies.**
 - (a) If Seller fails to perform any of Seller's material obligations under this Agreement, and the same continues until the date that is the earlier of (i) the Closing Date or (ii) five (5) business days after Seller's receipt of written notice from Buyer, Buyer may, as Buyer's sole remedy for Seller's failure, cancel this Agreement within ten (10) business days after the expiration of the relevant time period specified in clauses (i) and (ii) above.
 - (b) If Buyer fails to perform any of Buyer's material obligations under this Agreement and the same continues until the date that is the earlier of (i) the Closing Date or (ii) five (5) days after Buyer's receipt of written notice from Seller, Seller may, as Seller's sole remedy for Buyer's failure, cancel this Agreement within ten (10)

business days after the expiration of the relevant time period specified in clauses (i) and (ii) above;

- (c) Seller and Buyer hereby agree that it would be impracticable and extremely difficult to fix the amount of Seller's actual damages and further agree that (\$50,000.00) is a reasonable estimate of the amount Seller might be damaged as a result of Buyer's failure to perform under this Agreement as set forth in 19.b above. Seller and Buyer acknowledge that the payment of such liquidated damages is not intended as a forfeiture or penalty within the meaning of California Civil Code Sections 3275 or 3369, but is intended to constitute liquidated damages to Seller pursuant to California Civil Code Sections 1671, 1676 and 1677.

20. **Attorneys' Fees.** If any legal action is brought by either party to enforce any provision of this Agreement, or in the event of the termination of this Agreement, each party shall bear its own costs and expenses, including attorney fees.

21. **Miscellaneous.**

- (a) This Agreement shall be governed by the law of the State of California.
- (b) Each party shall execute, acknowledge, and deliver, at or after the Closing Date, such further assurances, instruments and documents as the other may reasonably request in order to fulfill the intent of this Agreement and the transactions contemplated hereby.
- (c) If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.
- (d) This Agreement may be executed in counterparts and transmitted by facsimile by and to each of the parties, and each such counterpart shall be deemed an original, and all of them together shall constitute a single instrument.
- (e) The parties acknowledge that each party and its counsel have reviewed, commented on and approved this Agreement and any rule of construction otherwise requiring any ambiguities within this Agreement to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- (f) In the event that any time period set forth in this Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period shall be deemed to be automatically extended to the next business day.

SIGNATURE PAGES TO FOLLOW

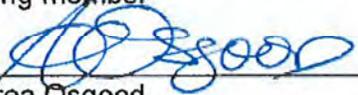
IN WITNESS WHEREOF, Seller and Buyer have entered into this Agreement as of the day and year first above written.

BUYER:

Kerner Canal, L.P.,
a California limited partnership

By: Kerner Canal LLC,
a California limited liability company,
its general partner

By: Eden Investments, Inc.,
a California nonprofit public benefit corporation,
its managing member

By: 
Andrea Osgood,
Senior Vice President of Real Estate Development

Date: 12/21/2022

SELLER:

COUNTY OF MARIN

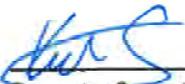
Stephanie Moulton Peters, President
Board of Supervisors

ATTEST:

Deputy Clerk

Date: _____

Approved as to form:



Deputy County Counsel



EXHIBIT A

21060 Redwood Road, Suite 110
Castro Valley, CA 94546
Office Phone: 510-537-8300
Office Fax: 510-537-0928
Email: Suzanne.Smith@doma.com

Doma Title of California, Inc.
21060 Redwood Road, Suite 110
Castro Valley, CA 94546
Attn: Suzanne Smith

Your Ref:
Our Order No.: 54605-21-02106
Property Address: 3301 Kerner Boulevard, San
Rafael, CA 94901

Preliminary Report Dated as of November 21, 2022 at 12:00 AM.

IN RESPONSE TO THE ABOVE REFERENCED APPLICATION FOR A POLICY OF TITLE INSURANCE,

North American Title Insurance Company

Hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and limitations on covered risks of said Policy or Policies are set forth in Exhibit A attached. The Policy to be issued may contain an Arbitration Clause. When the amount of insurance is less than that set forth in the Arbitration Clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the Parties. Limitations on covered risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a deductible amount and a maximum dollar limit of liability for certain coverages are also set forth in Exhibit A. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The form of Policy of title insurance contemplated by this report is:
CLTA Standard Coverage Policy

Please note that the America First Homeowner's Policy (CLTA/ ALTA Homeowner's Policy) can only be issued on transactions involving individuals as purchasers and residential 1-4 properties. Any indication that the America First Homeowner's Policy (CLTA/ ALTA Homeowner's Policy) will be issued in a transaction that does not meet these criteria is hereby revised to state that the policy contemplated is a Standard Coverage Policy.

Brian O'Connell, Title Officer III

SCHEDULE A

1. The estate or interest in the land herein after described or referred to covered by this report is:
A Fee as to Parcel(s) One, an Easement as to Parcel(s) Two.
2. Title to said estate or interest at the date hereof is vested in:
County of Marin, a Political Subdivision of the State of California
3. Real Property in the City of San Rafael, County of Marin, State of California, described as follows:

See attached Legal Description

LEGAL DESCRIPTION

Real Property in the City of San Rafael, County of Marin, State of California, described as follows:

PARCEL ONE:

PARCEL 2, AS SHOWN UPON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP LANDS OF PANSINI AS DESCRIBED IN BOOK 2230 OFFICIAL RECORDS AT PAGE 607 AND BOOK 2503 OFFICIAL RECORDS AT PAGE 236, SAN RAFAEL, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD DECEMBER 30, 1980 IN BOOK 18 OF PARCEL MAPS AT PAGE 82, MARIN COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO THE CITY OF SAN RAFAEL IN THE DEED RECORDED DECEMBER 22, 2009 AS SERIES NUMBER 2009-0070487, MARIN COUNTY RECORDS AND RE-RECORDED FEBRUARY 22, 2010 AS SERIES NUMBER 2010-0008378, MARIN COUNTY RECORDS.

PARCEL TWO:

AN EASEMENT FOR INGRESS AND EGRESS DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN SAID DEED RECORDED JUNE 9, 1978 IN BOOK 3386 OF OFFICIAL RECORDS AT PAGE 278, MARIN COUNTY RECORDS; SAID POINT BEING ON THE NORTHERLY LINE OF BELVEDERE STREET AND AT THE MOST WESTERLY CORNER OF PARCEL 2, AS SHOWN UPON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP LANDS OF PANSINI AS DESCRIBED IN BOOK 2230 OFFICIAL RECORDS AT PAGE 607 AND BOOK 2503 OFFICIAL RECORDS AT PAGE 236 SAN RAFAEL, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD DECEMBER 30, 1980 IN BOOK 18 OF PARCEL MAPS AT PAGE 82 MARIN COUNTY RECORDS; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LANDS OF LUCEY AND THE WESTERLY LINE OF SAID PARCEL 2, NORTH 20° 28' 00" EAST 7.30 FEET; THENCE LEAVING SAID EASTERLY LINE OF LUCEY, AND SAID WESTERLY LINE OF PARCEL 2, NORTH 69° 24' 00" WEST 8.00 FEET; THENCE SOUTHERLY ALONG A LINE PARALLEL TO AND 8.00 FEET WESTERLY OF SAID EASTERLY LINE OF LUCEY, SOUTH 20° 28' 00" WEST 2.49 FEET TO THE NORTHERLY LINE OF BELVEDERE STREET; SAID POINT BEING ON A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 222.50 FEET AND TO WHICH POINT A RADIAL LINE BEARS NORTH 50° 26' 54" EAST; THENCE SOUTHEASTERLY 9.35 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 2° 24' 30" TO THE POINT OF BEGINNING.

SAID EASEMENT IS FOR THE BENEFIT OF AND APPURTENANT TO PARCEL 2, AS SHOWN UPON THE PARCEL MAP ABOVE REFERRED TO.

APN: 008-082-52

SCHEDULE B

At the date hereof exceptions to coverage in addition to the printed exceptions and exclusions in the policy form designated on the face page of this report would be as follows:

1. Intentionally Deleted.
2. General and special taxes and assessments for the fiscal year 2022-2023 are not assessed.
3. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
4. Any claim that any portion of the land is or was formerly tidelands or submerged lands.
5. Intentionally Deleted.
6. Intentionally Deleted.
7. An easement for sewer and incidental purposes, recorded July 18, 1957 as Book 1128 at Page 467 of Official Records.
In Favor of: San Rafael Sanitation District
8. An easement for ingress, egress, and incidental purposes in the document recorded June 22, 1973 as Book 2698 at Page 666 of Official Records.
9. An easement for ingress, egress, and incidental purposes in the document recorded March 2, 1978 in Book 3338, Page 566 of Official Records
10. An easement for Public Sanitary Sewer and incidental purposes, recorded January 7, 1981 as/in Instrument No. 1981-0000659, Official Records.

In Favor of: San Rafael Sanitation District
Affects: A Portion of said land

Terms and provisions contained in the above document.
11. Any and all offers of dedications, conditions, restrictions, easements, notes and/or provisions shown or disclosed by the filed or recorded map referred to in the legal description, including but not limited to:

For: Access and incidental purposes.
For: Public utility and incidental purposes.
For: Sewer and incidental purposes.
12. An easement for ingress, egress and incidental purposes in the document recorded October 19, 1982 as Series Number 1982-0043604 of Official Records.
13. An easement for The right to construct, install, inspect, maintain, replace, remove, use facilities and incidental purposes, recorded June 20, 1983 as/in Instrument No. 1983-0028924, Official Records.

In Favor of: Pacific Gas and Electric Company, a California Corporation
Affects: A Portion of said land

Terms and provisions contained in the above document.
14. The terms and provisions contained in the document entitled " Regulatory Agreement and Declaration of Restrictive Covenants " recorded May 19, 2022 as Instrument No. 2022-0020382 of Official Records.

15. With respect to County of Marin, a Political Subdivision of the State of California, a corporation:
 - a. A certificate of good standing of recent date issued by the Secretary of State of the corporation's state of domicile.
 - b. A certified copy of a resolution of the Board of Directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
 - c. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.

Notice: If an ALTA Extended Lender's Policy is to be issued, the following exceptions will appear:

16. Any rights, interests, or claims of parties in possession of the land not shown by the public records.

*****END OF REPORT*****

A. NOTICE OF RECORDING PROCEDURE

Pursuant to Cal. Revenue & Tax Code §480.3, all Deeds and other Documents that reflect a change in ownership must be accompanied by a Preliminary Change of Ownership Report to be completed by the transferee. If this special report is not presented at the time of recording, an additional recording fee of \$20.00, as required by law, will be charged. Preliminary Change in Ownership forms, instructions on how to complete them, and a nonexclusive list of documents that are affected by this change, are available from the County Recorder's Office or the Office of the County Assessor.

Effective January 1, 2018, Cal. Government Code §27388.1 imposes an additional fee of \$75.00 to be paid at the time of recording for every real estate instrument, paper, or notice required or permitted by law to record, except those expressly exempted from payment.

B. GOOD FUNDS LAW

Under Section 12413.1 of the California Insurance Code, Doma Title of California, Inc. may only make funds available for disbursement in accordance with the following rules:

Same day availability. Disbursement on the date of deposit is allowed only when funds are deposited to Doma Title of California, Inc. by Cash or Electronic Transfer (Wire). Cash will be accepted only under special circumstances and upon approval by management.

Next business day availability. If funds are deposited to Doma Title of California, Inc. by cashier's checks, certified checks or teller's checks, disbursement may be on the next business day following deposit. A "teller's check" is one drawn by an insured financial institution against another insured financial institution (e.g., a savings and loan funding with a check drawn against a FDIC insured bank).

Second business day availability. If the deposit is made by checks other than those described in paragraphs 1 and 2 above, disbursement may occur on the day when funds must be made available to depositors under Federal Reserve Regulation CC. In most cases, these checks will be available on the second business day following deposit. (For further details, consult California Insurance Code Section 12413, et seq. and Regulation CC).

These are the minimum periods before funds will be made available. Doma Title of California, Inc. is not obligated to disburse funds at the expiration of the time periods above, and expressly reserves the right to require additional time before disbursing on deposited funds. Close of escrow and final disbursement will not be made based on deposits in the form of personal checks, corporate checks, credit union checks, money market checks, travelers checks and official checks until confirmation of final clearance of the funds.

Doma Title of California, Inc. will not be responsible for accruals of interest or other charges resulting from compliance with the disbursement restrictions imposed by state law.

Doma Title of California, Inc. charges for recording the transaction documents include charges for services performed by Doma Title of California, Inc., in addition to an estimate of payments to be made to governmental agencies.

Note: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

- C. The map attached, if any, may or may not be a survey of the land depicted hereon. Doma Title of California, Inc. expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE

Referring Party:

Doma Insurance Agency, Inc.; Doma Insurance Agency of Arizona, Inc.; Doma Title of California, Inc.; Doma Insurance Agency of Florida, Inc.; Doma Insurance Agency of Illinois, Inc.; Doma Insurance Agency of Indiana, LLC; Doma Insurance Agency of Minnesota, Inc.; Doma Title Agency of Nevada, Inc.; Doma Insurance Agency of New Jersey, Inc.; Doma Insurance Agency of Texas, Inc.; or Doma Insurance Agency of Utah, LLC, as applicable (“Doma Insurance Agency”)

This is to give notice that Doma Insurance Agency has business relationships with Doma Title Insurance, Inc. (known as North American Title Insurance Company in the state of Mississippi) (“Doma Title”); Doma Customer Financing LLC (“Doma Customer Financing”); and Cura Home, Inc. (“Cura Home”). Doma Insurance Agency, Doma Title, Doma Customer Financing, and Cura Home are part of the Doma Family of Companies and are indirect wholly owned subsidiaries of Doma Holdings, Inc. Because of these relationships, the referral of services to Doma Title, Doma Customer Financing, or Cura Home may provide Doma Insurance Agency a financial or other benefit.

Set forth below are the estimated charges or range of charges for the settlement services provided by Doma Title, Doma Customer Financing, and Cura Home. You are NOT required to use Doma Title, Doma Customer Financing, or Cura Home as a condition for closing your transaction. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

Provider and Settlement Service	Charge or Range of Charges
Doma Title <ul style="list-style-type: none"> • Provides title insurance 	10% - 40% of costs for lender’s and/or owner’s title insurance, as applicable, depending on the property state, and as shown on the Loan Estimate and/or Closing Disclosure provided by your lender.
Doma Customer Financing <ul style="list-style-type: none"> • Provides credit services 	Origination fee ranges between 0% - 3% of loan amount.
Cura Home <ul style="list-style-type: none"> • Provides home warranty services 	The home warranty contract premium ranges between \$300 - \$1,400 in annual premium.
<p>This is an affiliated business arrangement disclosure statement. Actual services and charges may vary according to the circumstances underlying the transaction, including the home value, coverage and limits chosen, as well as other requested terms, unusual market conditions, government regulation, property location and similar factors.</p>	

ACKNOWLEDGMENT

I/we have read this disclosure form and understand that Doma Insurance Agency is referring me/us to purchase the above-described settlement service and may receive a financial or other benefit as the result of this referral.

Buyer/Borrower:

Date: _____

Seller:

Date: _____

DOMA TITLE OF CALIFORNIA, INC.

21060 Redwood Road, Suite 110, Castro Valley, CA 94546

Office Phone: 510-537-8300 Office Fax: 510-537-0928 Email: Suzanne.Smith@doma.com

Closing Protection Letters can be ordered directly by emailing cacpl@doma.com with your title order number and property address.

Attention:

Your Ref:

Our Order No.: 54605-21-02106

LENDERS SUPPLEMENTAL REPORT

Dated as of November 21, 2022 at 12:00 AM.

Title Officer: Brian O'Connell

The above numbered report (including any supplements or amendments thereto) is hereby modified and/or supplemented in order to reflect the following additional items relating to the issuance of an American Land Title Association loan form policy of Title Insurance:

Our ALTA Loan Policy, when issued, will contain Endorsement Nos. 100 and 116.

There is located on said land a Commercial
Known as: 3301 Kerner Boulevard, San Rafael, CA 94901
City of San Rafael
County of Marin
State of California.

According to the public records, there has been no conveyance of the land within a period of 124 months prior to the date of this report, except as follows:

A document recorded December 8, 2020 as Instrument No. 2020-0062725 of Official Records.

From: Dennis Gilardi and Susan Gilardi, Trustees of the Gilardi Charitable Remainder Unitrust dated September 7, 2018

To: County of Marin, a Political Subdivision of the State of California

Privacy Policy

The Doma Family of Companies

FACTS	What does the Doma family of companies do with your personal information?	
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some, but not all, sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: <ul style="list-style-type: none"> • Social Security number, date of birth and income • Transaction history and payment history • Purchase history and account balances 	
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information, the reasons the Doma Family of Companies chooses to share, and whether you can limit this sharing.	
Reasons we can share your personal information		
	Does Doma share?	Can you limit this sharing?
For our everyday business purposes Such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes To offer our products and services to you	Yes	No
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes Information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes Information about your creditworthiness	No	We don't share
For our affiliates to market to you	Yes	No
For nonaffiliates to market to you	No	We don't share
To limit our sharing	<ul style="list-style-type: none"> • Call 1-866-929-7437—our menu will prompt you through your choice(s) or • Visit us online: www.doma.com <p>Please note:</p> <p>If you are a <i>new</i> customer, we can begin sharing your information 30 days from the date we sent this notice. When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p> <p>However, you can contact us at any time to limit our sharing.</p>	
Questions?	Call 1 (866) 929-7437 or go to www.doma.com	

Privacy Policy

The Doma Family of Companies

Who we are	
Who is providing this notice?	The Doma Family of Companies (identified below), which offers title insurance and settlement services.
What we do	
How does Doma protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secure files and buildings.
How does Doma collect my personal information?	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> • Apply for insurance • Apply for financing • Give us your contact information • Provide your mortgage information • Show your government-issued ID <p>We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.</p>
Why can't I limit all sharing?	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> • Sharing for affiliates' everyday business purposes— information about your creditworthiness • Affiliates from using your information to market to you • Sharing for nonaffiliates to market to you <p>State laws and individual companies may give you additional rights to limit sharing.</p>
What happens when I limit sharing for an account I hold jointly with someone else?	Your choices will apply to everyone on your account – unless you tell us otherwise.
Definitions	
Affiliates	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> • Our affiliates are the entities that comprise the Doma Family of Companies (listed below) and include companies with a Doma name; financial companies such as Doma Insurance Agency, Inc. and Doma Home Insurance Services, LLC; and nonfinancial companies such as Title Agency Holdco, LLC.
Nonaffiliates	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> • Nonaffiliates we share with can include collection agencies, our service providers, companies that perform marketing and advertising services on our behalf, and consumer reporting agencies.
Joint marketing	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> • Doma doesn't jointly market.
Other important information	
*For California residents: you may have additional rights under the California Consumer Privacy Act. For a description of those rights, please see our Doma Family of Companies' privacy policy located here: www.doma.com .	

Rev. 08/11/2022

Privacy Policy

The Doma Family of Companies

The Doma Family of Companies consists of the following entities:

Doma Holdings, Inc. Doma Corporate, LLC Doma Customer Financing LLC Doma Home Insurance Services, LLC Doma Insurance Agency, Inc. Doma Insurance Agency of Arizona, Inc. North American Title Company of Colorado Doma Insurance Agency of Florida, Inc. Doma Insurance Agency of Illinois, Inc. Doma Insurance Agency of Indiana, LLC Doma Insurance Agency of Louisiana, LLC Doma Insurance Agency of Minnesota, Inc. Doma Title Insurance Company of New York Doma Title Agency of Nevada, Inc. Doma Insurance Agency of New Jersey, Inc.	Doma Insurance Agency of Texas, Inc. Doma Insurance Agency of Utah, LLC Doma Title Insurance, Inc. Doma Trustee Services, LLC Doma Title of California, Inc. Cura Home, Inc. NASSA LLC North American Title Company North American Title Insurance Company North American Asset Development, LLC North American Services, LLC Spear Agency Acquisition Inc. States Title Holding, Inc. States Title, LLC Title Agency Holdco, LLC
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Rev. 08/11/2022

CLTA Preliminary Report Form - Exhibit A (Rev. 05-06-16)

**CLTA STANDARD COVERAGE POLICY - 1990
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

**CLTA/ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13)
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - a. building;
 - b. zoning;
 - c. land use;
 - d. improvements on the Land;
 - e. land division; and
 - f. environmental protection.This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.

4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.
 This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$10,000
Covered Risk 18:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 21:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$5,000

2006 ALTA LOAN POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14);
 or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

[Except as provided in Schedule B - Part II, [t[or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

[PART I

[The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.]

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

2006 ALTA OWNER'S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
1. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
2. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
3. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
4. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of: [The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.
7. [Variable exceptions such as taxes, easements, CC&R's, etc. shown here.]

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY - ASSESSMENTS PRIORITY (04-02-15)
EXCLUSIONS FROM COVERAGE**

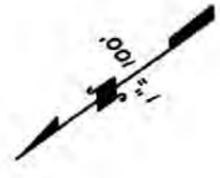
The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions, or location of any improvement erected on the Land; (iii) the subdivision of land; or (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

PTN. SEC. 2, T.1N-R.6W, M.D.B. & M.

Tax Rate Area
8-006

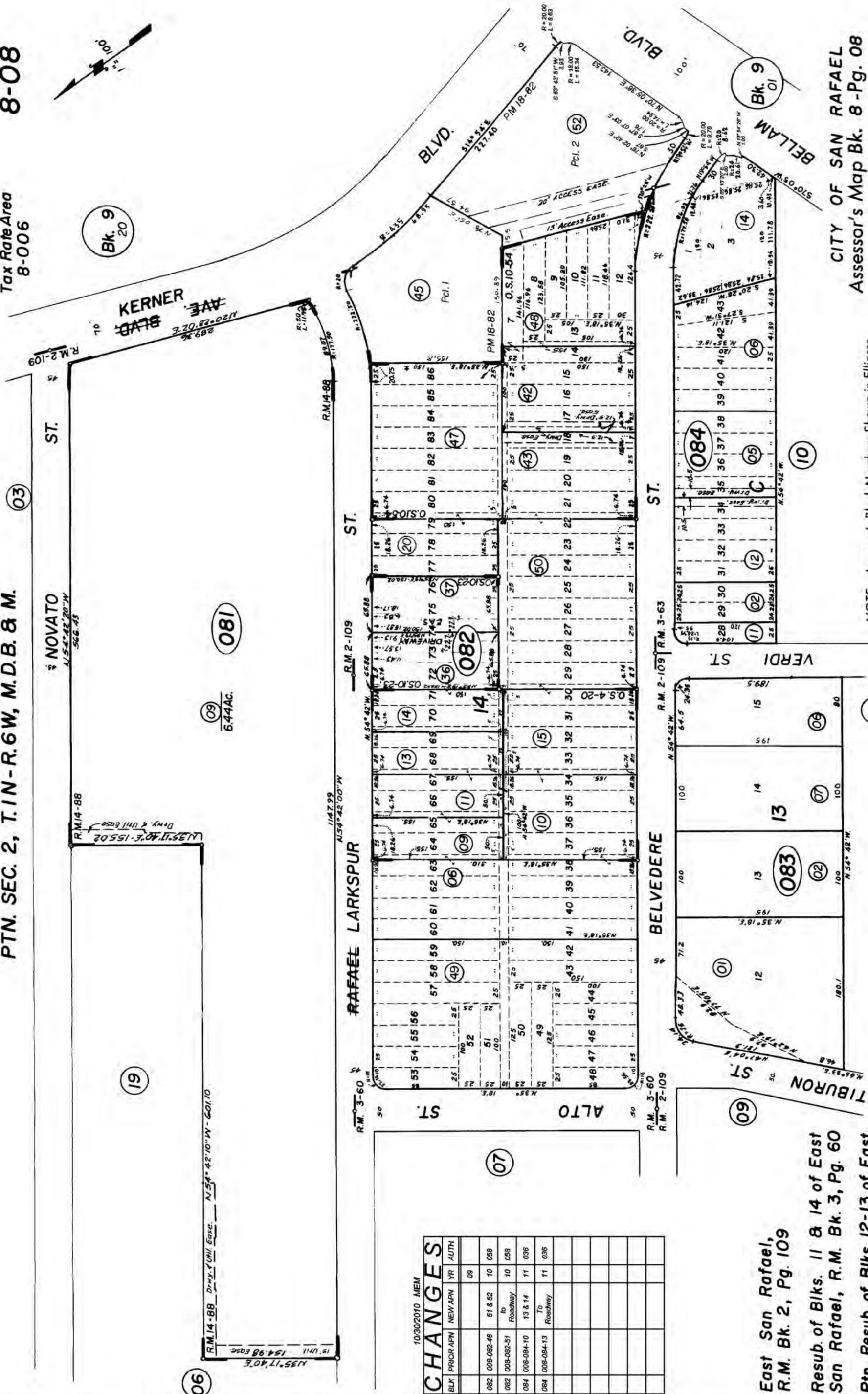
8-08



Bk. 9
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Bk. 9
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CITY OF SAN RAFAEL
Assessor's Map Bk. 8 -Pg. 08
County of Marin, Calif.



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10/30/2010 MEM

BLK	PRIOR APN	NEW APN	YR	AUTH
			09	
082	008-082-46	51 & 52	10	058
082	008-082-51	To Roadway	10	058
084	008-084-10	13 & 14	11	036
084	008-084-13	To Roadway	11	036

NOTE - Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.

East San Rafael,
R.M. Bk. 2, Pg. 109
Resub. of Blks. 11 & 14 of East
San Rafael, R.M. Bk. 3, Pg. 60
Ptn. Resub. of Blks. 12-13 of East
San Rafael, R.M. Bk. 3, Pg. 63

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City of San Rafael
In Recognition of
Wildfire Preparedness Month 2023

WHEREAS, the risk of wildfire in the City of San Rafael, Marin County, the State of California, and now in many areas of North America is a significant concern to community members, City, State, and Federal leaders and Fire Department personnel, and

WHEREAS, the established purpose for and implementation of the City of San Rafael's Wildfire Prevention and Protection Action Plan was developed at the direction of City Council, and

WHEREAS, the voters in Marin County have passed Measure C which established the joint powers authority known as the Marin Wildfire Prevention Authority, which directly supports the projects and programs involving community outreach and education; creation and maintenance of defensible space; assessment and improvement of evacuation routes and corridors; and provides for effective emergency warning and notification systems; and

WHEREAS, the creation of defensible space with a "house out approach" can protect lives and prevent ignitions of structures and maintain critical housing for community members; and

WHEREAS, the above and below mentioned actions combined with equipping, training, educating, and supporting fire service personnel enables a safe, effective, and responsible approach to suppression of fires in the wildland urban interface; and

WHEREAS, drought conditions and wildfire safety prescribe the use of fire adapted ornamental plants, home hardening efforts, and vigilant attention to vegetation management to help homes and structures avoid the destruction caused by a wildfire event; and

WHEREAS, an informed and active community is a proactive and prepared community; and given the climate, drought conditions, and other factors, hazard mitigation efforts are now required year round to ensure community safety and resiliency.

NOW, THEREFORE, I, Kate Colin, Mayor of San Rafael, do hereby proclaim the month of May 2023 as Wildfire Preparedness Month and in doing so, urge all residents and community members to take adaptive wildfire preparation steps to reduce our community's risk profile and achieve safety related to wildfire.



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

Mayor



**Proclamation in Recognition of
PUBLIC SERVICE RECOGNITION WEEK**

May 7-13, 2023

WHEREAS, Public Service Recognition Week has been celebrated the first week of May since 1985 (beginning on the first Sunday of the month) to honor the people who serve our nation every single day as federal, state, county, local and tribal government employees; and

WHEREAS, this week is a time to educate citizens about the work public servants do and the many ways government services make life better for the American people. It is also a time to connect and educate citizens nationwide to the work of their government and to improve the perception and morale of government workers and other public servants; and

WHEREAS, Public Service Recognition Week is intended to foster pride among public servants and help inspire a new generation of public servants; and

WHEREAS, the City of San Rafael supports and encourages employees to continue building new partnerships with other public agencies, associations, community organizations and private corporations in order to continue providing efficient and excellent service to our community; and

WHEREAS, the City honors our public employees for their dedication and service and acknowledges and appreciates the work they do to ensure the safety of our citizens, improve and preserve public assets, preserve and sustain our neighborhood and economic vitality, and support and strengthen the quality of life for our residents.

NOW THEREFORE, the Mayor and City Council of the City of San Rafael hereby proclaim May 7-13, 2023 as Public Service Recognition Week and encourages all citizens to recognize the accomplishments and contributions of government employees at all levels — federal, state, county and here in the City of San Rafael.



A handwritten signature in blue ink, appearing to read "Kurtz".

Mayor



**Proclamation in Recognition of
ASIAN AMERICAN AND PACIFIC ISLANDER HERITAGE MONTH
May 1 — May 31, 2023**

WHEREAS, Asian American and Pacific Islander Heritage Month recognizes, celebrates, and increases awareness of the rich history, contributions, and accomplishments of Asian Americans and Pacific Island Americans; and

WHEREAS, the month of May was originally chosen to coincide with two milestones in Asian/Pacific American history: the arrival of the first Japanese immigrants (May 7, 1843) in the United States, and Chinese workers' role in building the transcontinental railroad, completed May 10, 1869; and

WHEREAS, today, Asian Americans and Pacific Islanders are the fastest growing racial group in the United States. AAPI Heritage Month celebrates the unique journey of all AAPI immigrants and citizens in the United States and their unique life experiences, traditions and cultures; and

WHEREAS, the national theme for 2023 is *"Advancing Leaders Through Opportunity"* which is especially paramount now as the public sector has demonstrated its ability to successfully be agile and pivot workplace processes to achieve organizational goals throughout and after the pandemic; and

WHEREAS, the City of San Rafael is committed to promoting equal opportunity, cultural diversity, equity, inclusion and belonging among our workforce.

NOW THEREFORE, the Mayor and City Council of the City of San Rafael hereby proclaim the month of May 2023 as Asian American and Pacific Islander Heritage Month, and do hereby reaffirm our shared values of compassion, equity, inclusion, and diversity; and our commitment to building a larger world in which everyone is valued, understood and has an equal opportunity to thrive.



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

Mayor



**Resolution of the
San Rafael City Council
in Recognition of**

NATIONAL POLICE WEEK 2023

- WHEREAS,** The Congress and President of the United States have designated May 15, 2023 as Peace Officers' Memorial Day, and May 14th to 20th, 2023 as National Police week; and
- WHEREAS,** the members of the San Rafael Police Department play an essential role in safeguarding the rights and freedoms of all those residing in or visiting San Rafael; and
- WHEREAS,** it is important that all residents know and understand the duties, responsibilities, hazards, and sacrifices of their law enforcement agency, and that members of the Police Department recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and
- WHEREAS,** the men and women of the San Rafael Police Department unceasingly provide a vital public service.

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of San Rafael call upon all patriotic, civic and educational organizations to observe the week of May 14th to the 20th, 2023 as National Police Week with appropriate ceremonies and observances in which all of our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their communities and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all residents.

FURTHERMORE, we call upon all residents of San Rafael to recognize Monday, May 15, as Peace Officers' Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty and let us recognize and pay respect to the survivors of our fallen heroes.



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

Mayor

City of San Rafael
PROCLAMATION

MENTAL HEALTH AWARENESS MONTH, MAY 2023

- WHEREAS,** mental health is essential to everyone’s overall health and well-being; and
- WHEREAS,** mental illnesses are real and prevalent in our nation, and many of us will have, or know someone that has a mental health diagnosis at some point in our lives; and
- WHEREAS,** all Americans experience times of difficulty and stress in their lives, and should feel comfortable in seeking help and support to manage these times; and
- WHEREAS,** engaging in prevention, early identification, and early intervention are as effective ways to reduce the burden of mental illnesses as they are to reduce the burden of other chronic conditions; and
- WHEREAS,** there is a strong body of research that identifies behavioral health risks and supports specific tools that all Americans can use to protect their health and well-being; and
- WHEREAS,** with effective treatment before Stage 4, all individuals with mental illnesses even serious mental illnesses - can make progress toward recovery and lead full, productive lives; and
- WHEREAS,** jails and prisons have often become the default places of custodial care for even nonviolent people with serious mental illnesses; and
- WHEREAS,** each business, school, government agency, healthcare provider, organization and citizen have a responsibility to promote mental health and well-being for all.

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of San Rafael, do hereby proclaim May 2023 as Mental Health Month. As the formal leaders within the City, I also call upon our residents, government agencies, public and private institutions, businesses, and schools in San Rafael to commit our community to increasing awareness and understanding of mental health, the steps our citizens can take to protect their mental health, and the need for appropriate and accessible services for all people with mental illnesses.



A handwritten signature in blue ink, appearing to read "Kate Colin".

Kate Colin
Mayor



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

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

City Manager Approval: _____

TOPIC: FY 2023 LOCAL MEASURE A, AA AND B ALLOCATION

SUBJECT: RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE FUNDING AGREEMENT A-FY23-11 BETWEEN THE TRANSPORTATION AUTHORITY OF MARIN (TAM) AND THE CITY OF SAN RAFAEL, THEREBY AUTHORIZING THE RECEIPT OF AN ALLOCATION OF \$47,527 IN MEASURE A, \$440,653 IN MEASURE B, AND \$1,322,378 IN MEASURE AA FUNDING FOR FY 2022-2023.

RECOMMENDATION: ADOPT RESOLUTION

BACKGROUND: Marin County voters approved the authorizations of Measure A, Measure B, and Measure AA at the General Elections held on November 2, 2004, November 10, 2010, and November 6, 2018, respectively, thereby authorizing that the Transportation Authority of Marin (TAM) be given the responsibility to administer the proceeds from a one-half cent transaction and use tax (Measure A renewed as AA) and vehicle registration fee (Measure B). These measures authorize TAM to administer Measure A, Measure AA, and Measure B funds for public right-of-way, multi-modal transportation projects identified by local agency public works directors and approved by their governing bodies.

As in past years, the City must approve a TAM funding agreement, in this case Agreement A-FY23-11, to release the Measure A, Measure AA and Measure B funds described above in the total amount of \$1,810,558 for FY 2022-23.

ANALYSIS: Public Works has utilized past Local Measure A, Measure AA and Measure B allocations for various public right-of-way capital projects. With Council’s approval, the current funding agreement will utilize the \$1,810,558 allocation for the following projects:

1. Spinnaker Point Drive Parking Modifications: Construction of angled parking along the north side of Spinnaker Point Drive to help increase available parking for this area. Sidewalk was realigned to allow for the angled parking to be installed and allow sufficient safety clearance for cars to exit.
 - \$1,100,000 total cost, all of which utilized TAM A, AA, and B funds.
2. Second and Fourth Street Intersection Improvement Project: An intersection Improvement project would reconfigure the streets, so they meet as a tee-intersection, shortening the

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

crossing distances and minimizing the number of crossings for pedestrians and bicycles. The five current legs would be reduced to three, shortening the wait times for all users here. The project would also complete the Class IV bikeway connection from West Street to West End, which is a critical connection listed as a top priority in the City's Bike and Pedestrian Master Plan. Other improvements include accessibility improvements, drainage, undergrounding of overhead electrical service, and the signalization of the intersection of West Crescent and Fourth Street providing safety and access improvements.

- \$5,100,000 total cost, of which \$710,558 will be utilized from TAM A, AA and B funds.

FISCAL IMPACT: This agreement provides \$1,810,558 in Measure A, Measure AA and Measure B funds, to be used for the projects described above. The receipt of these funds enables the City to utilize Gas Tax Fund (#206) resources for other equally important right-of-way projects.

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

1. Adopt a resolution to accept the funding agreement A-FY23-11 between TAM and the City of San Rafael, thereby authorizing the receipt of an allocation of \$47,527 in Measure A, \$440,653 in Measure B, and \$1,322,378 in Measure AA funding for FY 2022-23.
2. Do not adopt the resolution and provide further direction to staff.

RECOMMENDED ACTION: Adopt the resolution.

ATTACHMENT:

1. Resolution
2. A-FY23-11 Funding Agreement

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE FUNDING AGREEMENT A-FY23-11 BETWEEN THE TRANSPORTATION AUTHORITY OF MARIN AND THE CITY OF SAN RAFAEL, THEREBY AUTHORIZING THE RECEIPT OF AN ALLOCATION OF \$47,527 IN MEASURE A, \$440,653 IN MEASURE B AND \$1,322,378 IN MEASURE AA FUNDING FOR FY 2022-2023

WHEREAS, The voters of Marin County approved the authorizations of Measure A, Measure B, and Measure AA at the General Elections held on November 2, 2004, November 10, 2010, and November 6, 2018, respectively, thereby authorizing that TAM be given the responsibility to administer the proceeds from a one-half cent transaction and use tax (Measures A and AA funds) and vehicle registration fee (Measure B funds); and

WHEREAS, Measures A, B, and AA proceeds will be used to pay for the Spinnaker Point Drive Parking Modifications Project and the Second and Fourth Street Intersection Improvement Project as outlined in the City of San Rafael's FY 2022-23 Expenditure Plans; and

WHEREAS, TAM has requested that the City approve Funding Agreement A-FY23-11 to release the City of San Rafael's FY 2022-2023 allocation of \$47,527 in Measure A, \$440,653 in Measure B, and \$1,322,378 in Measure AA funds; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Rafael hereby approves and authorizes the City Manager to execute Funding Agreement A-FY23-11 between TAM and the City, authorizing the allocation to San Rafael of \$47,527 in Measure A, \$440,653 in Measure B, and \$1,322,378 in Measure AA funds, in a form to be approved by the City Attorney.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 1st day of May 2023, by the following vote, to wit:

AYES:

NOES:

ABSENT:

Lindsay Lara, City Clerk

TAM AGREEMENT A-FY23-11

**FUNDING AGREEMENT
BETWEEN
TRANSPORTATION AUTHORITY OF MARIN
AND
CITY OF SAN RAFAEL**

This AGREEMENT is made this _____ day of _____ 202____, by and between the Transportation Authority of Marin, hereinafter referred to as “TAM”, a local public agency, and the City of San Rafael, hereinafter referred to as “RECIPIENT”, a local public agency.

SECTION 1. RECITALS

1. The voters of Marin County approved the authorization of Measures A, AA, and B, thereby authorizing that TAM be given the responsibility to administer the proceeds from a transportation sales tax (Measures A and AA) and a vehicle registration fee (Measure B), respectively, to fund transportation-related projects and programs in Marin County.
2. The proceeds will be used to pay for the programs and projects outlined in the Measures A, AA, and B Expenditure Plans and further guided by the Measures A, AA, and B Strategic Plans.
3. According to the Measures A and AA Expenditure Plans, local streets and roads funds are provided to local cities, towns, and Marin County (local agencies) to be used for any local transportation need, including streets and roads projects, local transit projects, bicycle pedestrian projects and other transportation uses.
4. According to the Measure B Strategic Plan, thirty-five percent (35%) of funds will be distributed to sponsors, under Element 1.1, for local streets maintenance and improvements.
5. Each project will be required to consider the needs of all roadway users and, where feasible, locally defined bicycle and pedestrian projects will be implemented at the time a roadway is improved.
6. Local priorities would be determined by each local agency's Public Works Director with approval of their governing board in a public meeting.

SECTION 2. PURPOSE OF FUNDING AGREEMENT

This AGREEMENT is entered into by and between TAM and RECIPIENT to document the funding conditions necessary for the RECIPIENT to comply with applicable law and TAM policies and conditions (EXHIBIT A). This AGREEMENT consists of additional documents stated in these sections as being attached hereto and incorporated in the AGREEMENT by reference.

SECTION 3. PROJECT DEFINITION AND SCOPE

This AGREEMENT, approved through Resolution 2022-09 of TAM, in accordance with the requirements of TAM’s Measures A, AA, and B Expenditure Plans and Strategic Plans is made for the following

purposes identified in the RECIPIENT's Measures A, AA, and B Allocation Request Form (EXHIBIT B):

Local Infrastructure for All Modes

Additional information on project scope is included in the Measures A, AA, and B Allocation Request Form.

SECTION 4. GRANT

TAM hereby grants to the RECIPIENT the sum of \$1,810,558.00 as designated in Resolution No. 2022-09 (EXHIBIT D), approved June 23, 2022, which is included in this AGREEMENT by reference.

SECTION 5. COST ELIGIBILITY

Cost eligibility shall be determined by TAM's Expenditure Plan and Strategic Plan policies. Funds may be used for any local transportation need identified by the RECIPIENT's Public Works Director, including streets and roads projects, local transit projects, bicycle pedestrian projects and other transportation uses, as approved by the RECIPIENT's governing board. Where feasible, locally defined bicycle and pedestrian projects will be implemented in conjunction with a related roadway improvement. This could include safety improvements, pedestrian facilities including disabled access, or bicycle facilities such as bike lanes or signage.

SECTION 6. BUDGET AND SCOPE

RECIPIENT shall maintain a project or program budget. RECIPIENT shall carry out the project and shall incur obligations against and make disbursements of the grant in conformity with TAM's requirements and the budget.

SECTION 7. PROJECT MANAGEMENT

RECIPIENT shall be responsible for the project and provide management of consultant and contractor activities for which RECIPIENT contracts, including responsibility for schedule, scope, and budget, consistent with TAM's resolution allocating the grant unless otherwise agreed upon in writing.

SECTION 8. PROJECT OVERSIGHT

RECIPIENT shall cooperate with TAM's project management team and shall provide any requested project information.

SECTION 9. ATTRIBUTION AND SIGNAGE

If any portion of grant funds is used for production of reports, acknowledgment of the TAM's role shall be included in the documents. If any portion of grant funds is used for construction, RECIPIENT shall, upon initiation of field work or at the earliest feasible time thereafter, install and maintain a sign at the construction site identifying TAM Funds (e.g., TAM and RECIPIENT's logos – "Your Measure AA Dollars at Work"). For non-construction capital purchases funded by any portion of grant funds, RECIPIENT shall affix permanent signage identifying TAM and TAM Funds as a funding source. RECIPIENT shall demonstrate compliance with attribution and signage requirements as an indispensable condition for authorization of Measures A, AA, and B disbursement for project expenses.

SECTION 10. PRESS RELEASES

RECIPIENT shall notify TAM in advance of any press releases about project and program activities, particularly groundbreakings and ribbon cuttings, in connection with grant funds expended from this AGREEMENT.

SECTION 11. COMPLIANCE WITH LAW

In the performance of its obligations pursuant to this AGREEMENT, RECIPIENT shall keep itself fully informed of the federal, state, and local laws, ordinances and regulations in any manner affecting the performance of this Agreement, and must at all times comply with such laws, ordinances, and regulations as they may be amended from time to time.

SECTION 12. ENVIRONMENTAL COMPLIANCE

RECIPIENT shall undertake all environmental mitigation measures that may be identified as commitments in applicable documents (such as environmental assessments, environmental impact statements and reports, and memoranda of agreement) and comply with any conditions imposed as a part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in this AGREEMENT by reference. Recipient shall be responsible for obtaining all necessary environmental permits for performance of work.

SECTION 13. FINANCES

All costs charged to the project shall be supported by properly prepared and documented time records, invoices, or vouchers evidencing in detail the nature and propriety of the charges and the basis for the percentage charged to TAM.

SECTION 14. RECORDS

All checks, payrolls, invoices, contracts, vouchers, journal entries, work orders, or other accounting documents pertaining in whole or in part to the project shall be maintained by RECIPIENT for a period of five (5) years after the later of project closeout or termination of grant. Such project documents shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other similar documents not pertaining to the project.

SECTION 15. PAYMENT

TAM shall remit payment to RECIPIENT upon written request by the RECIPIENT after the execution of this AGREEMENT.

SECTION 16. ELIGIBLE EXPENSES

RECIPIENT shall expend funds only on eligible expenses as follows: operating costs, direct staff time (salary and benefits), consultants; right of way engineering and acquisition costs (including permitting), and competitively bid construction contracts. Indirect costs (as defined by OMB Circular A-87) and overhead costs will not be considered eligible expenses. Funds shall also be expended according to the applicable provisions of the Expenditure Plan and of the Public Utilities Code Section 180000 et seq.

TAM shall provide notice to RECIPIENT of any and all expenditures made by RECIPIENT which are not in compliance with this AGREEMENT or the Expenditure Plan promptly after TAM becomes aware of any such expenditures.

SECTION 17. AUDITS

TAM reserves the right at any time to conduct or require a financial or performance audit of the RECIPIENT'S compliance with this AGREEMENT. TAM will give advance notice of the requirement. RECIPIENT shall permit TAM, or any of its duly authorized representatives, to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records, and accounts of the RECIPIENT and its contractors with regard to the project.

SECTION 18. THIRD PARTY CONTRACT AUDITS

TAM reserves the right to request an audit of other third-party contracts for any reason. If RECIPIENT is subject to third party financial audit requirements imposed by another funding source, copies of audits performed in fulfillment of such requirements shall be provided to the TAM.

SECTION 19. CLOSEOUT PROCEDURES AND PROJECT REPORT

RECIPIENT shall provide TAM a Project Report as shown in EXHIBIT C. This report shall include the total expenditures for the approved scope, revenues from all funding sources applied for the approved scope of work. RECIPIENT shall provide supporting documentation for expenditures and revenues from its accounting and financial management system. RECIPIENT shall certify that the amounts sought are only for project elements included in the Allocation Request Form

SECTION 20. REPAYMENT OF INELIGIBLE COSTS

TAM reserves the right to offset RECIPIENT payback of ineligible costs against future grant approvals for this project or other projects in the Expenditure Plan for which RECIPIENT is the sponsoring agency.

SECTION 21. RIGHT TO WITHHOLD

If the above items are not provided to TAM by the annual due date and/or such items are found not to be in compliance with this AGREEMENT, Public Utilities Code Section 180000 et seq., the ballot measure or the Strategic Plan, TAM may withhold funds for future allocations from RECIPIENT until RECIPIENT has corrected any noted deficiencies to TAM's satisfaction. While funds are being withheld, all interest on withheld funds shall be retained by TAM as an administrative fee.

SECTION 22. RESCISSION OF AUTHORIZATION OF FUNDS

TAM reserves the right to rescind its authorization of unneeded grant funds prior to, or at the time of, PROJECT closeout. Funds are determined to be unneeded if they are uncommitted at time of project closeout.

SECTION 23. TERMINATION FOR CAUSE

RECIPIENT agrees that, upon ten (10) working days written notice, TAM may suspend or terminate all or part of the financial assistance provided herein for failure to correct a breach of this AGREEMENT. Any failure to make reasonable progress, inconsistency with the Expenditure Plan or Allocation Request Form, unauthorized use of grant funds as specified in this AGREEMENT, or other violation of the

AGREEMENT that significantly endangers substantial performance of the project shall be deemed to be a breach of this AGREEMENT and cause for termination. Upon mutual consent, RECIPIENT will repay TAM any unexpended funds originally provided under this Agreement.

SECTION 24. CORRECTION OF BREACH

With respect to any breach which is reasonably capable of being cured, RECIPIENT shall have thirty (30) days from the date of notice of breach to initiate steps to cure. If RECIPIENT diligently pursues cure, such RECIPIENT shall be allowed a reasonable time to cure or by a time established in writing by TAM.

SECTION 25. LIABILITY

Neither TAM nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by RECIPIENT under or in connection with any work, authority, or jurisdiction delegated to RECIPIENT under this AGREEMENT. It is also understood and agreed that pursuant to Government Code Section 895.4, RECIPIENT shall fully defend, indemnify, and hold TAM harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by RECIPIENT under or in connection with any work, or jurisdiction delegated to RECIPIENT under this AGREEMENT.

Neither RECIPIENT nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by TAM under or in connection with any work, authority, or jurisdiction delegated to TAM under this AGREEMENT. It is also understood and agreed that pursuant to Government Code Section 895.4, TAM shall fully defend, indemnify, and hold RECIPIENT harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring in by reason of anything done or omitted to be done by TAM under or in connection with any work, authority, or jurisdiction delegated to TAM under this AGREEMENT.

In the event of concurrent negligence of RECIPIENT and TAM, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

SECTION 26. OBLIGATIONS

In general, termination of financial assistance under this AGREEMENT will not invalidate obligations properly incurred by RECIPIENT before the termination date; to the extent those obligations cannot be canceled.

SECTION 27. INTEGRATION

This AGREEMENT represents the entire AGREEMENT of the parties with respect to the subject matter thereof. No representations, warranties, inducements, or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

SECTION 28. AMENDMENT

Except as otherwise provided herein, this AGREEMENT may not be changed, modified, or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this AGREEMENT shall be void and of no effect.

SECTION 29. INDEPENDENT AGENCY

RECIPIENT performs the terms and conditions of this AGREEMENT as an entity independent of TAM. None of RECIPIENT'S agents or employees shall be agents or employees of TAM.

SECTION 30. ASSIGNMENT

The AGREEMENT may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

SECTION 31. BINDING ON SUCCESSORS, ASSIGNEES OR TRANSFEREES

This AGREEMENT shall be binding upon the successor(s), assignee(s) or transferee(s) of TAM or RECIPIENT as may be the case. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this AGREEMENT other than as provided above.

SECTION 32. EXPENSES

Each party shall be solely responsible for and shall bear all of its own respective legal expenses in connection with any dispute arising out of this AGREEMENT and the transactions hereby contemplated. RECIPIENT may not use GRANT funds, or other TAM programmed funds, for the aforementioned purpose.

SECTION 33. SEVERABILITY

Should any part of this AGREEMENT be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decisions shall not affect the validity of the remainder of this AGREEMENT, which shall continue in full force and effect; provided that the remainder of this AGREEMENT can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

SECTION 34. EXHIBITS

The following Exhibits are hereby made part of this AGREEMENT:

EXHIBIT A: Conditions on Local Infrastructure for All Modes

EXHIBIT B: Allocation Request Form

EXHIBIT C: Project Report (Sample Format)

EXHIBIT D: TAM Board Resolution 2022-09

SECTION 35. ACCEPTANCE OF GRANT

RECIPIENT does hereby declare that all written statements, representations, covenants, and materials submitted as a condition of this AGREEMENT are true and correct and does hereby accept TAM's grant and agrees to all of the terms and conditions of this AGREEMENT. The parties have executed this AGREEMENT as of the date first written above.

City of San Rafael:

Transportation Authority of Marin (TAM):

By: _____

By: _____

Anne Richman, Executive Director

Print Name

Print Title

Approved as to form (optional):

By: _____
City of San Rafael, Attorney

Print Name

Exhibit A

Conditions on Local Infrastructure for All Modes

Recipient agrees that it shall:

1. Agree to the formula used in the allocation of the funds as reflected in the respective Expenditure Plans and agree to the use of the State Department of Finance Estimates of Population figures (Report E-1, updated each May) for California cities and counties for the biennial update of the allocation formula.
2. Set up an appropriate system of interest-bearing accounts and reporting for funds received. The accounting system shall provide adequate internal controls and audit trails to facilitate a periodic compliance audit for the funds which shall be maintained for the duration of the Agreement plus five years after discharge.
3. Provide TAM with the number of maintained road miles within Recipient's jurisdiction which shall be consistent with the miles reported to state and federal agencies and that contained in the Recipient's pavement management system. Recipient shall provide TAM with the number of maintained road miles biennially, even if there were no changes in the number of miles.
4. In the event Recipient's expenditures in a fiscal year are less than the amount the Recipient has received, provide an explanation of why the revenues exceeded expenditures and how the Recipient plans to allocate the funds to future projects.
5. Within 60 working days of the end of each fiscal year, provide a Project Report for projects upon which funds were expended. The Project Report shall show the amount spent in that reporting year, including the total estimated project costs, the total expenditures to date, a brief description (including digital photographs) and location of the projects, and the benefits to be realized from said project (see Project Report, Exhibit C). The Report must also include a description and photograph of TAM signage and the number of signs posted.
6. As part of the Project Report, include a statement signed by the Recipient's Public Works Director, certifying the Report's compliance with the provisions of this AGREEMENT. A resolution by the Recipient's governing board approving the project in a public meeting should be attached to the Report.
7. Provide updated and accurate information (including digital photographs of the projects before, during and after construction) for TAM's website, highlighting projects or programs in which funds received by Recipient have been used.
8. Provide updated and accurate information on the Recipient's website, in order to inform the public, on how funds are being used in the Recipient's jurisdiction. Also provide a link on the Recipient's website to TAM's website.
9. Make available, upon request from TAM, Recipient's administrative officer or designated staff to render a report or answer any and all inquiries in regard to its receipt, usage, and compliance audit findings of funds before the TAM Board.

10. If after the close of the third fiscal year, minimal or no funds have been expended on projects, TAM reserves the right to withhold the fifth year's funds allocation until the Recipient's allocation is drawn down.
11. Provide parcel land use information for the annual TAM transportation modeling update.
12. Provide evidence of Pavement Management System certification in accordance with section 2108.1 of the Streets and Highway Code. MTC requires cities and counties to submit pavement maintenance and rehabilitation projects for funding to utilize a Pavement Management Program.

Exhibit B

Transportation Authority of Marin Measures A and AA – Transportation Sales Tax Funds Measure B – Vehicle Registration Fee Funds

Allocation Request Form

Fiscal Year of Allocation: 2022/23

Expenditure Plan: Local Roads and Related Infrastructures

Implementing Agency: City of San Rafael

Project Name #1: Spinnaker Point Dr Parking Modifications

Scope of Work #1: Construction of angled parking along the north side of Spinnaker Point Drive to help increase available parking for this area. Sidewalk will be realigned to allow for the angled parking to be installed and allow sufficient safety clearance for cars to exit. Plan sheet is attached.

Cost of Scope #1: \$1,100,000 (total scope amount requested)

Project Name #2: Second and Fourth Street Intersection Improvement project

Scope of Work #2: This Intersection Improvement project would reconfigure the streets, so they meet as a tee-intersection, shortening the crossing distances and minimizing the number of crossings for pedestrians and bicycles. The five current legs would be reduced to three, shortening the wait times for all users here. The project would also complete the Class IV bikeway connection from West Street to West End, which is a critical connection listed as a top priority in the City's Bike and Pedestrian Master Plan. Other improvements include accessibility improvements, drainage, undergrounding of overhead electrical service, and the signalization of the intersection of West Crescent and Fourth Street providing safety and access improvements.

Cost of Scope #2: \$4,000,000 (of which \$710,558 will be utilized from TAM A, AA, B funds)

Total Costs: \$5,100,000

Measure AA Category 2.1 Funds Available Amount: \$1,322,378

Measure B Element 1.1 Funds Available Amount: \$440,653

Measure A Reserve Strategy 3.2 Funds Available Amount: 47,527

Total Requested Amount: \$1,810,558

Other Funding: \$3,289,442 in other funds, including local and Gas Tax

Exhibit C

Project Report (sample format)

(due within 60 days of the end of each fiscal year)

Amount spent in this reporting year -

Total estimated project costs

Total expenditures to date

Project locations and descriptions

(please provide digital photographs for each project)

Benefits realized from project(s)

TAM signage:

Number of signs posted:

Attach a statement, signed by the City Public Works Director, certifying the reports compliance with the provisions of the funding Agreement

Attach a resolution by the Governing Board approving the project(s)

Attach the project worksheet template (sample follows) for each project included in the Project Report.

Local Roadway Project Report, Part I

<i>Name of roadway:</i>
<i>Project limits:</i>
<i>Jurisdiction:</i>
<i>Description of maintenance project:</i>
<i>Roadway's Pavement Condition Index:</i>
<i>Date of last PCI Evaluation:</i>

Multi-Modal and Safety-Related Considerations

According to the Measures A, AA, and B Expenditure Plan, each local road project will be required to consider the needs of all roadway users. Where feasible, locally defined bicycle and pedestrian projects will be implemented at the time a roadway is improved. Improvements could include striping and signing for bicycle lanes and bikeways, sidewalk improvements, curb ramps, and other accessibility and safety improvements.

Please discuss, in the following three sections, considerations for multi-modal and safety-related improvements as a part of the local road maintenance project.

1. Safety Improvements: Describe safety-related improvements considered as a part of the project (refer to collision statistics, traffic volumes, roadway functional classification and other information, as appropriate). Discuss whether these improvements are feasible and indicate if they could or could not be included as a part of the project. If not, state why.

2. Pedestrian and Disabled Persons Facilities: Describe pedestrian and ADA-related improvements considered as a part of the project (refer to pedestrian master plans, ADA transition plans, school and transit access considerations, and other information, as appropriate). Discuss whether these improvements are feasible and indicate if they could or could not be included as a part of the project. If not, state why.

3. Bicycle Facilities: Describe bicycle-related improvements considered as a part of the project (refer to bicycle master plans and other information, as appropriate). Discuss whether these improvements are feasible and indicate if they could or could not be included as a part of the project. If not, state why.

Exhibit D

TAM RESOLUTION NO. 2022-09

RESOLUTION OF THE TRANSPORTATION AUTHORITY OF MARIN FOR THE ALLOCATION OF \$9,273,969 IN TRANSPORTATION SALES TAX (MEASURE A AND MEASURE AA) AND VEHICLE REGISTRATION FEE (MEASURE B) FUNDS TO BELVEDERE, CORTE MADERA, FAIRFAX, LARKSPUR, MILL VALLEY, NOVATO, ROSS, SAN ANSELMO, SAN RAFAEL, SAUSALITO, TIBURON, AND MARIN COUNTY

WHEREAS, The voters of Marin County approved the authorizations of Measure A, Measure B, and Measure AA at the General Elections held on November 2, 2004, November 10, 2010, and November 6, 2018, respectively, thereby authorizing that TAM be given the responsibility to administer the proceeds from a one-half cent transaction and use tax (Measures A and AA funds) and vehicle registration fee (Measure B funds); and

WHEREAS, Measures A, B, and AA proceeds are used to pay for the programs and projects outlined in their respective Expenditure Plans; and

WHEREAS, TAM has developed Strategic Plans to provide guidance on implementing the Expenditure Plans; and

WHEREAS, The Measure A Strategic Plan programmed Measure A funds to the four strategies listed in the Expenditure Plan, including Strategy 3.2, Local Infrastructure for all Modes; and

WHEREAS, The Measure B Strategic Plan programs Measure B funds to three elements listed in the Expenditure, including Element 1.1, Maintenance of Local Streets; and

WHEREAS, The Measure AA Strategic Plan programs Measure AA funds to the four categories listed in the Expenditure Plan, including Category 2.1, Maintain and Manage Local Roads; and

WHEREAS, Measure A funds for Strategy 3.2, Measure B funds for Element 1.1, and Measure AA funds for Category 2.1 are programmed under the respective Strategic Plans to Marin County and the cities or towns of Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, Sausalito, and Tiburon for local infrastructure improvement projects that are prioritized by the respective Public Works Directors; and

WHEREAS, Measure A funds for Strategy 3.2, Measure B funds for Element 1.1, and Measure AA funds for Category 2.1 can be used for street and road projects, local transit projects, and bicycle and pedestrian projects; and

WHEREAS, Infrastructure improvement projects funded with Measure A funds for Strategy 3.2, Measure B funds for Element 1.1, and Measure AA for Category 2.1 will be approved by the County's and Cities' governing boards at public meetings, and

WHEREAS, The project sponsors are requesting funds that have been accumulated for FY 22/23; and

WHEREAS, These allocations are consistent with the Measure A, Measure B, and Measure AA Strategic Plans; and

WHEREAS, There are sufficient funds in the Strategy 3.2, Element 1.1, and Category 2.1 line-items of the TAM’s approved FY 22/23 Budget to cover the proposed action; and

WHEREAS, After reviewing the requests in coordination with project sponsors, TAM staff recommends allocating \$243,441 in Measure A funds, \$2,257,096 in Measure B funds, and \$6,773,432 in Measure AA funds as requested; now, therefore, be it

RESOLVED, That the Transportation Authority of Marin hereby allocates a total of \$243,441 in Measure A funds, \$2,257,096 in Measure B funds, and \$6,773,432 in Measure AA funds for eligible projects under Strategy 3.2, Element 1.1, and Category 2.1, respectively, for FY 22/23 as shown in the following table; and be it further

	Measure A	Measure B	Measure AA	Total
Belvedere	\$2,378	\$22,044	\$66,154	\$90,576
Corte Madera	\$8,956	\$83,038	\$249,193	\$341,187
Fairfax	\$6,694	\$62,062	\$186,245	\$255,001
Larkspur	\$9,605	\$89,052	\$267,240	\$365,896
Mill Valley	\$13,750	\$127,488	\$382,584	\$523,822
Novato	\$43,931	\$407,317	\$1,222,338	\$1,673,586
Ross	\$2,547	\$23,613	\$70,861	\$97,021
San Anselmo	\$10,782	\$99,967	\$299,995	\$410,744
San Rafael	\$47,527	\$440,653	\$1,322,378	\$1,810,558
Sausalito	\$6,726	\$62,360	\$187,139	\$256,224
Tiburon	\$8,451	\$78,357	\$235,146	\$321,954
County	\$82,094	\$761,145	\$2,284,159	\$3,127,398
Total	\$243,441	\$2,257,096	\$6,773,432	\$9,273,969

RESOLVED, That the Transportation Authority of Marin finds the allocations of these funds to be in conformance with the priorities and funding levels established in the Measure A, Measure B, and Measure AA Expenditure Plans and the Measure A, Measure B, and Measure AA Strategic Plan Updates; and be it further

RESOLVED, That the Transportation Authority of Marin hereby authorizes the actual expenditure (cash reimbursement) of funds for these activities to take place subject to the Fiscal Year Cash Flow Distribution Schedule detailed in the attached Allocation Request Forms; and be it further

RESOLVED, That as a condition of this authorization for expenditure, the Executive Director shall impose such terms and conditions as are necessary for the project sponsors to comply with applicable law and adopted Authority policies and execute Funding Agreements with the respective project sponsors to that effect; and be it further

RESOLVED, That as a condition of this authorization for expenditure, the referenced project sponsors shall provide the Authority with any other information it may request regarding the use of the funds hereby authorized.

PASSED AND ADOPTED at a regular meeting of the Transportation Authority of Marin held on the 23rd day of June 2022, by the following vote:

AYES: Arnold, Carmel, Cleveland-Knowles, Colbert, Colin, Connolly, Cutrano, Fredericks, Hillmer, Kemnitzer, Kuhl, Lee, Rice

NOES:

ABSENT: Moulton-Peters

ABSTAIN: Eklund, Rodoni


Stephanie Moulton-Peters, Chair
Transportation Authority of Marin

ATTEST:



Jennifer Doucette
Clerk of the Board



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: Joanna Kwok, Senior Engineer
April Miller, Public Works Director

City Manager Approval: _____

TOPIC: 2023 MTC REGIONAL ACTIVE TRANSPORTATION PROGRAM LOCAL SUPPORT

SUBJECT: RESOLUTION OF LOCAL SUPPORT AUTHORIZING THE FILING OF AN APPLICATION FOR FUNDING ASSIGNED TO MTC AND COMMITTING ANY NECESSARY MATCHING FUNDS AND STATING THE ASSURANCE TO COMPLETE THE CANAL ACTIVE TRANSPORTATION ENHANCEMENTS PROJECT

RESOLUTION OF LOCAL SUPPORT AUTHORIZING THE FILING OF AN APPLICATION FOR FUNDING ASSIGNED TO MTC AND COMMITTING ANY NECESSARY MATCHING FUNDS AND STATING THE ASSURANCE TO COMPLETE THE SAN RAFAEL CANAL CROSSING

RECOMMENDATION:

Staff recommends the City Council adopt two resolutions of local support authorizing the filing of applications for funding assigned to MTC, committing any necessary matching funds and stating the assurance to complete the Canal Active Transportation Enhancements and San Rafael Canal Crossing projects.

BACKGROUND:

The Active Transportation Program (ATP) was created by Senate Bill 99 to encourage increased use of active modes of transportation, such as biking and walking. The program aims to increase the proportion of trips accomplished by biking and walking, improve the safety and mobility of non-motorized users, advance efforts to achieve greenhouse gas reduction goals, enhance public health, and provide a broad spectrum of projects to benefit many types of users including disadvantaged communities. In March 2022, the California Transportation Commission (CTC) approved the Active Transportation Program (ATP) Cycle 6 guidelines, and MTC released the Call for Projects for the Regional ATP.

The City of San Rafael applied for funding through the Regional ATP for two projects:

1. Canal Neighborhood Active Transportation Enhancements
2. San Rafael Canal Crossing

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

Canal Neighborhood Active Transportation Enhancements Project

This project will provide pedestrian, bicycle, and transit enhancements in the Canal Neighborhood. Pedestrian enhancements include curb ramp upgrades, sidewalk gap closures, corridor lighting improvements, and uncontrolled crosswalk enhancements. Bicycle improvements include constructing bicycle boulevard treatments and adding secure bicycle parking. Transit improvements include adding transit shelter enhancements at several existing stops and constructing a new transit stop along a high-use transit route. These enhancements would improve mobility, equity, safety, and comfort for non-motorized users traveling to and from the Canal neighborhood. Residents will have better connectivity to key destinations such as schools, parks, and shopping in and out of the community.

The City is requesting \$4,123,000 of ATP funds for the project's planning, environmental clearance, design, and construction. Staff plan to include approximately \$1,031,000 towards the project through the Capital Improvement Program budget process in future fiscal years.

San Rafael Canal Crossing Project

This project will provide a non-motorized bicycle and pedestrian crossing bridge between the Canal Neighborhood and destinations north of San Rafael Creek. The new crossing would provide connectivity within a highly developed active transportation network in central Marin County, including the Bay Trail and the North-South Greenway, ensuring that residents of the Canal Neighborhood and the broader community are provided with safe access to regional destinations.

The City is requesting \$3,925,000 of ATP funds for the project's planning, environmental clearance, and design. The planning and design phase of the project will include stakeholder engagement to ensure that the project meets the needs of the community. The construction of the project is currently unfunded, but City staff will be searching for grant opportunities to fund the remaining project costs.

Both the Canal Neighborhood Active Transportation Enhancements and San Rafael Canal Crossing projects were recommended by MTC staff for funding in the 2023 Regional ATP. On January 25, 2023, MTC adopted the ATP Cycle 6 program of projects, which includes both San Rafael projects. One of the requirements for receiving regional discretionary funds is that the City must adopt a Resolution of Local Support for each of the projects. These resolutions must be submitted to MTC prior to the May 2023 CTC meeting when CTC considers final approval of MTC's Regional ATP. The Resolutions of Local Support for each of the projects is attached to this report.

FISCAL IMPACT:

Adoption of the Resolutions of Local Support is required for the Regional ATP Cycle 6 applications. The City is currently positioned to receive \$8,048,000 to fund two public improvement projects (Canal Neighborhood Active Transportation Enhancements and San Rafael Canal Crossing). Staff intend to include about \$1,031,000 towards the Canal Neighborhood Active Transportation Enhancements Project in the Capital Improvement Plan budget process for future fiscal years and apply for grant opportunities to fund the San Rafael Canal Crossing Project. Additional costs will be included in future budgeting years if needed.

RECOMMENDED ACTION:

Adopt the resolutions of local support authorizing the filing of applications for funding assigned to MTC and committing any necessary matching funds and stating the assurance to complete the projects.

ATTACHMENTS:

1. Resolution of Local Support Canal Active Transportation Enhancements Project
2. Resolution of Local Support San Rafael Canal Crossing Project

**RESOLUTION OF LOCAL SUPPORT
RESOLUTION NO.**

**RESOLUTION OF LOCAL SUPPORT AUTHORIZING THE FILING OF AN
APPLICATION FOR FUNDING ASSIGNED TO MTC AND COMMITTING ANY
NECESSARY MATCHING FUNDS AND STATING THE ASSURANCE TO
COMPLETE THE CANAL ACTIVE TRANSPORTATION ENHANCEMENTS PROJECT**

WHEREAS, the City of San Rafael (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for \$4,123,000 in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the Canal Active Transportation Enhancements Project (herein referred to as PROJECT) for the Regional Active Transportation Program (ATP) Cycle 6 (herein referred to as PROGRAM); and

WHEREAS, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the FEDERAL TRANSPORTATION ACT) including, but not limited to the Surface Transportation Block Grant Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149) and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

WHEREAS, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and

WHEREAS, pursuant to the FEDERAL TRANSPORTATION ACT, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, as part of the application for REGIONAL DISCRETIONARY FUNDING, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
- that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and
- that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
- that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and
- in the case of a transit project, the PROJECT will comply with MTC Resolution No. 3866, revised, which sets forth the requirements of MTC's Transit Coordination Implementation Plan to more efficiently deliver transit projects in the region; and
- in the case of an RTIP project, state law requires PROJECT be included in a local congestion management plan, or be consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the

countywide transportation agency; and

WHEREAS, that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

WHEREAS, there is no legal impediment to APPLICANT making applications for the funds; and

WHEREAS, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

WHEREAS, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

WHEREAS, MTC requires that a copy of this resolution be transmitted to the MTC in conjunction with the filing of the application.

NOW, THEREFORE BE IT RESOLVED, that the APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under the FEDERAL TRANSPORTATION ACT or continued funding; and be it further

RESOLVED that APPLICANT will provide any required matching funds; and be it further

RESOLVED that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and be it further

RESOLVED that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that

may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and be it further

RESOLVED that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if approved, for the amount approved by MTC and programmed in the federal TIP; and be it further

RESOLVED that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and be it further

RESOLVED that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the PROGRAM; and be it further

RESOLVED that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution No. 3866, revised; and be it further

RESOLVED that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and be it further

RESOLVED that, in the case of an RTIP project, PROJECT is included in a local congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the countywide transportation agency; and be it further

RESOLVED that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and be it further

RESOLVED that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and be it further

RESOLVED that there is no legal impediment to APPLICANT making applications for the funds; and be it further

RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and be it further

RESOLVED that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and be it further

RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and be it further

RESOLVED that the MTC is requested to support the application for the PROJECT described in the resolution, and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project sponsor for TIP programming.

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 1st day of May 2023, by the following vote, to wit:

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

Lindsay Lara, City Clerk

**RESOLUTION OF LOCAL SUPPORT
RESOLUTION NO.**

**RESOLUTION OF LOCAL SUPPORT AUTHORIZING THE FILING OF AN
APPLICATION FOR FUNDING ASSIGNED TO MTC AND COMMITTING ANY
NECESSARY MATCHING FUNDS AND STATING THE ASSURANCE TO
COMPLETE THE SAN RAFAEL CANAL CROSSING PROJECT**

WHEREAS, the City of San Rafael (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for \$3,925,000 in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the San Rafael Canal Crossing Project (herein referred to as PROJECT) for the Regional Active Transportation Program (ATP) Cycle 6 (herein referred to as PROGRAM); and

WHEREAS, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the FEDERAL TRANSPORTATION ACT) including, but not limited to the Surface Transportation Block Grant Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149) and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

WHEREAS, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and

WHEREAS, pursuant to the FEDERAL TRANSPORTATION ACT, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, as part of the application for REGIONAL DISCRETIONARY FUNDING, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
- that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and
- that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
- that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and
- in the case of an RTIP project, state law requires PROJECT be included in a local congestion management plan, or be consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the countywide transportation agency; and

WHEREAS, that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

WHEREAS, there is no legal impediment to APPLICANT making applications for the funds; and

WHEREAS, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

WHEREAS, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

WHEREAS, MTC requires that a copy of this resolution be transmitted to the MTC in conjunction with the filing of the application.

NOW, THEREFORE BE IT RESOLVED, that the APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under the FEDERAL TRANSPORTATION ACT or continued funding; and be it further

RESOLVED that APPLICANT will provide any required matching funds; and be it further

RESOLVED that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and be it further

RESOLVED that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and be it further

RESOLVED that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if approved, for the amount approved by MTC and programmed in the federal TIP; and be it further

RESOLVED that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and be it further

RESOLVED that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the PROGRAM; and be it further

RESOLVED that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution No. 3866, revised; and be it further

RESOLVED that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and be it further

RESOLVED that, in the case of an RTIP project, PROJECT is included in a local congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the countywide transportation agency; and be it further

RESOLVED that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and be it further

RESOLVED that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and be it further

RESOLVED that there is no legal impediment to APPLICANT making applications for the funds; and be it further

RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and be it further

RESOLVED that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for

REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and be it further

RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and be it further

RESOLVED that the MTC is requested to support the application for the PROJECT described in the resolution, and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project sponsor for TIP programming.

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 1st day of May 2023, by the following vote, to wit:

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

Lindsay Lara, City Clerk



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

**Prepared by: April Miller, Director of Public Works
Philip Buckley, Senior Engineer**

City Manager Approval: _____

TOPIC: SOUTHERN HEIGHTS/COURTRIGHT RETAINING WALL PROJECT

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROPERTY PURCHASE AGREEMENT FOR ACQUISITION OF A ROADWAY AND SLOPE EASEMENT WITH PROPERTY OWNER OF 78 SOUTHERN HEIGHTS BOULEVARD AND ACCEPT THE GRANT DEED FOR SUCH PROPERTY.

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to execute a property purchase agreement for acquisition of a roadway and slope easement with property owner of 78 Southern Heights Boulevard and accept the grant deed for such property.

BACKGROUND: Southern Heights Boulevard is a two-way local street located in the hills above San Rafael. The City intends to install a retaining wall system along the outside edge of Southern Heights Boulevard between 78 Southern Heights Boulevard and the private driveway (i.e., Courtright Road) leading to 82 Southern Heights Boulevard. Additionally, the project will include roadway resurfacing, drainage improvements, tree removal, erosion and sediment control, guardrail and pedestrian safety railing.

The existing right-of-way width on Southern Heights Boulevard varies from 17 feet to 44 feet. Most of the new retaining wall and drainage facilities will be installed within the existing public right-of-way. A property easement acquisition, measuring roughly 200 square feet, will be needed from the property at 78 Southern Heights Boulevard to build a portion of the retaining wall. Below the wall, a slope easement measuring roughly 650 square feet is necessary for the right to construct, replace, remove, maintain or modify slopes below the wall.

ANALYSIS:

Obtaining right of way is necessary to construct the new retaining wall and maintain the existing alignment and grade of the road. A real estate appraisal with comparables was ordered to determine the fair market value of the easement. Factors which may affect the value of the easement include: size, whether the land is deemed "developable," hillside slope, and length/duration of the easement. After extensive negotiations to determine fair and reasonable

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

compensation, the property owner accepted the City's offer to purchase the easement for \$25,013 and the parties negotiated a purchase and sale agreement, Exhibit 1 to the resolution. The agreement allows the City to acquire the property in lieu of proceeding with eminent domain proceedings.

The City Attorney's Office retained Benjamin Stock, a real estate attorney, to peer review all real estate documents prepared by the design team. Mr. Stock reviewed and approved the offer packages prior to and during negotiations with property owners.

The attached resolution (Attachment 1) would authorize the City Manager to execute the Purchase Agreement with the property owner, accept the grant deed, and take any other actions necessary to effectuate acquisition of the property.

FISCAL IMPACT: The easement purchase price of \$25,013 will be appropriated from the Gas Tax Fund #206 via a transfer from the Liability Internal Services Fund #605.

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

1. Adopt the resolution as presented.
2. The City Council may decline to approve the resolution resulting in a project that cannot be constructed as designed. If the City does not advance the project into construction, legal counsel will need to review terms of a Settlement Agreement entered into with respect to the action encaptioned *Steward Miller, et al. v. City of San Rafael, et al.*, Marin County Superior Court case no. CIV 1703948 signed in January 2021.
3. The City Council may defer action and request staff to provide further information or modifications at a future Council meeting.

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute a property purchase agreement for acquisition of a roadway and slope easement with property owner of 78 Southern Heights Boulevard and accept the grant deed for such property.

ATTACHMENT:

1. Resolution
2. Exhibit 1 to Resolution: Draft Purchase and Sale Agreement

RESOLUTION NO.

RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROPERTY PURCHASE AGREEMENT FOR ACQUISITION OF A ROADWAY AND SLOPE EASEMENT WITH PROPERTY OWNER OF 78 SOUTHERN HEIGHTS BOULEVARD, AND ACCEPT THE GRANT DEED FOR SUCH PROPERTY

WHEREAS, public interest, convenience and welfare require that the property hereinafter mentioned be purchased and used for the benefit of the public of the City of San Rafael, California.

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

1. The City Manager is authorized to execute the Agreement for Purchase and Sale of Real Property between Daniel M. Humphreys and Katherine F. Humphreys, and the City of San Rafael, a copy of which is attached hereto, marked as Exhibit "1", and incorporated herein by this reference, in a form by the City Attorney; and
2. The City Manager is authorized to accept the Grant Deed for the subject property identified in Exhibit "1" from Daniel M. Humphreys and Katherine F. Humphreys to the City of San Rafael, and to take any other actions necessary to effectuate acquisition of the property.

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 1st day of May 2023, by the following vote, to wit:

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

LINDSAY LARA, City Clerk

**AGREEMENT FOR PURCHASE AND SALE OF REAL
PROPERTY (INCLUDING ESCROW INSTRUCTIONS)**

This PURCHASE AND SALE AND SETTLEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of April 24, 2023 (the “**Effective Date**”), by and between the DANIEL M. HUMPHREYS AND KATHERINE F. HUMPHREYS (“**Seller**”), and the CITY OF SAN RAFAEL, a California municipal corporation (“**Purchaser**”). Seller and Purchaser may collectively be referred to as the “**Parties**.”

RECITALS

A. Seller is the owner of the land and improvements located at APN 013-171-04, commonly known as 78 Southern Heights Boulevard, San Rafael, California, 94901 (the “**Property**”).

B. Purchaser desires to purchase from Seller, and Seller desires to convey to Purchaser, a roadway and slope easement over a portion of the Property, as more specifically described on Exhibit A (the “**Subject Easement**”), in order to construct roadway improvements including a retaining wall to improve street safety, as part of the Southern Heights/Courtright Retaining Wall Project (the “**Project**”).

C. On or about January 14, 2021, the Purchaser sent Seller an offer to purchase the Subject Easement pursuant to Government Code section 7267.2.

D. In lieu of proceeding with eminent domain proceedings for the acquisition of the Subject Easement, the Parties desire to enter into this Agreement.

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Sale and Purchase of the Subject Easement. Seller agrees to sell and convey the Subject Easement to Purchaser, and Purchaser agrees to purchase the Subject Easement from Seller, on the terms and conditions set forth herein.

2. Purchase Price. The total purchase price for the Subject Easement shall be \$25,013.00 (“**Purchase Price**”). The parties acknowledge and agree the Purchase Price specifically includes full compensation for any interest in Seller’s business operations, loss of business goodwill, relocation damages or benefits, severance damage, attorneys’ fees or any other compensation of any nature whatsoever.

2.1 Payment of Purchase Price. On or before the Close of Escrow, Purchaser shall deposit with Escrow Agent the Purchase Price, in immediately available funds, which shall be paid to Seller at Close of Escrow.

2.2 Conveyance of Title/Title Policy. Subject to the fulfillment of the Conditions Precedent described below, at the Close of Escrow, Seller shall grant to Purchaser the Subject Easement by easement grant deed in the form attached as Exhibit B and incorporated

herein by reference (“**Easement Deed**”), subject only to (a) nondelinquent taxes and assessments; (b) liens to secure payment of current, unpaid real estate taxes and assessments; (c) all covenants, conditions, and restrictions, reservations, rights, rights of way, easements, encumbrances, liens, and title matters of record; (d) such title matters affecting the Subject Easement created by or with the written consent of Purchaser; (e) all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the Subject Easement; (f) all matters which would be apparent from an inspection of the Subject Easement; (g) all matters which would be disclosed by a survey of the Subject Easement; and (f) exceptions which are approved and/or accepted by Purchaser in writing (collectively, “**Approved Conditions of Title**”).

2.3 Purchaser shall cause Old Republic Title Company (the “**Title Company**”) to deliver to Seller and Purchaser an updated Preliminary Title Report for the Easement within five (5) business days after the later of the Effective Date or the date Escrow (defined in Section 8, below) is opened, and in any event, no later than ten business days prior to Close of Escrow. Within thirty (30) days from the Effective Date, Purchaser shall have completed its review of all title matters affecting the Subject Easement to the extent desired by Purchaser and shall obtain whatever assurances and/or commitments it desires from the Title Company as to title matters and the title insurance policies which Purchaser desires the Title Company to issue to Purchaser at the Closing for the Subject Easement (the “**Title Policy**”). Purchaser shall cause Escrow Agent (defined in Section 8, below) at Close of Escrow to provide Purchaser with a standard CLTA or ALTA (as the Purchaser may request in its sole discretion) policy of title insurance in the amount of the Purchase Price issued by the Title Company, together with any endorsements reasonably requested by Purchaser, showing title vested in Purchaser for the Subject Easement, subject only to the Approved Conditions of Title set forth above and the standard and printed exceptions, exclusions and stipulations contained in the form of owner’s title insurance policy to be obtained by Purchaser. Purchaser shall pay all premiums for the Title Policy and any endorsements to the Title Policy.

3. “As Is” Sale; Release by Purchaser. Purchaser specifically acknowledges and agrees that Seller is selling and Purchaser is purchasing the Subject Easement on an “As-Is, Where-Is, With All Faults” basis as of the Closing and that Purchaser is not relying on any representations or warranties of any kind whatsoever, express or implied, from Seller, its agents, employees or attorneys as to any matters concerning the Subject Easement, including without limitation: (a) the quality, nature, adequacy and physical condition of the Subject Easement and any improvements thereon, (b) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (c) the presence of hazardous materials on, under or about the Easement or the adjoining or neighboring lands, (d) the quality of any labor and materials used in any improvements on the Subject Easement, and (e) the condition of title to the Subject Easement. Seller hereby specifically disclaims: (i) all warranties implied by law arising out of or with respect to the execution of this Agreement, any aspect or element of the Subject Easement, or the performance of Seller’s obligations hereunder including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose; and (ii) any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (x) the nature and condition of the Subject Easement or other items conveyed hereunder, including, without limitation, the water, soil, and geology, the suitability thereof and

of the Subject Easement or other items conveyed hereunder for any and all activities and uses which Purchaser may elect to conduct thereon, the existence of any environmental hazards or conditions thereon (including but not limited to the presence of asbestos or other hazardous substances) or compliance with applicable environmental laws; (y) the nature and extent of any right-of-way, possession, lien, encumbrance, license, reservation, condition or otherwise; and (z) the compliance of the Subject Easement or other items conveyed hereunder or its operation with any laws (including environmental laws), ordinances, rules, requirements, resolutions, policy statements and regulations. Upon recording of the Easement Deed, Purchaser fully releases, acquits and discharges Seller from any and all claims related to the matters set forth above, excepting from such release and discharge only those warranties and representations of the Seller set forth in Section 13.

4. Waiver of Property Rights and Interests. Upon receipt by Seller of the Purchase Price, Seller for itself and for its agents, successors and assigns fully releases, acquits and discharges Purchaser and its officers, officials, council members, employees, attorneys, accountants, other professionals, insurers, and agents, and all entities, boards, commissions, and bodies related to any of them (collectively, the “**Released Parties**”) from all claims that Seller, its agents, successors and assigns has or may have against the Released Parties arising out of or related to Purchaser’s acquisition of the Subject Easement and the grant of any right-of-entry, including, without limitation, all of Seller’s property rights and interests in the Property as burdened by the Subject Easement, including but not limited to (i) any improvements, including improvements pertaining to the realty, furniture, fixture, and equipment, (ii) business goodwill and lost income (past or future) relating to the Subject Easement, (iii) lost income, (iv) relocation benefits, (v) severance damages, if any, (vi) any and all rights pertaining to the Eminent Domain Law contained in the Code of Civil Procedure sections 1230.010 *et seq.*, including, but not limited to the Code of Civil Procedure section 1245.245, and (vii) economic or consequential damages, (viii) professional consultant fees and attorney’s fees and costs, and (ix) all other costs, and any and all compensable interests, and/or damages, and/or claims, of any kind and nature, claimed or to be claimed, suffered or to be suffered, by Seller, its agents, successors and assigns by reason of Purchaser’s acquisition of the Subject Easement, provided that nothing herein shall release Purchaser from any liability resulting from Purchaser’s breach of any agreement, warranty, or covenant for which it is responsible under this Agreement.

4.1 Waiver of Civil Code Section 1542. Seller, on behalf of itself and its agents, successors and assigns, expressly waives all rights under Section 1542 of the Civil Code of the State of California (“**Section 1542**”), or any other federal or state statutory rights or rules, or principles of common law or equity, or those of any jurisdiction, government, or political subdivision thereof, similar to Section 1542 (hereinafter referred to as a “**Similar Provision**”). Thus, Seller and its agents, successors and assigns, and any business, enterprise, or venture in which they are involved, may not invoke the benefits of Section 1542 or any Similar Provision in order to prosecute or assert in any manner the matters released in Section 3 above. Section 1542 provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Seller's Initials: DM

DANIEL M. HUMPHREYS

Seller's Initials: KH

KATHERINE F. HUMPHREYS

4.2 Survival. The provisions of this Section 4 shall survive the Closing and shall not be merged into the Easement Deed, and shall be fully enforceable after Close of Escrow (Close of Escrow defined in Section 6, below).

5. Escrow. Purchaser and Seller have opened or shall, within five days of the Effective Date of this Agreement, open an escrow (“**Escrow**”) in accordance with this Agreement at Old Republic Title Company (“**Escrow Agent**”). This Agreement, together with any supplementary escrow instructions prepared by Escrow Agent and executed by Purchaser and Seller, constitutes the joint escrow instructions of Purchaser and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this Escrow in the shortest possible time.

5.1 Documents and Funds. Prior to the Close of Escrow Seller shall execute, acknowledge and deliver into Escrow the Easement Deed, as defined herein. The Certificate of Acceptance attached to the Easement Deed shall be executed, acknowledged and delivered into Escrow by Purchaser on or before the Close of Escrow. Purchaser and Seller agree to deposit with Escrow Agent any additional funds and/or instruments as may be necessary to complete this transaction.

5.2 Escrow Account. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other escrow trust account in any state or national bank doing business in the State of California. All disbursements shall be made by check from such account.

6. Escrow Agent Authorization. Escrow Agent is authorized to, and shall:

6.1 Costs and Expenses. Charge to Purchaser: (a) all premiums for the Title Policy and any title endorsements, (b) all documentary transfer taxes, (c) all City transfer taxes, (d) all fees charged by the Escrow Agent in connection with the consummation of the transaction described herein, and (e) all document recording charges, all of which shall be paid by Purchaser through Escrow. Purchaser shall pay outside of Escrow all costs and expenses related to its due diligence investigations, and all legal and professional fees and costs of attorneys and other consultants and agents retained by Purchaser. Seller shall pay outside of Escrow all legal fees and costs incurred by Seller. If the Closing does not occur for any reason, then Purchaser shall pay all cancellation fees charged by Escrow Agent.

6.2 Disbursement.

(a) Disburse funds, including the Purchase Price to Seller or the individual members of Seller as they may direct; provided, if Seller fails to provide such directions or the members of Seller provide inconsistent directions, Escrow Agent may retain all

or a portion of such funds as it deems prudent until the members of Seller provide consistent directions, and Purchaser shall not have any liability to Seller or its individual members arising from failure or delay to distribute funds or distribution of funds contrary to any member of Seller's directions.

(b) Record the Easement Deed and Certificate of Acceptance.

(c) Deliver to Purchaser the originals of the Title Policy, and the Non-Foreign Transferor Declaration; deliver to Purchaser and Seller conformed copies of the Easement Deed and Certificate of Acceptance when conditions of the Escrow have been fulfilled by Purchaser and Seller.

6.3 Close of Escrow. The term "**Close of Escrow**," if and where written in these instructions, shall be deemed to have occurred on the date the Easement Deed and other necessary instruments of conveyance are recorded in the office of the Marin County Recorder. Recordation of instruments delivered through this Escrow is authorized, if necessary or proper in the issuance of the policy of title insurance.

6.4 Time Limits. All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.

6.5 Time of the Essence. TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND, EXCEPT AS OTHERWISE PROVIDED BELOW, ESCROW IS TO CLOSE ON OR BEFORE JUNE 15, 2023, UNLESS SAID DATE IS EXTENDED BY THE MUTUAL WRITTEN AGREEMENT OF THE PARTIES. If this Escrow is not in condition to close by such date, then any party who has fully complied with this Agreement may, in writing, demand the return of its money or property; provided, however, no demand for return shall be recognized until five days after Escrow Agent shall have mailed copies of demand to all other parties at the respective addresses shown in the notice provisions below, and if any objections are raised within such five-day period, Escrow Agent is authorized to hold all money, papers and documents until instructed by a court of competent jurisdiction or mutual instructions.

7. FIRPTA. Seller and Purchaser agree to execute and deliver as directed by Escrow Agent any instrument, affidavit, and statement, including without limitation the Non-Foreign Transferor Declaration, which is attached hereto as Exhibit C, if applicable, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder.

8. Tax Requirements. Escrow Agent shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement and tax withholding forms, including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

8.1 Transfer Taxes. No transfer tax shall be due because Purchaser is a public entity.

9. Feasibility.

9.1 Waiver of Investigations. Except as provided in Section 2.3, Purchaser waives the need for a due diligence or feasibility period and the right to conduct further investigations of the Easement.

10. Conditions Precedent to Close of Escrow.

10.1 Purchaser's Conditions Prior to Closing. The obligation of the Purchaser to complete the purchase of the Subject Easement is subject to the satisfaction of the following conditions:

(i) Seller shall deliver through Escrow the executed, acknowledged and recordable Easement Deed.

(ii) Seller shall deliver through Escrow a Non-Foreign Transferor Declaration, if applicable.

(iii) Seller shall deliver through Escrow such other documents as are necessary to comply with Seller's obligations under this Agreement.

(iv) Seller shall not be in default of any of its obligations under the terms of this Agreement, and all of Seller's representations and warranties made as of the date of this Agreement shall continue to be true and correct as of the Close of Escrow.

(v) Escrow Agent shall have committed to deliver to Purchaser an owners title insurance policy as required by Section 2.3 hereof.

On failure of any of the conditions set forth above, Purchaser may terminate its obligations under this Agreement with no further liability to Seller by giving notice to Seller on or before the expiration of the time allowed for each condition. In the event of such termination by the Purchaser, the Escrow Agent shall return any portion of the Purchase Price already deposited, to Purchaser. Purchaser's failure to elect to terminate its obligations shall constitute a waiver of the condition by Purchaser.

10.2 Seller's Conditions Precedent to Closing. The obligation of Seller to complete the sale of the Subject Easement is subject to the satisfaction of the following conditions:

(i) Purchaser shall not be in default of any of its obligations under the terms of this Agreement, and all of Purchaser's representations and warranties made as of the date of this Agreement shall continue to be true and correct as of the Close of Escrow.

(ii) Purchaser shall have deposited with the Escrow Agent the duly executed and acknowledged Certificate of Acceptance and other documents required to close Escrow, the Purchase Price in immediately available funds, and the Purchaser's share of closing costs described herein.

(iii) At or before the Closing, Purchaser shall deposit into Escrow such other documents as are necessary to comply with Purchaser's obligations under this Agreement.

(iv) Before the Closing, Seller shall deposit into Escrow the written approval from Seller's mortgage lender, Wells Fargo Bank, for the sale of the Subject Easement by Seller to Purchaser as provided by this Purchase and Sale Settlement Agreement.

On failure of any of the conditions set forth above, Seller may terminate its obligations under this Agreement with no further liability to Purchaser by giving notice to Purchaser on or before the expiration of the time allowed for each condition. Seller's failure to elect to terminate its obligations shall constitute a waiver of the condition by Seller.

11. Closing Statement. Seller instructs Escrow Agent to release a copy of Seller's closing statement to Purchaser.

12. Loss or Damage to Property. Loss or damage to the Subject Easement, by fire or other casualty, occurring prior to the recordation of the Easement Deed, shall be at the risk of Seller. In the event that loss or damage to the Subject Easement, by fire or other casualty, occurs prior to the recordation of the Easement Deed, Purchaser may elect to either terminate this Agreement or waive the right to terminate and close Escrow without any offset to the Purchase Price or any rights to insurance proceeds, if any.

13. Warranties, Representations, and Covenants of Seller. Seller hereby warrants, represents, and/or covenants to Purchaser that:

13.1 Pending Claims. To the best of Seller's knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign, except as disclosed in Recital C.

13.2 Encroachments. To the best of Seller's knowledge, there are no encroachments onto the Subject Easement by improvements on any adjoining property, nor do any improvements located on the Property encroach on the Subject Easement.

13.3 Seller's Title. Until the Close of Escrow, Seller shall not intentionally do anything which would impair Seller's title to any of the Subject Easement.

13.4 Condition of Land. To the best of Seller's knowledge, there are no substances, materials or conditions on the Property to be burdened by the Subject Easement that qualify as a Hazardous Material (as defined below) or otherwise violate any Environmental Law (as defined below). For the purposes of this Agreement, the following items have the following meanings:

(i) "Environmental Law" means any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980) and RCRA (Resources Conservation and Recovery Act of 1976).

(ii) **“Hazardous Material”** means any substance, material or waste which is or becomes designated, classified or regulated as being “toxic” or “hazardous” or a “pollutant” or which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products.

13.5 Conflict with Other Obligation. To the best of Seller’s knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which Seller or the Property may be bound with respect to the Subject Easement.

13.6 Authority. Seller is the owner of and has the full right, power, and authority to sell, convey, and grant the Subject Easement to Purchaser as provided herein and to carry out Seller’s obligations hereunder. If Seller is a trust, corporation, partnership, limited liability company or other similar entity, each party executing this Agreement on behalf of Seller represents and warrants that such person is duly and validly authorized to do so on behalf of Seller.

13.7 Bankruptcy. Neither Seller nor any related entity is the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Seller to be able to transfer the Subject Easement as provided herein.

13.8 Governmental Compliance. To the best of Seller’s knowledge, Seller has not received any notice from any governmental agency or authority alleging that the Subject Easement is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by Seller following the date this Agreement is signed by Purchaser, Seller shall notify Purchaser within ten days of receipt of such notice. Seller then, at its option, may either elect to perform the work or take the necessary corrective action prior to the Close of Escrow or refuse to do so, in which case Seller shall notify Purchaser of such refusal and Purchaser shall be entitled to either close Escrow with knowledge of such notice(s) or terminate this Agreement.

13.9 Non-Foreign Transferor. Seller is not a **“foreign person”** within the meaning of the Foreign Investment in Real Property Act or any similar state statute, and Seller will comply with all of the requirements of the Foreign Investment in Real Property Act and any similar state statute in connection with this transaction.

13.10 Change of Situation. Until the Close of Escrow, Seller shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true as of the Close of Escrow, immediately give written notice of such fact or condition to Purchaser.

14. Broker’s Commission. Seller and Purchaser each warrants and represents that it has not engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, and that it is not liable for any real estate commissions, broker’s fees or finder’s fees which may accrue by means of the sale of the Subject Easement. Seller and Purchaser agree to and do hereby indemnify and hold the other harmless from and

against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or finder, licensed or otherwise, which it has employed in connection with the transaction covered by this Agreement.

15. Construction of Faux Rock Façade. Purchaser agrees that the retaining wall to be constructed for the Project within the boundaries of the Subject Easement shall include a faux rock façade using materials selected by Purchaser.

16. Indemnification Regarding Project Construction Activities. Purchaser agrees to defend, indemnify, and hold harmless Seller with regard to any third-party claims arising out of Purchaser's construction activities for the Project on the Property. This section shall not be interpreted to require indemnity or defense of claims that are released by Purchaser under Section 4 of this Agreement.

17. Survival. Any covenants, agreements, and indemnifications that this Agreement does not require to be fully performed prior to Close of Escrow shall survive Close of Escrow and shall be fully enforceable after Close of Escrow in accordance with their terms.

18. Waiver, Consent and Remedies. Each provision of this Agreement to be performed by Purchaser and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and Purchaser's performance hereunder, as appropriate, and any breach thereof by Purchaser or Seller shall be deemed a material default hereunder. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

19. Attorneys' Fees. In the event any declaratory or other legal or equitable action is instituted between Seller, Purchaser and/or Escrow Agent in connection with this Agreement, then as between Purchaser and Seller, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs and reasonable attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

20. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by reputable overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of: (i) if personally delivered, the date of delivery to the address of the

person to receive such notice; (ii) if mailed, three business days after the date of posting by the United States post office; or (iii) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day. Notice of change of address shall be given by written notice in the manner described in this Section. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Seller: Daniel & Katherine Humphreys
78 Southern Heights Blvd.
San Rafael, CA 94901

If to Purchaser: City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901
Attention: Philip Buckley
Telephone: (415) 419-6841

with a copy to: Burke, Williams & Sorensen, LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94612-3501
Attention: Benjamin Stock
Telephone: (510) 273-8780

21. Default. Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes a default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within ten days from the date of the notice. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within such ten-day period.

22. Interpretation. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate. The words "include" and "including" shall be interpreted as though followed by the words "without limitation." This Agreement shall be interpreted as though jointly prepared by both parties.

23. Entire Agreement. This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

24. Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

25. Governing Law. This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California without reference to its choice of laws rules.

26. Invalidity of Provision. If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way effect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

27. Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by Purchaser and Seller.

28. Counterparts. This Agreement may be executed in any number of identical counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any counterpart signature pages may be detached and assembled to form a single original document. This Agreement may be executed by signatures transmitted by facsimile, adobe acrobat or other electronic image files and these signatures shall be valid, binding and admissible as though they were ink originals.

29. Time of Essence. Time is of the essence of each provision of this Agreement.

30. Binding Upon Successors. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

31. Offer. Any delivery of unsigned copies of this Agreement is solely for the purpose of review by the party to whom delivered, and neither the delivery nor any prior communications between the parties, whether oral or written, shall in any way be construed as an offer by Purchaser or Seller, nor in any way imply that Purchaser or Seller is under any obligation to enter the transaction which is the subject of this Agreement. The signing of this Agreement by Seller constitutes an offer which shall not be deemed accepted by Purchaser unless and until this Agreement has been executed on behalf of Purchaser by its City Manager or his/her designee after adoption of a resolution or minute action by the City Council of the City of San Rafael. Seller agrees that this offer shall be acceptable and cannot be revoked for a period of 30 days following presentation by Seller.

32. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "**holiday**" shall mean all holidays as specified in sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

33. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

34. Cooperation. Each party agrees to cooperate with the other in the closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

35. Reservation of City's Right to File Suit. Seller understands and acknowledges that if for any reason this Agreement is terminated, Purchaser expressly reserves its rights to bring an action in the Superior Court of the State of California, County of Marin, pursuant to the requirements set forth in the eminent domain statutes of the State of California.

- Exhibit A Legal Description and Plat Map of the Easement Area
- Exhibit B Form of Easement Deed and Certificate of Acceptance
- Exhibit C FIRPTA Certificate

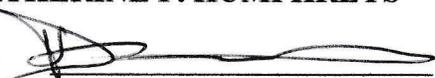
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

SELLER:

PURCHASER:

**DANIEL M. HUMPHREYS AND
KATHERINE F. HUMPHREYS**

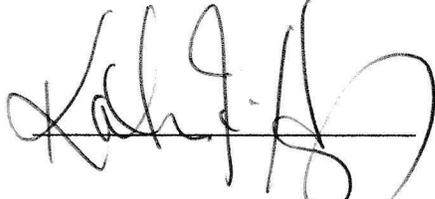
**CITY OF SAN RAFAEL, a
California municipal corporation**

By: 

By: _____

Name: DANIEL M. HUMPHREYS

Name: _____

By: 

Its: _____

Name: KATHERINE F. HUMPHREYS

EXHIBIT A – LEGAL DESCRIPTION AND PLAT MAPS

ROADWAY EASEMENT

EASEMENT AREA:

Real property situated in the City of San Rafael, County of Marin, State of California, and described as follows:

Being an easement over a portion of that property described by the grant deed to Daniel M. Humphreys and Katherine F. Humphreys filed for record on June 15, 2017 as Document Number 2017-0024838, Official Records of Marin County, more particularly described as follows:

COMMENCING at a ½ inch iron pipe with plastic plug "LS 4794" located at the Southwest corner of Parcel One, also being the Northwest corner of Parcel Two of that map entitled "Boundary Line Adjustment Between Parcel One and Parcel Two of Lands Conveyed to Burke" filed for record on December 11, 1992, in Book 31 of Surveys, at Page 25, Marin County Records, thence along the westerly line of Parcel One, North 13°20'00" East, 11.27 feet; thence continuing along said westerly line, North 01°59'00" West, 60.40 feet; thence North 75°58'00" West, 29.01 feet to the **POINT OF BEGINNING** of the parcel herein described; thence continuing westerly along said line, 40.49 feet; thence North 05°18'00" East, 10.13 feet; thence departing from said westerly line, South 62°33'54" East, 43.20 feet to the **POINT OF BEGINNING** of the hereinabove described parcel of land.

Containing 202.71 square feet, more or less.

Basis of Bearings: Book 31 of Surveys at Page 25, Marin County Records

SLOPE EASEMENT

EASEMENT AREA:

Real property situated in the City of San Rafael, County of Marin, State of California, and described as follows:

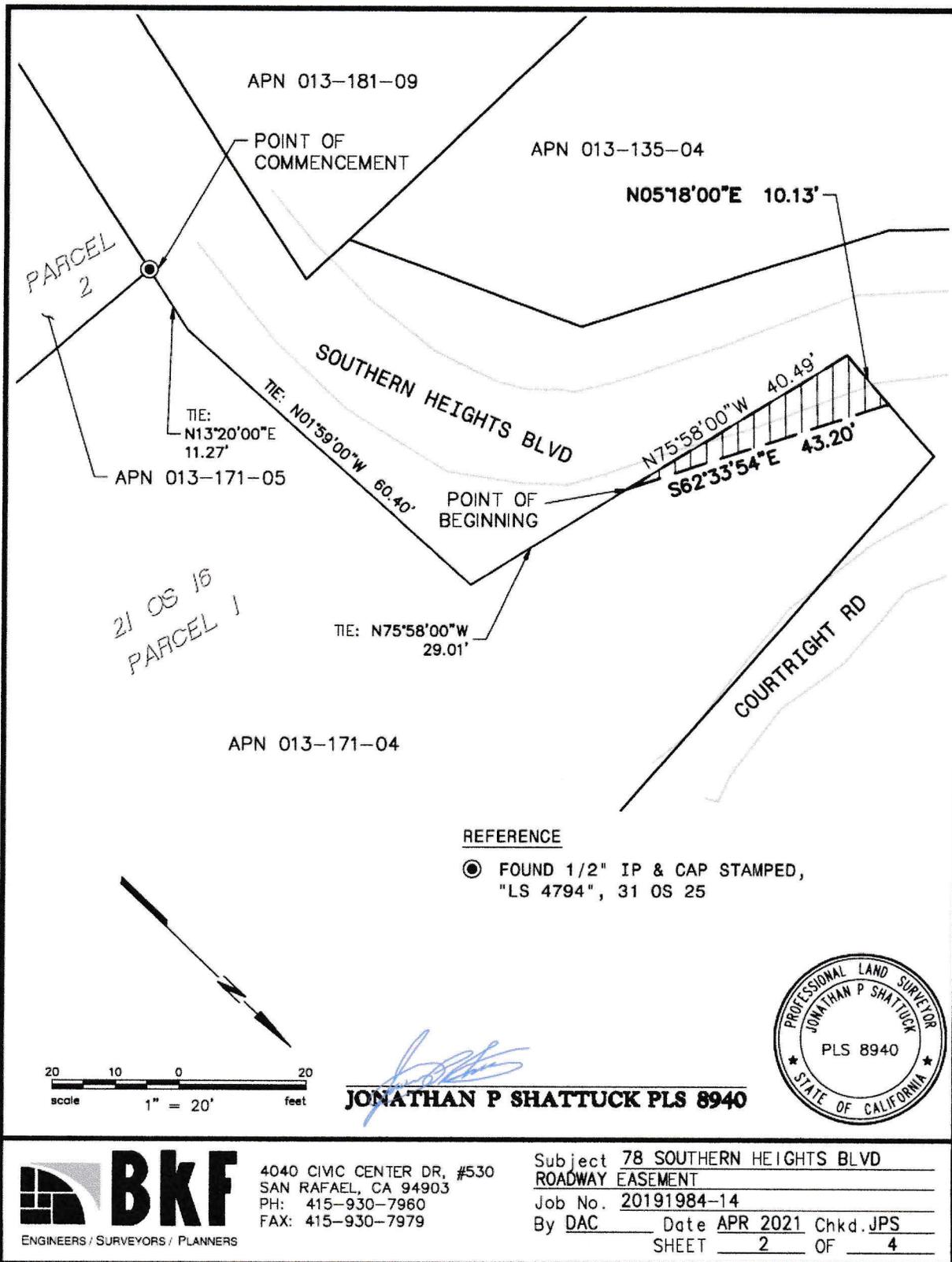
Being an easement over a portion of that property described by the grant deed to Daniel M. Humphreys and Katherine F. Humphreys filed for record on June 15, 2017 as Document Number 2017-0024838, Official Records of Marin County, more particularly described as follows:

COMMENCING at a ½ inch iron pipe with plastic plug "LS 4794" located at the Southwest corner of Parcel One, also being the Northwest corner of Parcel Two of that map entitled "Boundary Line Adjustment Between Parcel One and Parcel Two of Lands Conveyed to Burke" filed for record on December 11, 1992, in Book 31 of Surveys, at Page 25, Marin County Records, thence along the westerly line of Parcel One, North 13°20'00" East, 11.27 feet; thence continuing along said westerly line, North 01°59'00" West, 60.40 feet; thence North 75°58'00" West, 20.86 feet to the **POINT OF BEGINNING** of the parcel herein described; thence continuing along said line, 16.78 feet; thence North 62°33'54" West, 34.00 feet ; thence North 05°18'00" East, 13.16 feet to the northerly line of said Parcel One; thence along said line, North 86°46'00" East, 10.11 feet; thence departing from said northerly line, parallel with and 10 feet easterly of the westerly line of Parcel One, South 05°18'00" West, 5.77 feet; thence South 62°33'54" East, 35.30 feet; thence South 75°58'00" East, 6.97 feet; thence South 14°02'00" West, 10.00 feet; to the **POINT OF BEGINNING** of the hereinabove described parcel of land.

Containing 629.17 square feet, more or less.

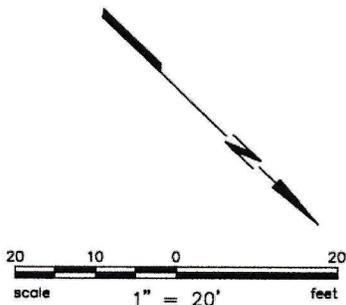
Basis of Bearings: Book 31 of Surveys at Page 25, Marin County Records

Exhibit A



REFERENCE

● FOUND 1/2" IP & CAP STAMPED, "LS 4794", 31 OS 25

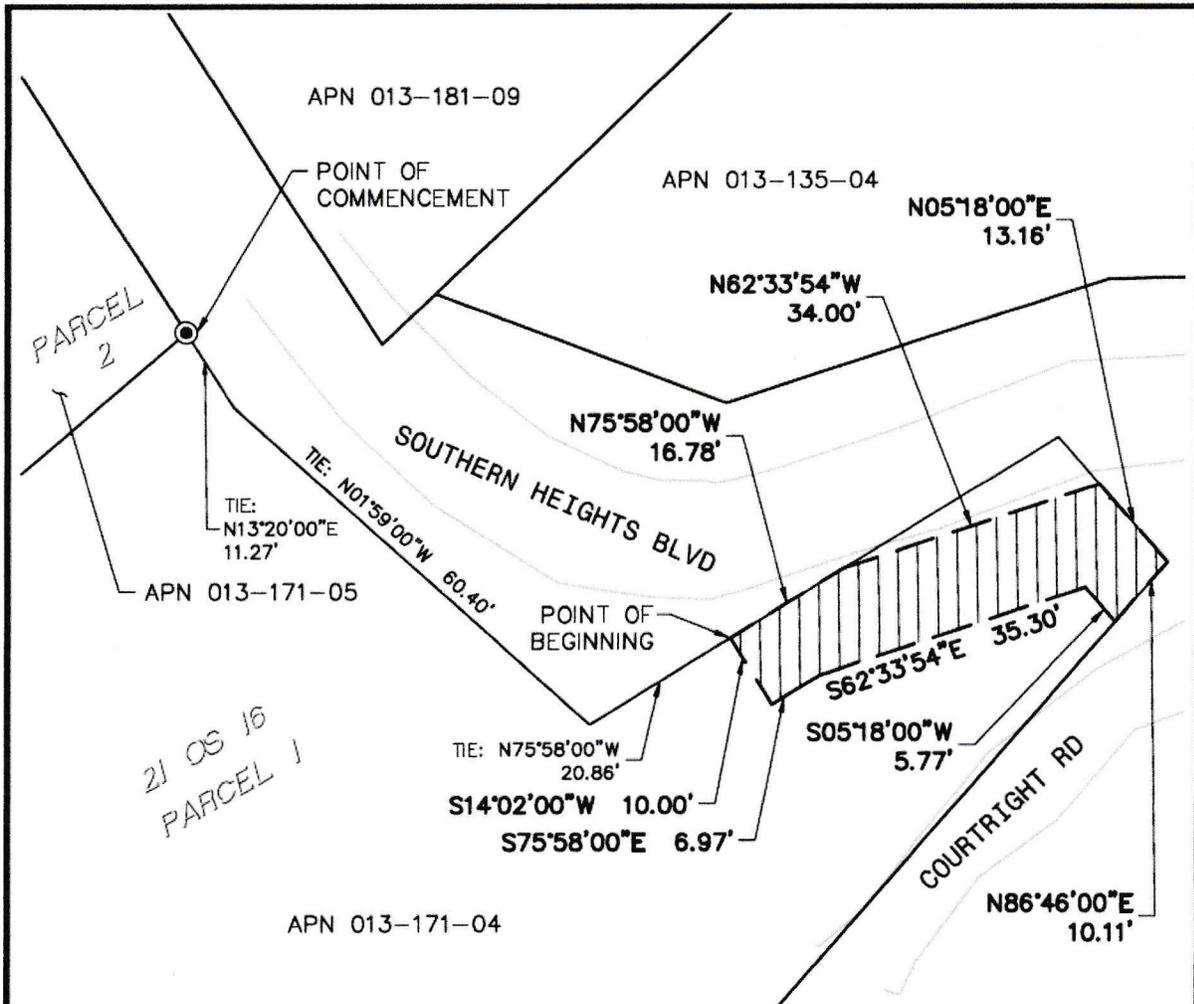


JONATHAN P SHATTUCK PLS 8940



4040 CIVIC CENTER DR, #530
 SAN RAFAEL, CA 94903
 PH: 415-930-7960
 FAX: 415-930-7979

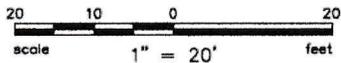
Subject 78 SOUTHERN HEIGHTS BLVD
 ROADWAY EASEMENT
 Job No. 20191984-14
 By DAC Date APR 2021 Chkd. JPS
 SHEET 2 OF 4



21 OS 16
PARCEL 1

REFERENCE

- FOUND 1/2" IP & CAP STAMPED, "LS 4794", 31 OS 25



[Signature]
JONATHAN P SHATTUCK PLS 8940



4040 CIVIC CENTER DR, #530
SAN RAFAEL, CA 94903
PH: 415-930-7960
FAX: 415-930-7979

Subject 78 SOUTHERN HEIGHTS BLVD
SLOPE EASEMENT
Job No. 20191984-14
By DAC Date APR 2021 Chkd. JPS
SHEET 4 OF 4

EXHIBIT B

EASEMENT DEED

Recording Requested by and
After Recordation Mail to:

City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901
Attention: _____

*This document is exempt from the
payment of a recording fee pursuant to Government Code § 27383*

EASEMENT GRANT DEED

WHEREAS, DANIEL M. HUMPHREYS AND KATHERINE F. HUMPHREYS (“**Grantor**”) are the owners of that certain real property in the City of San Rafael, County of Marin, State of California, APN 013-171-04, commonly known as 78 Southern Heights Boulevard, San Rafael, California, 94901, as more particularly described in that grant deed filed as Document No. 2017-0024838, in the Official Records of the County of Marin (“**Property**”).

WHEREAS, Grantor desires to grant the City of San Rafael, a California municipal corporation (“**Grantee**”), for itself, its successors and assigns and all those taking by, under or through it or them, a roadway and slope easement on the Property.

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor hereby grants to Grantee, an easement to construct, reconstruct, install, operate, inspect, maintain, replace, remove and use as a roadway, together with the right of surface ingress and egress for service vehicle access to said facility and the right to use said easement for staging during periods of construction, reconstruction, installation, inspection, maintenance, replacement, and removal in, on, across, under, and through that portion of the Property, and a slope easement for slopes of cuts and fills adjacent to such right of way, for purposes of excavating, sloping, cutting, filling, and erection of supporting retaining walls or other similar facilities, as depicted and more particularly described in Attachment 1 attached hereto and incorporated herein, and a slope easement for the right to construct, replace, remove, maintain or modify slopes in, upon, over, and across that portion of the Property depicted and more particularly described in Attachment 1 attached hereto and incorporated herein. The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto.

Exhibit B

IN WITNESS WHEREOF, the Grantor has caused this Easement Grant Deed to be executed as of the ____ day of _____, 2023.

GRANTOR:

DANIEL M. HUMPHREYS AND KATHERINE F. HUMPHREYS

By: _____
[Notary acknowledgment required]

Name: DANIEL M. HUMPHREYS

By: _____
[Notary acknowledgment required]

Name: KATHERINE F. HUMPHREYS

Exhibit B

Attachment 1

ROADWAY EASEMENT

EASEMENT AREA:

Real property situated in the City of San Rafael, County of Marin, State of California, and described as follows:

Being an easement over a portion of that property described by the grant deed to Daniel M. Humphreys and Katherine F. Humphreys filed for record on June 15, 2017 as Document Number 2017-0024838, Official Records of Marin County, more particularly described as follows:

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Containing 202.71 square feet, more or less.

Basis of Bearings: Book 31 of Surveys at Page 25, Marin County Records

SLOPE EASEMENT

EASEMENT AREA:

Real property situated in the City of San Rafael, County of Marin, State of California, and described as follows:

Being an easement over a portion of that property described by the grant deed to Daniel M. Humphreys and Katherine F. Humphreys filed for record on June 15, 2017 as Document Number 2017-0024838, Official Records of Marin County, more particularly described as follows:

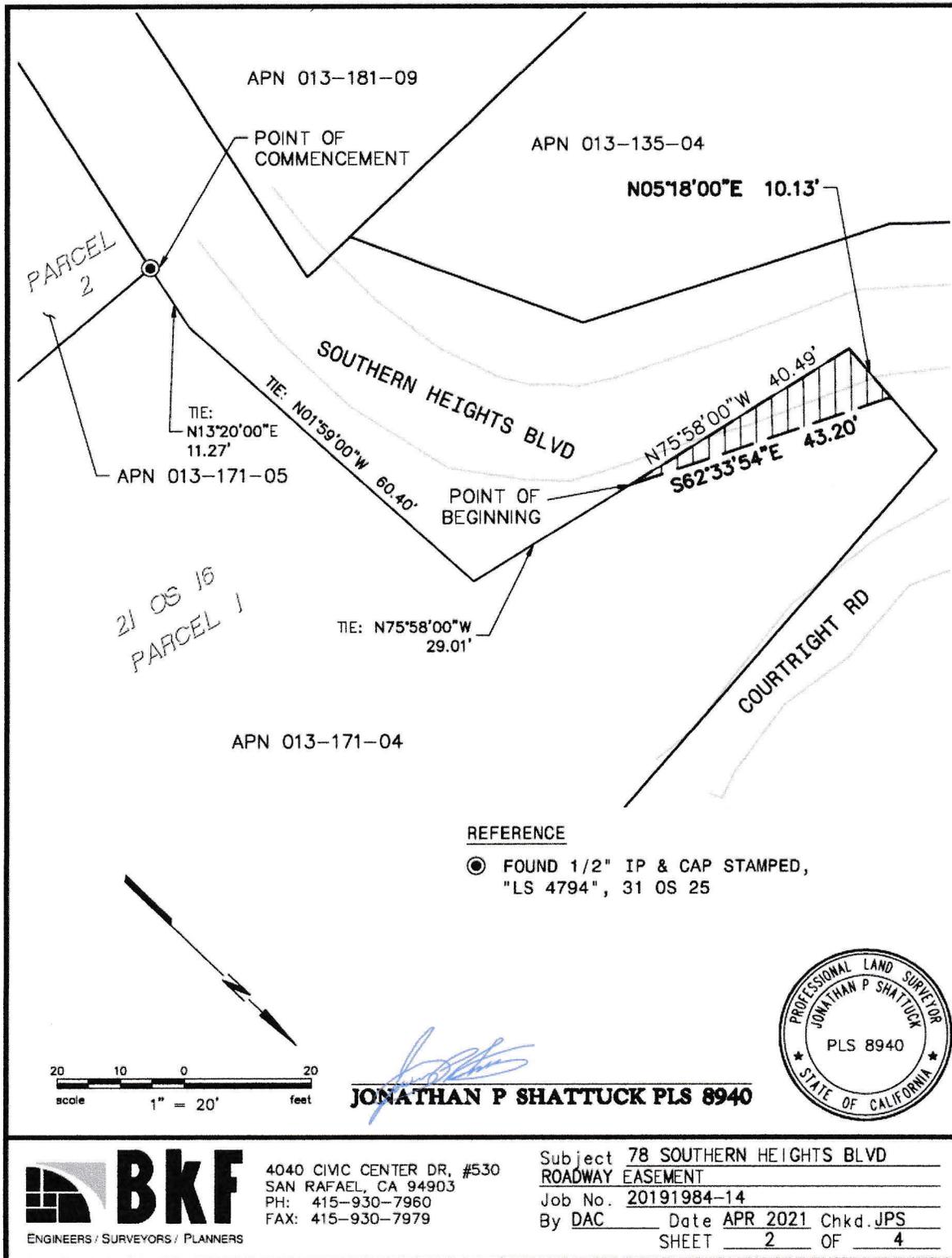
COMMENCING at a ½ inch iron pipe with plastic plug "LS 4794" located at the Southwest corner of Parcel One, also being the Northwest corner of Parcel Two of that map entitled "Boundary Line Adjustment Between Parcel One and Parcel Two of Lands Conveyed to Burke" filed for record on December 11, 1992, in Book 31 of Surveys, at Page 25, Marin County Records, thence along the westerly line of Parcel One, North 13°20'00" East, 11.27 feet; thence continuing along said westerly line, North 01°59'00" West, 60.40 feet; thence North 75°58'00" West, 20.86 feet to the **POINT OF BEGINNING** of the parcel herein described; thence continuing along said line, 16.78 feet; thence North 62°33'54" West, 34.00 feet; thence North 05°18'00" East, 13.16 feet to the northerly line of said Parcel One; thence along said line, North 86°46'00" East, 10.11 feet; thence departing from said northerly line, parallel with and 10 feet easterly of the westerly line of Parcel One, South 05°18'00" West, 5.77 feet; thence South 62°33'54" East, 35.30 feet; thence South 75°58'00" East, 6.97 feet; thence South 14°02'00" West, 10.00 feet; to the **POINT OF BEGINNING** of the hereinabove described parcel of land.

Containing 629.17 square feet, more or less.

Basis of Bearings: Book 31 of Surveys at Page 25, Marin County Records

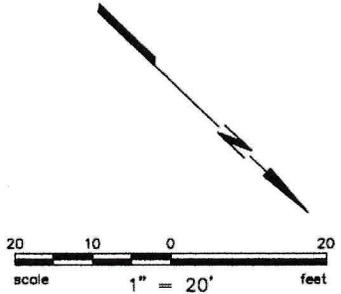
Exhibit B

Plat Map of Road Easement



REFERENCE

● FOUND 1/2" IP & CAP STAMPED,
"LS 4794", 31 OS 25



[Signature]
JONATHAN P SHATTUCK PLS 8940



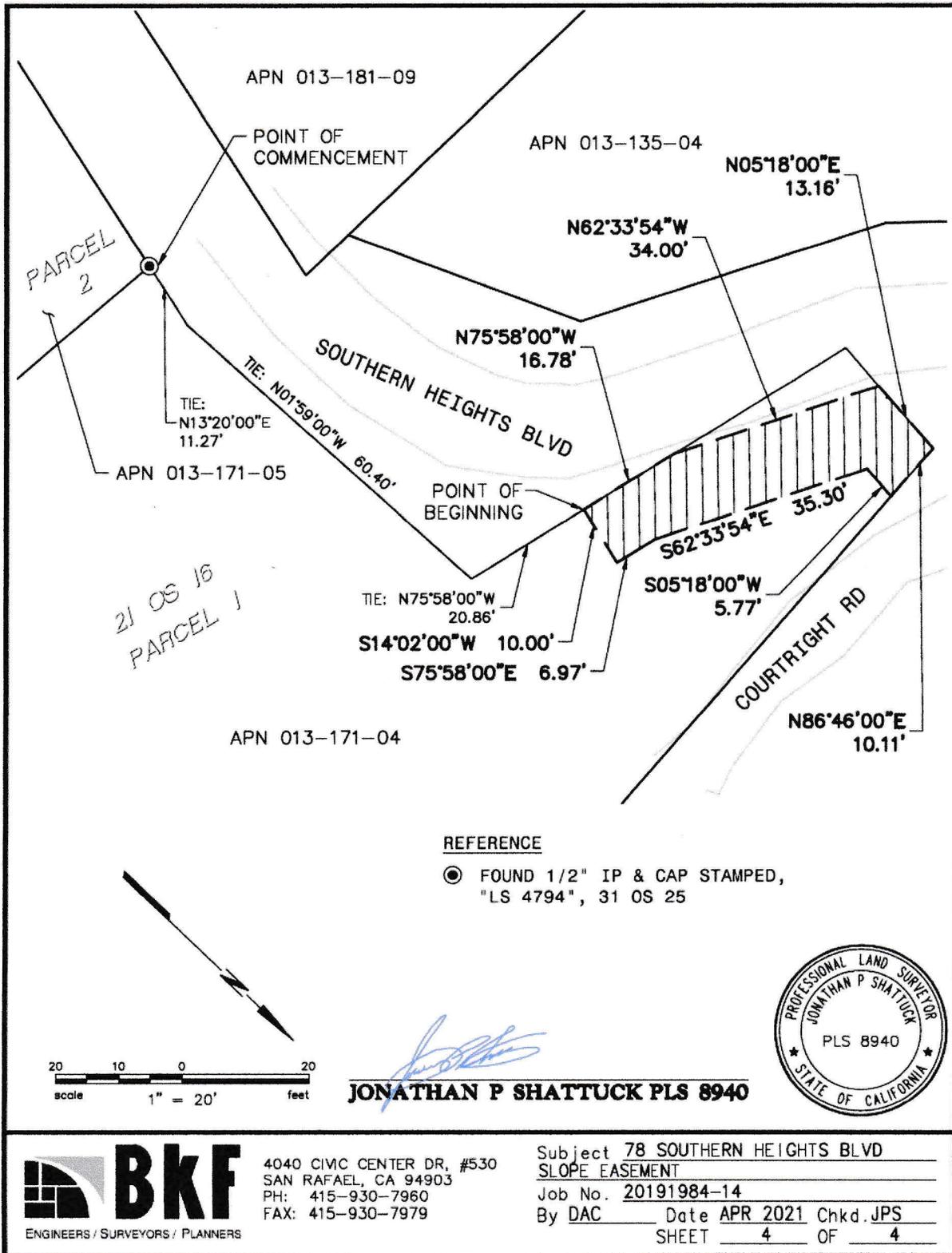
4040 CIVIC CENTER DR, #530
SAN RAFAEL, CA 94903
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Subject 78 SOUTHERN HEIGHTS BLVD
ROADWAY EASEMENT
Job No. 20191984-14
By DAC Date APR 2021 Chkd. JPS
SHEET 2 OF 4

191984-14_ROAD-SLOPE-EXHIBIT.dwg © 2021 BKF ENGINEERS

Exhibit B

Plat Map of Slope Easement



191984-14_ROAD-SLOPE-EXHIBIT.dwg © 2021 BKF ENGINEERS

Exhibit B

Certificate of Acceptance

This is to certify that the interests in real property conveyed by the Easement Grant Deed dated _____, 2023, from DANIEL M. HUMPHREYS AND KATHERINE F. HUMPHREYS, as grantor, to the City of San Rafael, a municipal corporation, as grantee, are hereby accepted by the City Manager of the City of San Rafael pursuant to authority conferred by Resolution No. _____ of the City Council adopted on _____, 2023, and the City of San Rafael, as grantee, consents to recordation of said Easement Grant Deed.

Date: _____, 2023

By: _____
City Manager

Exhibit B

EXHIBIT C

FIRPTA AFFIDAVIT

Section 1445 of the Internal Revenue Code of 1954, as amended (“**Code**”), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U. S. real property interest by DANIEL M. HUMPHREYS AND KATHERINE F. HUMPHREYS, as Transferors, the undersigned hereby certifies the following:

1. Each of the Transferors is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. The Transferors’ U. S. employer identification number or social security number are [redacted].
3. The Transferors’ office address or mailing address is [redacted].

The Transferors understand that this Certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury the undersigned declares that he/she has examined this Certification and to the best of his/her knowledge and belief it is true, correct, and complete, and further declares that he/she has authority to sign this document on behalf of the Transferors.

Dated: _____, 2023

By: _____
DANIEL M. HUMPHREYS, a natural person

By: _____
KATHERINE F. HUMPHREYS, a natural person

CONSENT OF ESCROW AGENT

Escrow Agent hereby acknowledges receipt of this Agreement, which has been executed by the parties. Escrow Agent hereby agrees (i) to be and serve as Escrow Agent pursuant to this Agreement; and (ii) subject to further supplemental escrow instructions mutually agreeable to the parties and Escrow Agent, to be bound by the Agreement in the performance of its duties as Escrow Agent and to hold and disburse all funds received by Escrow Agent in accordance with the provisions of this Agreement; provided, however, Escrow Agent shall have no obligation, liability, or responsibility under any amendment to the Agreement unless and until the same is accepted by Escrow Agent in writing. Escrow Agent further agrees to immediately deliver to each of Seller and Purchaser's counsel one original counterpart of this Agreement executed by the Parties and Escrow Agent. Escrow Agent has assigned this Agreement file number _____.

OLD REPUBLIC TITLE COMPANY

By: _____
Name: _____
Its: _____



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: Joanna Kwok, Senior Engineer
April Miller, Public Works Director

City Manager Approval: _____

TOPIC: SPINNAKER POINT PARKING MODIFICATION PROJECT NOTICE OF COMPLETION

SUBJECT: ACCEPT COMPLETION OF THE SPINNAKER POINT PARKING MODIFICATION PROJECT (CITY PROJECT NO. 11363), AND AUTHORIZE THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

RECOMMENDATION:

Accept completion of the Spinnaker Point Parking Modification Project and authorize the City Clerk to file the Notice of Completion.

BACKGROUND:

The City had identified the opportunity to increase on-street parking spaces along Spinnaker Point Drive by converting the existing parallel parking on the north side of the street, adjacent to the Albert J. Boro Community Center, into angled parking. The project incorporated angled parking in the street by reconfiguring the existing roadway, 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. The conversion to angled parking on the north side of Spinnaker Point Drive between Bahia Way and the crosswalk west of Portsmouth Cove resulted in 42 parking spaces, two of which are accessible parking spaces. This nearly doubled the number of existing parallel parking spaces that were replaced at this location. Other completed improvements include new curb and gutter, widened sidewalk to enhance the pedestrian experience, and streetlights to improve visibility and safety of the area.

A portion of the sidewalk was temporarily paved with asphalt and will be finished with concrete upon adjustment of utility box by PG&E. Installation of the project bioretention area was deferred to not delay the project construction as unforeseen utility conflicts were being resolved. As such, City staff will procure a contractor to complete both the concrete sidewalk and install the project bioretention area at a later time in coordination with the utility box adjustment.

The Spinnaker Point Parking Modification Project was advertised in accordance with San Rafael's Municipal Code on June 23, 2022, and sealed bids were publicly opened and read aloud on July 19, 2022. On [August 1, 2022](#), the City Council adopted a resolution authorizing the City Manager to enter

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

into an agreement with the low bidder, Michael Paul Company Inc., in the amount of \$844,693 and approving a construction contingency of \$125,307 for a total appropriation in an amount of \$970,000.

City staff have performed the final inspection and determined that all work has been satisfactorily completed in accordance with the project plans and specifications. City staff recommends that the City Council accept the project.

ANALYSIS:

Pursuant to Civil Code Section 8182, the City records a Notice of Completion upon City acceptance of the improvements. This acceptance initiates a time period during which project subcontractors may file Stop Notices seeking payment from the City from the funds owed to the Contractor for the project work.

FISCAL IMPACT:

No fiscal impact is associated with accepting this report.

RECOMMENDED ACTION:

Accept completion of the Spinnaker Point Parking Modification Project and authorize the City Clerk to file the Notice of Completion.

ATTACHMENTS:

1. Notice of Completion

Recording Requested By:
The City of San Rafael

When Recorded Mail To:
Lindsay Lara, City Clerk
1400 Fifth Avenue, 209
San Rafael, CA 94901

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE § 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION
Civil Code §§ 8182, 8184, 9204, and 9208

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is the agent of the owner of the Project described below.
2. Owner's full name is City of San Rafael ("City")
3. City's address is 1400 Fifth Ave., San Rafael, CA 94901
4. The nature of City's interest in the Project is:
___ Fee Ownership ___ Lessee ___ Other: Public Right-of-Way Easement
5. Construction work on the Project performed on City's behalf is generally described as follows:
Spinnaker Point Parking Modification Project: Scope of work includes excavation/demolition, off-haul of materials, reconfiguring Spinnaker Point Drive to incorporate angled parking, narrowing median, widening sidewalk, realigning curb and gutter, and installing new streetlights.
6. The name of the original Contractor for the Project is: Michael Paul Company, Inc. located at 1200 Casa Grande Rd., Petaluma, CA 94954.
7. The Project was accepted as complete on: May 1, 2023.
8. The Project is located at: Spinnaker Point Drive from Bahia Way to the crosswalk west of Portsmouth Cove.

Verification: In signing this document, I, the undersigned, declare under penalty of perjury under the laws of the State of California that I have read this notice, and I know and understand the contents of this notice, and that the facts stated in this notice are true and correct.

Date and Place

Signature

Name and Title

*EXEMPT FROM NOTARY ACKNOWLEDGMENT REQUIREMENTS PER
GOVERNMENT CODE § 27287 AND CIVIL CODE § 9208*

For internal use only: do not include in Project Manual

[Project Title]
[Project Number]

USER GUIDE
Page 2



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Prepared by: Alicia Giudice,
Community Development Director
Leslie Mendez, Planning Manager

City Manager Approval:  _____

TOPIC: USE PERMIT REVOCATION FOR NIGHTCLUB AT 842 FOURTH STREET

SUBJECT: RESOLUTION OF THE SAN RAFAEL CITY COUNCIL DENYING AN APPEAL (AP23-001) AND AFFIRMING THE PLANNING COMMISSION'S MARCH 28, 2023 ACTION TO REVOKE THE USE PERMIT (UP05-01) ALLOWING THE RE-ESTABLISHMENT OF LIVE ENTERTAINMENT AND A COCKTAIL LOUNGE AS PART OF A NEW RESTAURANT/SUPPER CLUB LOCATED AT 842 FOURTH STREET

EXECUTIVE SUMMARY:

George's Nightclub is located at 842 Fourth Street. The business operates under Use Permit UP05-01, which allows live entertainment and a cocktail lounge as part of a restaurant/supper club. The Use Permit includes conditions of approvals (COAs) designed to address and monitor business operations, site management and security, business license maintenance, hours of operation, and operation as a bona fide eating place (i.e. full-service restaurant). Since re-opening after the pandemic quarantine in April 2021, George's Nightclub has been operating in direct violation of several fundamental conditions of the Use Permit approval resulting in numerous and ongoing incidents of over-intoxication and violence related to club operations. These incidents constitute a public nuisance which is both detrimental to San Rafael Police Department (PD) resources and detrimental to the public health, safety, and welfare of the surrounding community.

Due to the frequent and ongoing disturbances related to the nightclub's operations, staff brought the Use Permit up to the Planning Commission for revocation hearing at the [March 28, 2023 Planning Commission meeting](#). The owner of the business Evolution Nightclub & Restaurant, LCC attended the hearing and responded to staff's presentation. Based on evidence presented by staff and the business owner at the hearing, and documentation presented in the staff report and attachments, the Planning Commission found that the business was operating in non-compliance with Use Permit conditions and represented a public nuisance, and unanimously voted to revoke Use Permit 05-01.

On April 5, 2023, the City received a timely appeal by the business owner of the Planning Commission's March 28, 2023 action (Attachment 2). The appeal asserts numerous arguments alleging that the Planning Commission's revocation was defective, including claims that the Planning Commission was misinformed and that the City has discriminated against the appellant. Pursuant to

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

San Rafael Municipal Code Section 14.28.040.B, staff scheduled the appeal for the next available City Council meeting.

RECOMMENDATION:

Staff recommends that the City Council adopt the attached Resolution denying the appeal (AP23-001) and affirming the Planning Commission's March 28, 2023 action to revoke Use Permit 05-01.

BACKGROUND:

On January 10, 2006, the Planning Commission adopted Resolution No. 06-02 approving Use Permit (UP05-01) to allow live entertainment and a cocktail lounge (i.e. nightclub) as part of a restaurant/supper club at 842 Fourth Street. The Use Permit conditions stipulate, among other provisions, that food service and on-site security be provided during all hours of operation of the nightclub use. The Nightclub is owned by Evolution Nightclub & Restaurant, LCC and does business under the name of George's Nightclub.

Throughout the years, PD has received numerous calls to respond to incidents at George's Nightclub. Since the business re-opened in the spring of 2021, PD has received service calls related to incidents at or related to the nightclub with increased frequency. Following the shooting and double homicide that occurred in July 2021 involving people associated with a performance at the club, a Code Enforcement Officer was assigned to conduct inspections to ensure compliance with the terms and conditions as established as a part of the Use Permit. Numerous violations were noted, detailed, and conveyed to Eslly Figueroa, the business operator, in a letter dated September 8, 2021, with a request to correct and comply.

Follow-up inspections since the September 2021 communication indicated that the business had made no movement to correct the identified Use Permit violations and the PD continues to receive and respond to frequent disturbance calls directly related to the club's operations. Given that George's Nightclub continues to operate in non-compliance with fundamental conditions required of the Use Permit and continues to cause frequent and ongoing disturbances requiring PD intervention, staff brought Use Permit 05-01 up for a revocation hearing pursuant to the authority of San Rafael Municipal Code (SRMC) [Section 14.30.070 - Revocation of discretionary permits](#) before the Planning Commission at the March 28, 2023 meeting.

After considering the evidence presented before them, including testimony from Eslly Figueroa, owner of Evolution Nightclub & Restaurant LLC, the Planning Commission voted to revoke Use Permit 05-01 upon finding that the business was operating in non-compliance with Use Permit conditions and that it represented a public nuisance. On April 5, 2023, Ms. Figueroa, Owner of Evolution Nightclub & Restaurant LLC ("Appellant") appealed the Planning Commission decision. Staff's analysis presented below demonstrates that the appeal of the Planning Commission's decision to revoke the use permit has no merit.

ANALYSIS:

Summary of Appeal (AP23-001) and Staff Responses

The following is a list of appeal points submitted by appellant Eslly Figueroa, followed by staff response. The complete appeal letter is included as Attachment 3.

Appeal Point 1 – Inadequate Spanish Interpretation

The appellant alleges that the Spanish interpretation services provided during the hearing were "inadequate, "improper and incomplete."

Staff Response:

The interpretation was sufficient to have afforded the Appellant an adequate opportunity to participate in the Planning Commission hearing.

The Appellant is a native Spanish speaker who understands and speaks English but is more comfortable conversing in Spanish. As a courtesy to Ms. Figueroa, staff provided Spanish/English language interpretation services for the March 28th Planning Commission hearing to ensure that language would not serve as a barrier to the Appellant's participation in the public process. Staff publicly announced at the beginning of the hearing that interpretation was available on the Spanish Interpretation Zoom channel.

During planning staff's presentation to the Planning Commission and throughout the duration of the hearing, the interpreter provided simultaneous translation from English to Spanish on the Spanish Zoom channel. When the Appellant first addressed the Commission in response to the staff report, she spoke in English, she did not ask for an interpreter or imply in any way that she did not understand staff's presentation. She also did not claim that the interpretation that had been provided to her up to that point had been inadequate.

When the Appellant spoke again during public comment period, she requested interpretation services and spoke in Spanish and the interpreter subsequently translated her comments into English. Staff reviewed the video recording of the Planning Commission meeting to analyze the quality of the Spanish to English interpretation. A comparison of a transcript of the Appellant's public comments (translated after the fact into English) with a transcript of the English interpretation provided in real-time during the hearing demonstrates that while the interpretation was not word-for-word, it adequately conveyed all of the points the Appellant made while speaking in Spanish (see Attachment 5). This comparison contradicts the Appellant's claim that she was provided inadequate interpretation.

Appeal Point 2 – Missing Commissioners, Inadequate Review, & Discrepancies

The Appellant notes that some commissioners were absent at the hearing, asserts that those present likely did not appropriately review the documents, and claims that "there are multiple discrepancies between the documents and what was stated during the public meeting by city staff."

Staff Response:

Four Planning Commissioners attended the March 28th Planning Commission hearing. There were two absences and one existing vacancy. Beyond making a cursory claim, the Appellant has not explained how the number of Commissioners present affected the outcome or why a decision by four commissioners would be improper. The *Planning Commission Rules and Procedures of the City of San Rafael* adopted January 24, 2023, state that a quorum consists of four members and that an affirmative vote of a majority of the quorum present (i.e. three Commissioners) is necessary to act on a Use Permit revocation decision. In this case, the four present Commissioners constituted a quorum, and the unanimous vote by all four present Commissioners to revoke the permit exceeded the vote count required for revocation.

Although the Appellant asserts that the Commissioners did not review the hearing packet and that multiple discrepancies existed between the packet documents and what was relayed orally during the hearing, she provides no examples or evidence to support this claim. To the contrary, the questions asked and comments made by the Commissioners during the hearing make it evident

that the Commissioners had read the agenda packet prior to the meeting. This appeal point has no merit.

Appeal Point 3 – July 2021 Shooting Weaponized to Slander the Venue

The Appellant asserts that the George’s Nightclub has been wrongly associated with a shooting and double homicide that occurred in July 2021 and that the shooting incident was repeatedly referred to during the Planning Commission hearing. She alleges the City has weaponized the event to slander the venue.

Staff Response:

The incident referred to by the Appellant represents only one of 24 incidents of violence and disorderly conduct at or around George’s Nightclub involving nightclub patrons during the 19-month period between June 2021 and January 2023. The Planning Commission’s decision to revoke the nightclub permit and find it a public nuisance was based on the entirety of the evidence presented and not on a single incident. The allegation in this appeal is unfounded.

Appeal Point 4 – Wrongful Accusation of Reselling Food

The Appellant states the venue was wrongfully accused of reselling food to a City staff member who conducted an under-cover site visit, and that that staff member should be discredited because she purchased and consumed food and alcohol during the visit.

Staff Response:

As relayed in the Planning Commission staff report, both the nightclub’s Use Permit and ABC License require that the business operate a full-service restaurant and serve food during their regular business hours. The nightclub is approved as a bona fide eating place, which is defined in condition of approval #20:

“Bona fide public eating place” means a place which is regularly used and kept open for the serving of meals to guests for compensation and which has: a) suitable kitchen facilities for the cooking of an assortment of foods which may be required for meals; b) a primary use of a sit down service to patrons; c) adequate seating arrangement for sit down patrons provided on the premises; d) Take-out service that is only incidental to the primary sit-down use; and e) alcoholic beverages all sold or dispensed for consideration for consumption on the premises only, and only when, served at tables or sit down counters by employees of the restaurant. A bona fide eating place does not include a place where food service is incidental to the service of alcoholic beverages, constituting less than 51% of sales.

Code Enforcement Officers conducted an undercover site visit to George’s Nightclub on June 4, 2022. The purpose of the visit was official city business to ascertain whether the venue was operating as a full service/bona fide public eating place compliant with the Use Permit condition. Senior Code Enforcement Officer Ana Santiago reported her experience at the club in a memorandum included as Attachment 11 to the Planning Commission resolution and upon questioning by the Commissioners during the revocation hearing. As reported, she was able to order food with a drink, but there was no menu, food service was not offered before 9:45 p.m., chicken wings were the only food item available and cash payment was required (whereas drinks could be paid for either in cash or with card). Ms. Santiago’s surreptitious visit to observe the kitchen area confirmed inactivity. Ms. Santiago’s visit verified that the business was not operating primarily as a full-service restaurant with incidental alcohol sales.

Neither Ms. Santiago nor planning staff stated or claimed that food was resold, and this was not a basis for the Planning Commission's revocation. The Appellant has not provided any information which could discredit the Code Enforcement report. Regardless, the Code Enforcement report was just one piece of evidence in an extensive record which the Planning Commission considered in finding non-compliance with Use Permit conditions. This appeal point has no merit.

Appeal Point 5 – Wrongful Accusation of Inoperable Kitchen/No Menu/No Permit

The Appellant states the venue is wrongfully accused of not having an operating kitchen, menu, or food preparation license.

Staff Response:

As stated above, George's Nightclub is required to operate as a full-service restaurant/supper club which is regularly used and kept open for the serving of meals to guests for compensation. Evolution Nightclub (dba George's Nightclub) possesses a Limited Food Preparation license from the County of Marin. This license type, however, is restricted; it does not allow the preparation of any food that must be refrigerated or washed and is not valid for the preparation of full-service meals as required for a bona fide eating place as verified by the Senior Environmental Health Specialist at Marin County Environmental Health Service Division (See Attachment 10 to Planning Commission Resolution). Additionally, as documented in Attachment 9 of the Planning Commission resolution, on its [Facebook page](#), [Yelp listing](#), and [Do the Bay listing](#), George's advertises as a night club, and all references to the restaurant, including menus, have been removed from the website and online ordering services. Site visits by both Code Enforcement (see Appeal Point 4 above) and PD have documented that the venue's kitchen cooking facilities are not being used during business hours (see page 5 of [Planning Commission staff report](#)).

Staff has documented that the venue does not regularly operate the kitchen, advertise as a full-service restaurant, provide a regular menu, prepare full-service meals, or even have a valid license to prepare full-service meals as required by the approved Use Permit. The Appeal Point has no merit.

Appeal Point 6 – Holding a Valid Business License

The Appellant states she operates with a valid business license and claims that at some point, she was prevented from bringing it up to date.

Staff Response:

As relayed in the Planning Commission staff report (p.3), the business license for George's Nightclub expired on January 1, 2022, and has not been renewed since. City of San Rafael Finance Department staff (Finance) have verified that the Appellant is able to renew her license at any time. When Finance sends out business license renewal requests each December, any unpaid accounts from the preceding 11 months are marked delinquent in the system. Once an account is deemed delinquent, online renewal is no longer an option; the business owner is required to contact Finance directly to renew the license, submit receipts and to pay delinquent fees. Pursuant to these procedures, Finance marked the Appellant's account as delinquent for failure to renew the business license within 11 months of its expiration; the Appellant, therefore, must contact Finance to renew the business license. This Appeal point has no merit.

Appeal Point 7 – No Communication to Modify the Use Permit

The Appellant states that the purpose of the Planning Commission hearing was to consider revocation or modification of the use permit, but that the City went straight for "the nuclear option" of revocation without considering modification of the Use Permit.

Staff Response:

Staff clearly relayed, both in the staff report and presentation, that the Planning Commission had the option to:

1. Adopt the Resolution revoking the Use Permit
2. Continue the hearing (to a date certain or an undefined date) to allow staff to address any of the Commission's comments or concerns; or
3. Recommend the Use Permit remain in effect as is or with additional conditions.

To begin the hearing, both planning staff and the Appellant were given an opportunity to present to the Planning Commission. Staff presented facts about George's Nightclub and recommended revocation of the Use Permit. When it was Appellant's turn to present, she gave only a very brief statement and made no request for the Planning Commission to modify, rather than revoke, her Use Permit. With the information it had been presented, the Planning Commission then voted to revoke the Use Permit.

The Planning Commission acted within its powers in deciding to revoke, rather than modify, the Use Permit. The Planning Commission relied on the detailed staff report and related attachments, and the presentations by staff and Appellant, in finding that revocation was the appropriate action. George's Nightclub has been operating in direct violation of several fundamental conditions of the Use Permit and numerous incidents of over-intoxication and violence related to club operations have been documented since the venue reopened in April of 2021. In a letter dated September 8, 2021, Use Permit violations were noted, detailed, and conveyed to Ms. Figueroa, the business owner, with a request to correct and comply. Follow-up inspections since the September 2021 communication indicate that the business made no movement to correct the identified Use Permit violations and the PD continues to receive and respond to frequent disturbance calls directly related to the club's operations. Given that George's Nightclub continued to operate in non-compliance with fundamental conditions required of the Use Permit and continued to cause frequent and ongoing disturbances requiring PD intervention, staff brought Use Permit 05-01 up for a revocation hearing. The severity of the incidents, ongoing impacts to patrons, passers-by, and the surrounding neighborhood, and the club's total failure to show correction and improvement led the Planning Commission to concur with the staff recommendation to revoke the Use Permit.

Appeal Point 8 – Biased Decision due to City Staff and Police Department Bias

The Appellant alleges that the Planning Commission decision was biased against Evolution Nightclub due to City staff and Police Department with insinuation that the cause is due to one of race, economic, and legal status. The Appellant further alleges harassment by the Police.

Staff Response:

The Appellant has provided no evidence of bias or harassment by City staff including PD. Police Chief Spiller testified during the Planning Commission hearing that the number of PD responses to incidents at George's Nightclub have been three times greater than those for any other San Rafael venue over an equal time period. Chief Spiller also explained that the police do not selectively monitor certain venues more than others; rather, they respond to incidents as members of the public report them. The high number of police contacts with George's is thus indicative not of bias, but of repeated threats to public safety so concerning that they are reported to the police by third parties.

Likewise, there is no evidence of bias by the Planning Commissioners. In fact, the Commissioners stated during the public hearing that they were reluctant to revoke the permit because George's

Nightclub provides vitality and contributes positively to the diversity of the City, and that they would be saddened at the loss of the positive aspects the venue provides. Ultimately, the Commissioners objectively weighed the positive community benefits with the extensive record of detriments to the health, safety, and welfare of the community as a whole and determined revocation was appropriate.

Appeal Point 9 – Business is not Detrimental to the Community

The Appellant alleges that the nightclub is not detrimental to the public health, safety, or welfare and that she has operated under the impression that she was operating in compliance with Use Permit conditions.

Staff Response:

Staff specifically informed the Planning Commission during the March 28th hearing that a Use Permit may be revoked based on (1) non-compliance with Use Permit conditions or (2) because the Use Permit holder has operated its business in a way that constitutes a public nuisance, meaning an activity that is 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. As documented, City staff have informed the Appellant of non-compliance with Use Permit conditions on several occasions with no action on her end to address or remediate. Even assuming the Appellant believed she was operating her business in compliance with the Use Permit conditions, the number and severity of incidents requiring PD intervention demonstrate that George’s Nightclub operates as a public nuisance impacting the health, safety and welfare of the community.

COMMUNITY OUTREACH:

Notice of all public hearings on the project, including this City Council appeal hearing, has been conducted in accordance with the public review period and noticing requirements contained in Chapter 29 of the Zoning Ordinance. All notices of public meeting or hearing on the project were mailed to all property owners and occupants within a 300-foot radius of the site and the representing neighborhood groups at least 15 days prior to each meeting or hearing. In addition, notice was sent via certified mail to the business owner and operator, and property owner. Notice of the appeal hearing was published in the Marin Independent Journal on April 21, 2023.

FISCAL IMPACT:

None.

OPTIONS:

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

1. Adopt the Resolution denying the appeal and affirming Planning Commission March 28, 2023 decision to revoke the Use Permit
2. Do not adopt the Resolution and uphold the appeal
3. Modify the Planning Commission’s determination

RECOMMENDED ACTION:

Adopt the Resolution denying the appeal and affirming Planning Commission March 28, 2023 decision to revoke the Use Permit

ATTACHMENTS:

1. City Council Resolution
2. Appeal of Planning Commission decision from Esly Figueroa, owner of Evolution Nightclub &

Restaurant LLC, dated Received April 5, 2023

3. [Planning Commission staff report PLAN23-018 Use Permit Revocation, dated March 28, 2023](#)
4. [Planning Commission Resolution 23-001](#)
5. Excerpt of Spanish to English Interpretation from March 28, 2023, Planning Commission meeting
6. Public Comments

RESOLUTION NO.

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL DENYING AN APPEAL (AP23-001)
AND AFFIRMING THE PLANNING COMMISSION'S MARCH 28, 2023 ACTION TO REVOKE
THE USE PERMIT (UP05-01) ALLOWING THE RE-ESTABLISHMENT OF LIVE
ENTERTAINMENT AND A COCKTAIL LOUNGE AS PART OF A NEW
RESTAURANT/SUPPER CLUB LOCATED AT 842 4TH STREET
(APN 011-224-14)**

WHEREAS, on January 10, 2006, the San Rafael Planning Commission held a duly-noticed public hearing and adopted Planning Commission Resolution No. 06-02 approving a Use Permit (UP05-01) allowing the re-establishment of live entertainment and a cocktail lounge as part of a new restaurant/supper club located 842 4th Street; and

WHEREAS, Evolution Nightclub & Restaurant, LLC (dba George's Nightclub) took over business operations in September of 2013; and

WHEREAS, the Use Permit includes several conditions of approval and requires that George's Nightclub continually comply with the conditions of approval; and

WHEREAS, a Use Permit may be revoked for the permit holder's failure to comply with the conditions of approval; and

WHEREAS, a Use Permit may also be revoked if the permit holder operates their business in such a way as to constitute a public nuisance; and

WHEREAS, the Community Development Department became aware that George's Nightclub failed to comply with the conditions of its Use Permit and operated its business in such a way that constituted a public nuisance; and

WHEREAS, on September 8, 2021 the City sent a notice of noncompliance via standard mail to Ms. Esly Figueroa, the operator of George's Nightclub, notifying her of the various violations of the conditions of the Use Permit for George's Nightclub and giving the opportunity to correct such violations; and

WHEREAS, Ms. Figueroa did not correct the violations of the conditions of the Use Permit and operated George's Nightclub in a way that was detrimental to the public health, safety, and welfare; and

WHEREAS, on February 27, 2023, the City sent a letter to both Ms. Figueroa and the property owner via certified mail notifying them that a revocation hearing had been set for March 28, 2023; and

WHEREAS, on March 28, 2023, the San Rafael Planning Commission held a duly noticed public hearing on the proposed revocation of Use Permit 05-01, accepting all oral and written public testimony and the written report of the Community Development Department staff; and

WHEREAS, on March 28, 2023, the Commission adopted Resolution No. 23-001 revoking the Use Permit (UP05-01); and

WHEREAS, on April 5, 2023, the City received a timely appeal of the Planning Commission Action filed by Esly Figueroa; and

WHEREAS, on May 1, 2023, the City of San Rafael City Council held a duly noticed public hearing to review and consider the appeal (AP23-001), accepting all oral and written public testimony and the written report by the Community Development Department Planning staff and closed said hearing on that date; and

WHEREAS, the custodian of documents which constitute the record of proceedings upon which this decision is based is the Community Development Department; and

WHEREAS, the City Council finds and determines that the Appeal (AP23-001) cannot be supported for the following reasons.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of San Rafael hereby denies the Appeal (AP23-001) and affirms the Planning Commission's action to revoke the Use Permit (UP05-01) based on the following findings:

A. Findings for Denial of Appeal (AP23-001)

Appeal Point 1 – Inadequate Spanish Interpretation

Whether the Spanish interpretation services provided during the Planning Commission hearing were “inadequate, “improper and incomplete.”

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that the interpretation provided during the Planning Commission hearing was adequate.

Appeal Point 2 – Missing Commissioners, Inadequate Review, & Discrepancies

Whether the Planning Commission appropriately reviewed the documents, whether there were discrepancies between the documents and what was presented during the public meeting by City staff, and whether there was quorum and a proper vote to revoke the Use Permit.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that the Planning Commission appropriately reviewed the documents, that there were not discrepancies between the documents and what was presented during the public hearing, and that there was a quorum and proper vote to revoke the Use Permit.

Appeal Point 3 – July 2021 Shooting Weaponized to Slander the Venue

Whether George's Nightclub was wrongly associated with a shooting and double homicide that occurred in July 2021 and whether the Planning Commission focused too heavily on that event in making its decision to revoke the Use Permit.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that George's Nightclub was not wrongfully associated with a shooting and double homicide in 2021, and that the Planning Commission gave appropriate weight to this event in making its decision to revoke the Use Permit.

Appeal Point 4 – Wrongful Accusation of Reselling Food

Whether the Appellant’s venue was wrongfully accused of reselling food to a City staff member who conducted an undercover site visit.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that George’s Nightclub was not wrongfully accused of reselling food to a City staff member who conducted an undercover site visit.

Appeal Point 5 – Wrongful Accusation of Inoperable Kitchen/No Menu/No Permit

Whether Appellant had an operating kitchen, a menu, and a food preparation license.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that George’s Nightclub did not have an operating kitchen, a menu, or a valid food preparation license.

Appeal Point 6 – Holding a Valid Business License

Whether Appellant had a valid business license and whether she was prevented from renewing her business license.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that George’s Nightclub did not have a valid business license and that its operator was not prevented from renewing the business license.

Appeal Point 7 – No Communication to Modify the Use Permit

Whether the Planning Commission was informed that it had the option to modify, rather than revoke the Use Permit.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that the Planning Commission was informed that it had the option to modify, rather than revoke the Use Permit, and that the Planning Commission exercised appropriate discretion in choosing to revoke rather than modify the Use Permit.

Appeal Point 8 – City Staff and Police Department Bias

Whether the Police Department or the Planning Commission was biased against George’s Nightclub.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that neither the Police Department, its officers, or the Planning Commission was biased against George’s Nightclub.

Appeal Point 9 – Business is not Detrimental to the Community

Whether George’s Nightclub is operated in such a way that it is detrimental to the public health, safety, or welfare.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that George's Nightclub is operated in such a way that it is detrimental to the public health, safety, and welfare of the community, and therefore a public nuisance.

B. Findings for Revocation of Use Permit (UP05-01)

1. George's Nightclub has repeatedly violated the conditions of approval contained within its Conditional Use Permit.

2. George's Nightclub is a strain on police department resources, and has repeatedly conducted its business in a way that is detrimental to the public health, safety or welfare, and is materially injurious to properties or improvements in the vicinity or to the general welfare of the city; therefore, George's Nightclub operates as a public nuisance in contravention of San Rafael Municipal Code Section 14.22.080.B.

BE IT FURTHER RESOLVED, that the City Council makes the following findings of fact related to the California Environmental Quality Act (CEQA):

C. California Environmental Quality Act (CEQA) Findings

The revocation of the Use Permit is categorically exempt from CEQA pursuant to Section 15321 of the CEQA Guidelines ("Enforcement Actions by Regulatory Agencies").

BE IT FURTHER RESOLVED, that the City of San Rafael City Council does hereby deny the Appeal (AP23-001) and affirms the Planning Commission's March 28, 2023 action revoking the Use Permit (UP05-01).

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 1st day of May, 2023, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

Lindsay Lara, City Clerk

Evolution Nightclub & Restaurant LLC
842 Fourth Street
San Rafael, CA 94901



City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

04/05/2023

RE: Appeal of Use Permit Revocation Project Number: PLAN23-018.

To whom it may concern:

I write this letter as my formal appeal in response to the City of San Rafael Planning Commission's decision for the use permit revocation project number: PLAN23-018. I would like for you to reconsider the decision made on 03/28/2023 for the following reasons:

1. "Simultaneous Spanish translation" was not responsibly provided. Furthermore, inadequate translation was provided by someone in attendance for me and complete lack of counter translation from the staff/commission to me rendered the hearing process to be challenging at best to address concerns raised. Moreover, as a result of improper and incomplete translations, the commission was fully and rightfully communicated what I stated during the agenda item when speaking in Spanish, my native language. There was a staff member who declared she was bilingual and previously had conversations with me in Spanish, who could've made just efforts to acknowledge that the translations provided were not complete. This was a failure on behalf of the city, to provide adequate and reasonable translation services for a community member and business owner who could not fully engage and communicate in English.
2. Multiple commissioners were absent from this public meeting and it appears several who were present likely did not appropriately review the agenda documents that accompanied the staff report. There are multiple discrepancies between the documents and what was stated during the public meeting by city staff in attendance who were seeking to justify the revocation of use permit on the grounds of lack of compliance and public nuisance.
3. Despite the fact that the shooting on 07/2021 was unrelated and stated as unrelated by multiple sources including newspaper articles that quote San Rafael Police Department's Lt. Dan Fink stating "the shooting was not related to the show or the performers", my establishment continues to be treated as if it was. The Police Department has heavily monitored my business since this incident, fueling a narrative to illustrate the establishment as a public nuisance. Throughout the public hearing and discussion, the shooting was continually referenced and unjustly used as the cornerstone rendering the establishment as a public nuisance. It is very tragic that lives were lost, and it's entirely deplorable and reprehensible that the city staff and police department weaponized this tragedy in attempt to slander the venue as an establishment that facilitates criminal activity.
4. My establishment was wrongfully accused of reselling food to one of your colleagues who went "undercover" for hours at my establishment during the public meeting but the "Case File" in the agenda documents from Ana Santiago does not state anything about purchasing wings while "undercover" only inquiring about them, which is in contradiction to what she stated at the public meeting. Additionally, Santiago states that I was in compliance with the number of security guards on duty further proving my point of being in compliance and not negligent. It also brings into question if this was conducted as official city business, as it was made clear that Santiago purchased and consumed alcohol while "undercover." If this was not conducted as official city business, then I do challenge the merits of Santiago's report being included in the agenda packet and her public statements. Otherwise, this is just a random community member who came to venue to consume

alcohol and enjoy a live event until closing. In the written letter, Santiago there is no mention of overcrowding, but in the public meeting makes contradicting statements. These should have been instances, called out by the commissioners for clarification, as Santiago's public statements were not in alignment with the published agenda item document of her "undercover" work. Be it further stated, that Santiago's blatant attempts to illustrate the business in a public meeting as unbecoming venue and fueling intentional public intoxication is detrimental to the image and safety of the venue.

5. My establishment was wrongfully accused of not having an operating kitchen nor a valid permit to operate when in fact, it does. We've had multiple unannounced visits from city employees, including the police, to check for a litany of compliance concerns. Additionally, we have a working food menu at all times. Food is made ready once ordered and I hold a valid permit to operate a food facility through the County of Marin which was also an attachment in the agenda report.
6. I do operate with valid business licenses and I tried to let the committee know but this was completely missed during the public hearing. Additionally, I have tried to bring my city business license up to date but was blocked. The inadequate, incomplete, and improper translations positioned me in a manner in which I could not justly defend myself against any accusations of violations and/or compliance concerns. The commissioners were unable to have a full and entire understanding of my defense against city staff claims.
7. The city provided communication of a public hearing to consider revocation or modification of the use permit but the city went right into a revocation hearing and nothing was communicated about a possible modification to the use permit as an option for the commission. The unfortunate reality is that city staff went straight for the nuclear option of preventing my business from operating based on misleading information.
8. The commissions decision was biased against Evolution due to the police department and city staff illustration of our venue being a rendered unsafe, and continually connecting a shooting incident to us, in which we weren't liable for. The same police department, that is currently being protested against by the minoritized community member who live in the area, like myself. Additional bias from the police department was admitted during the public meeting. Evolution is a Latina owned business that appeals to working class people of color who are the very backbone of this community. This is one of the very few locations in the area where many folks of color feel comfortable at for weekend nightlife entertainment. This uncomfortable truth may not be well received by many, but it is our reality. The police have made countless visits to my establishments and have found me to be full compliance but these visits are missing from the agenda report. Moreover, Police Chief Spiller never made mention of this during the public meeting, nor address the concerns I raised both in English and Spanish (that was not properly translated), regarding biases and harassment. Be it further stated, that city staff acknowledged during the public meeting, that they did not have information readily available about public safety call requests at my venue prior to July 2021. The shooting incident seems to be the calibration point in defining issues of public safety, some of which did not happen in my establishment - nor were associated with us in any capacity. Additionally, the police chief did not have such information as well, which leads to question the credibility of revoking the use permit on the premise of public nuisance.
9. Evolution is not "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." We have attempted to communicate with city staff, and admittedly have had delays in abilities to connect. However, I have been under the impression that operations were in compliance, as I had assumed appropriate business and food licenses for the location. As well, given the numerous visits by city employees for compliance checks that resulted in no raised concerns, it was assumed there were issues to be challenged. We would welcome the opportunity to work with the police staff in a collaborative manner to address any perceived issues of safety that are within our control. I find it quite damaging to categorize the venue as a threat to public safety, while simultaneously being subjected to city staff implying that

food services are not safe or in compliance. We have no option, but to vigorously defend ourselves from such overreach and misleading information. Thus, You have illustrated a narrative that makes it extremely difficult to fight against. I have successfully ran this business for almost 10 years now. I have made changes to comply that did not make it to the agenda report or brought up during the meeting. I have tried my best and continue to meet compliance standards and meet the demands from the city and police department, having gone as far as no longer hosting hip hop events per your request.

Best,



Esly Figueroa
Owner of Evolution Nightclub & Restaurant LLC
[REDACTED]
San Rafael, CA 94901
[REDACTED]

CERTIFICATE

of

COMPLETION

Francisco Vilela

has successfully completed the training for Food Protection Manager

Name:	Francisco Vilela	Date Completed:	3/30/2021
Name of course:	Food Protection Manager	Instructor Name:	Nick Eastwood
Approved Contact hours:	4	Instructor E-mail:	nick.eastwood@alwaysfoodsafes.com



The Always Food Safe Company
899 Montreal Circle, St. Paul, 55102
www.alwaysfoodsafes.com | 844.312.2011

Attachment 3:

[Planning Commission staff report PLAN23-018 Use Permit Revocation, dated March 28, 2023](#)

<https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2023/03/PC-Staff-Report-3-28-23.pdf>

Attachment 4:

[Planning Commission Resolution 23-001](#)

https://storage.googleapis.com/proudcity/sanrafaelcaemployees/uploads/2023/05/Attachment-4_PC-Resolution-23-01_Use-Permit-Revocation_Georges-Nightclub.pdf

Hearing Transcript Excerpts – Translated

YouTube video:

<https://www.youtube.com/watch?v=OzqXf5P0wiw>

0:30-0:54 – Planning staff mentions that Spanish interpretation will be provided on a Spanish Interpretation zoom channel

5:30 - 16:35 – Planning staff present their recommendation that the Planning Commission revoke the use permit

- The recording does not include a record of what was occurring on the Spanish Interpretation Zoom channel, so it is impossible to evaluate the adequacy of this portion of the interpretation

16:55 – Planning staff says that it is Ms. Figueroa’s turn to present; asks Ms. Figueroa if she wants to speak, present, or respond.

17:05 – Ms. Figueroa says, in English:

- “Hello, my name is Esly, um, I’m the owner of George’s nightclub almost for ten years, and I can hear everything, I was listening to everything they were saying, most of them is not... like, we talked with Leslie before, we had a meeting before this hearing, and some of them are not true, some of them are false, and I believe why... the police is the ones that came over to the club many times, several times, just without a call or anything, and came over to tell me what I had to do. And, no, I’m not okay with this, with everything you’re saying about me, about my club, it’s not true. It’s not what they’re saying. That’s all I can say.”

18:00 – Ms. Figueroa finishes giving her statement, commissioners open up the hearing to discussion among the commissioners, ask staff questions, etc.

38:35 – Commission finishes their questioning and opens up the floor to public comment.

38:38 – Ms. Figueroa speaks up, wants to make a public comment. Ms. Figueroa says, in English:

- “Hello? Yeah, uh, well the only thing I was reading is about.. um.. you say you have interpreter, right, in Spanish? So I think it’s better for me to speak Spanish, I’m Latina, like Mrs. Santiago said”

38:57 – Planning staff says, in English:

- “Great, go ahead.”

38:58 – Chair Suade says, in English:

- “Yes, please proceed.”

39:00: Ms. Figueroa says, in English:

- “In Spanish?”

39:02: Chair Saude and planning staff both say, in English:

- “Yes.”

39:03: Ms. Figueroa begins, in Spanish:

- “So, estaba ley[endo]... estaba viendo uno de los puntos que ellos dijeron fue de la licencia de la comida, que insisten que yo no la tengo y yo tengo la licencia de ah... venta de comida en ah... Evolution Nightclub. No es George’s. George’s es conocido por años, pero es Evolution el club and restaurant así es, entonces está la licencia vigente. El otro punto que habló eh.. han hablado es de los seguridad.. los cuatro seguridad. Que no... que no han tenido su ... ah.. una... la señora Santiago que estaba allí dijo que vio alguien que estaba fumando marihuana, y eso es algo que yo no puedo manejar porque estaba fuera de la hora de trabajar. Entonces, esto no lo podía manejar yo. Son cuatro seguridad los que he tenido todas las noches y tengo cómo probarlo. Ah.. el otro punto que ah.. estaba diciendo la señora Santiago fue de que los chicken wings habían sido cocinados nada más y que ya no vio. Tengo un cocinero a que le pago semanalmente y no solamente está eso. Hay tacos de carne, hay tacos de pollo, eh... también ella.. estaba viendo yo que ella en su reporte, y la tuve enfrente de mí, no pude hablar con ella, ella en el reporte estaba diciendo que una bebida se la cobraron más y no fue así. Yo, um, quiero decir esto – tuve un... tuve un ahm.. ah.. un, una... una fiesta de.. de negros, voy a decir así.. que tenía antes. Desde entonces, han utilizado mi ...”

- o Translation: “So, I was read[ing]... I was seeing some of the points that they said, about the food license, which they insist that I don’t have, and I *have* a license for um... food sales in um... Evolution Nightclub. It’s not George’s. It’s been known as George’s for years, but it’s Evolution, the club and restaurant, that’s how it is, so the license is valid. The other point that they said um... they talked about the security guards, the four security guards. That ... that they didn’t have their.. um .. a... Ms. Santiago, who was there, said that she saw someone who was smoking marijuana, and this is something that I can’t control because it was outside of work hours. So I couldn’t control that. They are four security guards who I have had every night and I have proof of this. Um.. the other point that.. um.. was that Ms. Santiago was saying that the chicken wings had been cooked, nothing else, and that she didn’t see any more. I have a cook who I pay weekly and it’s not just that. There are beef tacos, chicken tacos, um... also she... I was seeing that in her report, she.. and I had it in front of me, I couldn’t talk to her, in her report she was saying that they charged her more for a drink and that wasn’t the case. I, um... I want to say this – I had a... I had a um... ah.. a... um.. a party... a Black party, I’m going to call it that... that I had before. Since then, they have used my...”

41:03 – Eli (counsel for the Planning Commission) asks if there’s a way for some interpretation to be provided to the commission.

41:16 – Interpreter says in English that she’s sorry, that she would begin to interpret

41:21 – Interpreter says, in Spanish:

- “Um, señora Figueroa, le voy a interpretar lo que ha dicho hasta el momento, ok?”

- Translation: “Um, Ms. Figueroa, I’m going to translate what you’ve said up to this point, ok?”

41:25 – Ms. Figueroa says, in Spanish:

- “Sí”
 - Translation: “Yes.”

41:27 – Interpreter says, in English:

- “So I’m gonna interpret what she said so far. She said that she wanted to address a couple of the points. Yes, she does have a license for food, and with respect to the marijuana, it’s something that she can’t control because that person was off shift. When the other lady came, she said that there were only chicken wings, but she did have chicken tacos and other items of food.”

42:00 – Interpreter says (to Ms. Figueroa), in Spanish:

- “Ok, señora Figueroa, entonces dijo que desde que tu... la fiesta para negros, desde entonces?”
 - Translation: “Ok, Ms. Figueroa, so you said that since you... the Black party, since then?”

42:09 – Ms. Figueroa says, in Spanish:

- “Siempre tuve eventos de hip hop. Y de toda clase. Bodas, quinceañeras, de toda clase. Porque tenemos la cocina allí. Entonces, esta es... fue un evento de hip hop, desde eso entonces la policía me ha puesto como un target a mí, diciendo que yo traigo mal grupos a San Rafael.”
 - Translation: “I always had hip hop events. And [events] of every kind. Weddings, quinceañeras, all kinds. Because we have a kitchen there. So, this is... it was a hip hop event, since then, then the police have put, like, a target on me, saying that I bring bad groups to San Rafael.”

42: 38 – Interpreter says (to Ms. Figueroa), in Spanish:

- “Permítame un segundito”
 - Translation: “Give me a second”

42:40 – Interpreter says, in English:

- “Ok so she said that uh, she has parties, hip hop parties, all types of parties, weddings, quinceañeras, and since she had a hip hop party one time, uh, she’s been targeted by the police, who say that she brings bad groups to San Rafael.

43:02 – Ms. Figueroa says, in Spanish:

- “Sigo?”
 - Translation: “Should I continue?”

43:03 – Interpreter says, in Spanish:

- “Si, por favor”
 - Translation: “Yes, please.”

43:04 – Ms. Figueroa continues, in Spanish:

- “Entonces, hubo incidente tres blocks de George’s Nightclub esa noche. Sin embargo, ellos vinieron a pelear conmigo, la policía, fue una mujer. Y todos. Y que fueron... que, que, que había sido porque yo había hecho ese evento y un policía me dijo que por qué yo no mejor hacía eventos latinos, y ya no eventos negros, porque ellos eran problemáticos.”
 - o Translation: “So, there was an incident three blocks from George’s Nightclub that night. Nevertheless, they came to fight with me, the police, it was a woman. And everyone. And they were... that, that, that it had been because I had had this event and a police officer said [asked] me why I didn’t instead have Latino events, and no more Black events, because they’re problematic.”

43:35: Interpreter says (to Ms. Figueroa), in Spanish:

- “Ok, permítame, perdón.”
 - o Translation: “Ok, allow me, sorry”

43:38: Interpreter says, in English:

- “Ah, so, ah, there was an incident three blocks from George’s that night, but the police came to see me, actually it was a woman who came, and said that this had happened because of the event that I had had there. And the police told me why don’t I do parties for Latinos, not for black people, because these cause problems.”

44:00: Interpreter says (to Ms. Figueroa), in Spanish:

- “Ok, adelante.”
 - o Translation: “Ok, continue.”

44:03: Ms. Figueroa continues, in Spanish:

- “Entonces, este, ella me dijo que no tenía que hacer más de este tipo de eventos sin embargo no hubo nada que comprometiera mi club. Porque hubo investigaciones de parte de la policía, estuvieron hasta personas que venían el [incomprehensible], el, ah, los bomberos, vinieron todos, todos a mi club, y yo las entregué las cámaras, yo las entregué todo. después de la investigación, se dio conocer que mi club no tuvo nada que ver con ese evento. Sin embargo, desde esa fecha, me he sentido como un target que es a mí, a que buscan siempre problemas y yo sé que hay más bares alrededor, y no son solo los míos, los clientes que vienen de mí que están borrachos como ellos, la policía, me han dicho.”
 - o Translation: “So, ok, she told me I didn’t have to have any more of these types of events. Nevertheless, there was nothing that compromised my club. Because there were investigations by the police, there were so many people that came, the [incomprehensible], the, um, the firefighters, everyone came, everyone to my club, and I gave them the cameras, I gave them everything. After the investigation, it became know that my club didn’t have anything to do with this event. Nevertheless, since this date, I have felt like a target, which is, to me, that they always look for problems and I know that there are more bars around, and it’s not just my patrons who are drunk like they, the police, have told me.”

44:54: Interpreter says, in English:

- “Ok, uh, so the police said I shouldn’t do any more of those parties because it compromises my club, but there was an investigation, I gave them all, everything that they needed, the cameras, they were.. everybody came, the firefighters, everybody. I gave them everything from my cameras and at the end of the day they saw that my club was not involved in this, but I still feel like a target. They look at me when things happen. And there are other clubs around my business that have drunk people as well.”

45:33: Interpreter says (to Ms. Figueroa), in Spanish:

- “Ok, adelante.”
 - o Translation: “Ok, continue.”

45:35: Ms. Figueroa continues, in Spanish:

- “Entonces, ah, desde el después del COVID, que ha sido muy difícil para mí, ah... del COVID, es sin embargo en seguido, adelante. Voy a cumplir casi diez años de estar en Evolution Nightclub, trabajando bien. Y hasta ahora vinieron ellos que me quieren revocar el permiso. Y si yo he hecho las cosas... he tratado de hacer las cosas bien.”
 - o Translation: “So, um, since after COVID, which has been very difficult for me, um... since COVID, it’s in any case onward, forward. I’m going on ten years of being with Evolution Nightclub, working well. And just now they came, they want to revoke my permit. And yes, I have done things – I have tried to do things well.”

46:06: Interpreter says, in English:

- “Ok, um, so after COVID, because this has been hard for me, after COVID I’ve continued, and I’ve been almost ten years with Evolution Nightclub and it’s going well, now they want to revoke my license and all I’m doing is trying to do things correctly.”

46:25-46:30 – there is a pause in the conversation

46:30: Interpreter says (to Ms. Figueroa), in Spanish:

- “Algo más señora?”
 - o Translation: “Anything else, Ms.?”

46:33: Ms. Figueroa says, in Spanish:

- “Ah, sí, lo único que quiero decir es que me siento triste por todo lo que estoy pasando, esto me está enfermando, y yo era la dueña del edificio y el año pasado yo perdí mi edificio de George’s Nightclub, ahora solamente soy la dueña de Evolution Nightclub y Restaurant. Y yo quiero que escuchen mi parte también porque soy una mamá soltera y lo único que quiero es trabajar y hacer las cosas bien y ayudar a la comunidad. Es lo que he hecho. Gracias.”
 - o Translation: “Um, yes, the only thing that I want to say is that I feel sad because of everything I’m going through, it’s making me sick, and I was the owner of the building and last year I lost my building where George’s Nightclub is, now I’m only the owner of Evolution Nightclub and restaurant. And I want them to hear

my side too, because I'm a single mother and the only thing that I want is to work and do things well and help the community. It's what I have done. Thank you."

47:13: Interpreter says, in English:

- "Ok, the last thing I want to say is that, um, I feel this makes me sad what I'm going through, it's making me sick, I was the owner of the building of George's, but last year I lost that and now I'm just the owner of Evolution Nightclub. I want to say, too, that I'm a single mother, I'm just trying to work well and help the community. Thank you."

48:00 – Chair Saude closes the public hearing.

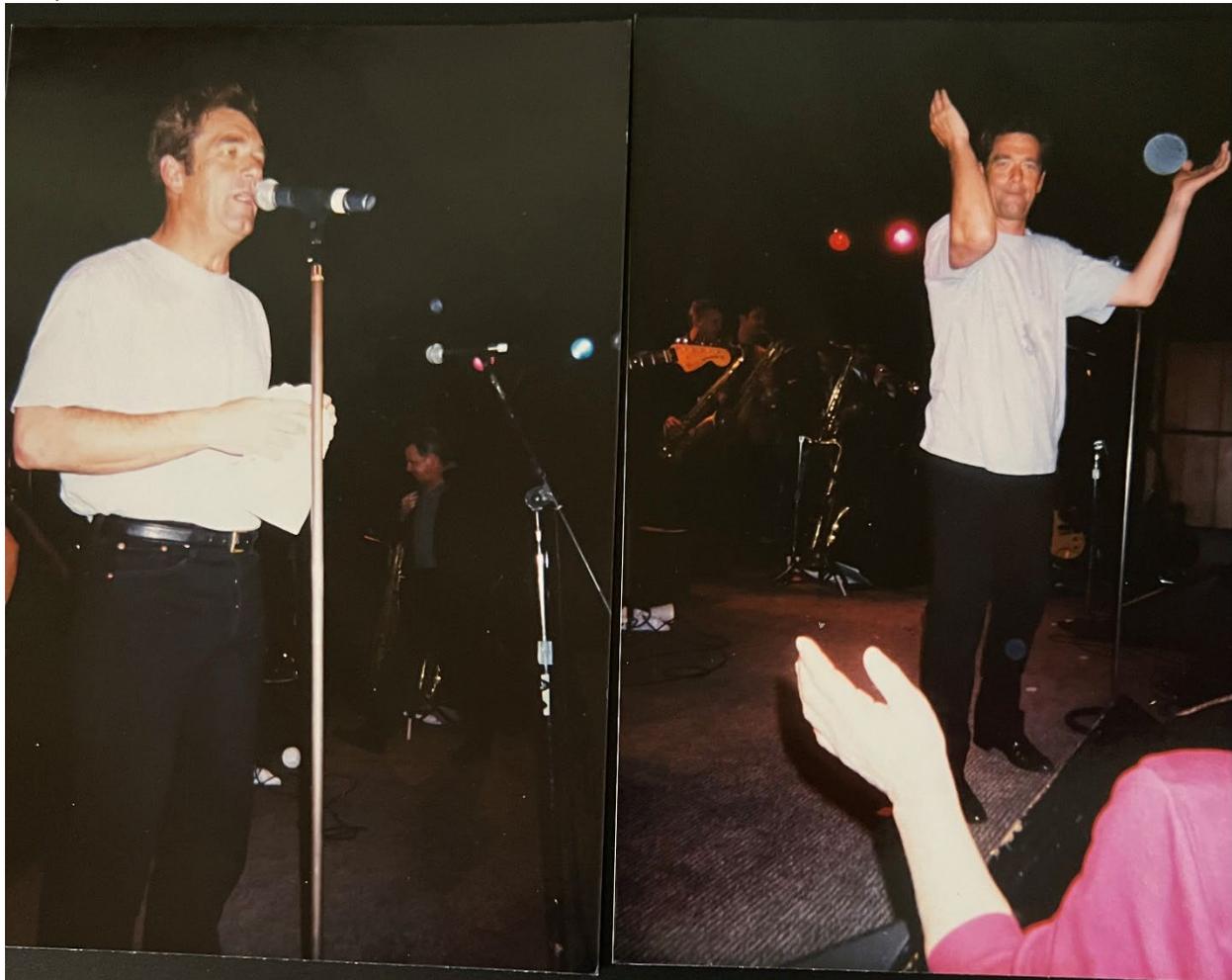
From: Craig Thomas Yates [REDACTED]
Sent: Sunday, April 16, 2023 5:38:00 PM
To: Mayor Kate <kate.colin@cityofsanrafael.org>
Subject: New George's

Hello Kate

Recognized him, he conducted last show at New George's for private invite 250 audience inclusive of myself. His beginning there at New George's, New George's historical landmark for City San Rafael and County of Marin!

We need to restore virtues of New George's as well allow for second story!

Huey Lewis





Sincerely

Craig Yates

Sent from my iPhone

Sent from my iPhone

Sent from my iPhone



Agenda Item No: 5.b
Meeting Date: May 1, 2023

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Manager’s Office, Sustainability

Prepared by: Walter Gonzalez, Management Analyst & Anna Oliva, Sustainability Fellow

City Manager Approval: _____ 

TOPIC: REUSABLE FOODWARE ORDINANCE

SUBJECT: AN ORDINANCE OF THE CITY OF SAN RAFAEL AMENDING THE SAN RAFAEL MUNICIPAL CODE TO REPEAL AND REPLACE CHAPTER 10.92 - PROHIBITION ON USE OF POLYSTYRENE FOAM DISPOSABLE FOOD PACKAGING WITH NEW CHAPTER 10.92 - REGULATION OF FOODWARE FOR RETAIL FOOD VENDORS

EXECUTIVE SUMMARY:

If adopted, the Reusable Foodware Ordinance would require the use of reusable and compostable foodware materials such as plates, bowls, cups, utensils, and trays at restaurants, grocery stores, and other food outlets. Exemptions are available for foodware with no compliant alternative. The ordinance would be enforced by the County of Marin’s Environmental Health Services Division via its health inspection program. Enforcement of the ordinance would begin on November 1, 2023, beginning with extensive outreach and education. Several Marin jurisdictions have adopted or are in the process of adopting an identical ordinance.

RECOMMENDATION:

Introduce and waive further reading of an ordinance amending the San Rafael Municipal Code to repeal and replace Chapter 10.92 - Prohibition on Use of Polystyrene Foam Disposable Food Packaging with New Chapter 10.92 - Regulation of Foodware for Retail Food Vendors.

BACKGROUND:

Foodware made of polystyrene or single-use plastic is typically not reusable, recyclable, or compostable and presents a threat to our environment and quality of life. Single-use plastic foodware makes up a significant portion of the litter in San Rafael. It clogs storm drains, arch culverts, and catch basins and ultimately gets discharged into the Bay, which results in an environmental hazard for residents and wildlife. Many types of plastic takeout containers also contain chemical additives that are known or suspected carcinogens and endocrine disruptors that can leach into food and beverages. Finally, plastics break down into microplastics, causing further harm to marine life.

_____ **FOR CITY CLERK ONLY**

File No.: _____

Council Meeting: _____

Disposition: _____

Durable, reusable foodware offers environmentally preferable alternatives to the harmful products currently used. These dishes, utensils, cups, and other foodware for dining on-site can be reused hundreds of times and create no waste. Compostable takeout containers can be processed into valuable soil amendments to support agriculture and landscaping. In addition, using reusable or compostable foodware reduces the costs of disposing of material in landfills.

In 2012, the City of San Rafael adopted Ordinance No. 1907, prohibiting the use of polystyrene foam (also known as Styrofoam) in packaging for prepared food or takeout. In 2014 the City adopted Ordinance No. 1920 prohibiting the use of single-use plastic bags at checkout in retail stores, requiring recyclable and reusable bags to be for sale, and requiring a 10-cent charge for recyclable or reusable bags offered at checkout. In 2021, the state passed AB 1276, which prohibits food vendors from providing single-use foodware accessories unless requested by the customer. State legislation is moving toward reducing single-use foodware; other similar legislation has been passed or introduced at the State level.

On May 10, 2022, the County of Marin adopted a Reusable Foodware Ordinance (RFO). The RFO requires all food facility vendors to use reusable foodware for dine-in operations and compliant compostable or recyclable foodware for take-out services. The County created this as a model ordinance for jurisdictional adoption with the goal of creating consistent regulations county-wide. County-wide adoption of the RFO would standardize requirements across Marin, ensuring consistent enforcement and minimizing confusion for consumers and food service providers. The Towns of Tiburon, San Anselmo, and Fairfax have adopted the model ordinance. The cities of Mill Valley, Novato, Larkspur, and the Town of Ross are on track to adopt the ordinance by May 2023.

The City of San Rafael explored adopting the RFO in 2021 and 2022. City staff reached out to businesses that would be affected by the ordinance and the San Rafael Chamber of Commerce, Business Improvement District, and Latino Council of Marin among others. Staff worked with City Council Sustainability Liaison Maika Llorens Gulati and Mayor Kate Colin and determined that it was not the time to adopt due to the ongoing impacts of COVID-19 and the lack of support in the business community. Concerns included financial hardship and the availability of compliant foodware due to supply chain issues at the time. There were also concerns about our smaller, immigrant-owned businesses being adversely affected without sufficient support. In addition, staff focus at that time was dedicated to compliance and implementation of new SB 1383 regulations.

ANALYSIS:

The County's deadline to introduce the model RFO is May 10, 2023, for jurisdictions to benefit from waived enforcement fees. COVID-19 emergency orders have been lifted, and most business and supply chain concerns have subsided. SB 1383 compliance is well underway. After discussing the ordinance with the County, the San Rafael Chamber of Commerce, and others, staff and the ad hoc Council Subcommittee have revisited the ordinance and are recommending adoption at this time.

If adopted, the RFO would apply to all food vendors permitted by the County of Marin to sell prepared food to the public - including restaurants, grocery stores and delis, bakeries, carry-out, quick services, farmers markets, food trucks, and any other business that requires a health permit. The ordinance would also apply to public events, City events, and gatherings where food vendors serve food.

The proposed ordinance uses the following general hierarchy of environmental impact: 1) reusables have the least impact and are required for dine-in, 2) natural-fiber compostable foodware is next best and compliant for takeout, and 3) single-use plastics, including bioplastics, are prohibited. The ordinance only allows fiber-based compostable foodware as compliant alternatives because our local compost facility at the Redwood Landfill will not accept bioplastics, given its status as an organic compost production facility.

The proposed ordinance would:

1. Require compliant compostable foodware¹ for takeout for all food vendors.
2. Require reusable foodware for dine-in.
3. Implement a \$0.25 cup itemized charge for all disposable cups.
4. Require foodware accessories such as straws and sauce packets only to be provided upon request.
5. Require food vendors to provide clearly labeled, separate waste receptacles for solid waste, recyclables, and organics.
6. Allow temporary exemptions if no compostable alternative is available.

Financial impacts to businesses in San Rafael would vary depending on the type of business, foodware types used, and amounts of materials. Generally, moving to reusable foodware for dine-in has been shown to save money for food vendors over the long run. For businesses that rely on takeout containers, the cost of compliance could increase minimally for compostable alternatives but could be included in the price of the food in most cases at a price point of just a few cents extra. The County provides information and case studies on its [RFO website](#) with more information for businesses, including a tool to find compliant types of foodware for different applications.

Implementation

The County of Marin's Environmental Health Services Division (EHS) would implement and enforce the proposed ordinance. EHS is uniquely positioned to provide proactive outreach during already scheduled business visits as part of its health inspection program. EHS will take a proactive approach by educating all retail food facility owners regularly on the requirements of the RFO and taking enforcement action only after multiple attempts to achieve compliance.

Enforcement will include written notice of non-compliance and a reasonable opportunity to correct prior to issuance of any penalty. The County may approve a temporary exemption of specific nonreusable foodware or foodware accessories should foodware or foodware accessories made of compliant compostable natural fiber not be commercially available as determined by the EHS Director or their designee. The County will maintain a list, updated annually, with foodware and/or foodware accessories deemed unavailable commercially.

The County of Marin requests jurisdictions to enter into an agreement, attached to this staff report, to define the responsibilities of the County and the City for enforcement of the ordinance. The County would act as the enforcement agency and provide updates to the City of any modifications to its ordinance or the enforcement program. The City must adopt the ordinance and pay the onboarding fee of \$33,327, which the County will waive if the City introduces the ordinance before May 10, 2023. The City Manager will enter into the agreement if the Council adopts the ordinance.

Alignment with City Priorities

The adoption of the RFO would further the City's goal of reducing single-use plastic waste, as it will address goal WR-C7 Inorganic Waste, from the Climate Action Plan 2030, calling to reduce single-use items. Reducing single-use foodware will help the City remove plastics from waterways, aiding Program C-3.6A, Water Quality Improvements from the General Plan 2040. The RFO would also work in tandem with SB 1383 by improving sorting capabilities with further education to businesses and the public.

¹ Compliant foodware must be natural-fiber compostable and be certified by the Biodegradable Products Institute. The County of Marin has a list on its EHS website listing compliant foodware that will continue to be updated as more foodware becomes commercially available.

Repeal of Polystyrene Foam Disposable Food Packaging Regulation

If adopted, the RFO would replace Ordinance No. 1907, prohibiting using polystyrene foam in packaging for prepared food or takeout. The RFO also prohibits polystyrene foam in foodware packaging materials.

COMMUNITY OUTREACH:

During the County of Marin’s drafting of the ordinance, the County conducted extensive outreach, including the development of a technical assistance and grant program. County staff developed a website with draft ordinance materials and resources, distributed community and business surveys in English and Spanish, and hosted various meetings and workshops to collect feedback from relevant stakeholders. The County also sent a letter to all food facility permit holders countywide inviting food vendors to business workshops and included background on the proposed ordinance, a link to the survey, and an informational flyer.

Throughout the ordinance development process, the County and its consultant R3 Consulting Group, hosted over 20 meetings with stakeholders from across Marin, including restaurant owners, various chamber of commerce groups (including the Council of Chambers), Latinx business leaders, disability advocates, waste haulers and processors, food inspectors, and advocacy groups. The County and R3 also provided one-on-one technical assistance to individual businesses, including calling 75 businesses and conducting 56 in-person site visits. During the site visits, businesses were informed of the ordinance features, provided outreach materials, and offered free technical assistance.

In late 2021 and early 2022, City staff conducted over 50 in-person interviews with food vendors throughout San Rafael, including Downtown, Terra Linda, and the Canal neighborhood. Staff interviewed the management and owners of restaurants, coffee shops, grocery stores, specialty drink shops, and other food vendors to hear feedback, assess support and understand better what types of materials were in use. Staff provided this feedback to the County as they developed and refined the ordinance. A summary of findings for both the County and City engagements is attached to this staff report.

City staff will continue to work with the County of Marin to aid businesses in the transition to compliance via various educational channels, as well as aiding the County in providing bilingual materials for all engagement efforts with our various businesses. County EHS has committed to prioritizing outreach and education and including information about compliance with SB 1383 requirements during the outreach and enforcement stage starting November 1, 2023.

FISCAL IMPACT:

Financial impacts of implementation to the City are expected to be minimal if the City adopts the proposed ordinance by the County’s deadline. If the City Council introduces the County’s model ordinance by May 10, 2023, EHS will take responsibility for enforcement through the food inspection program, and the one-time enforcement fees will be waived. If the City does not meet this deadline, the City will be required to pay the County a fee of \$33,327 to receive enforcement services from EHS.

OPTIONS:

1. Introduce the ordinance.
2. Do not introduce the ordinance, and direct staff to return with additional information or changes to the ordinance.

RECOMMENDED ACTION:

Introduce and waive further reading of the ordinance amending the San Rafael Municipal Code to repeal and replace Chapter 10.92 - Prohibition on Use of Polystyrene Foam Disposable Food Packaging with New Chapter 10.92 - Regulation of Foodware for Retail Food Vendors.

ATTACHMENTS:

Attachment A: Ordinance

Attachment B: Agreement with the County of Marin Regarding Enforcement of the Foodware Ordinance

Attachment C: County of Marin Outreach Summary

Attachment D: City of San Rafael Business Outreach – Key findings

Attachment E: Marin Sanitary Service Letter of Support

CITY COUNCIL OF THE CITY OF SAN RAFAEL

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN RAFAEL AMENDING
THE SAN RAFAEL MUNICIPAL CODE TO REPEAL AND
REPLACE CHAPTER 10.92 - PROHIBITION ON USE OF
POLYSTYRENE FOAM DISPOSABLE FOOD
PACKAGING WITH NEW CHAPTER 10.92 - REGULATION
OF FOODWARE FOR RETAIL FOOD VENDORS**

SECTION 1. FINDINGS

WHEREAS, the City of San Rafael has a desire and responsibility to protect the health, welfare, and safety of its residents and economy. The proliferation of non-reusable (or disposable) foodware, packaging, and plastics has contributed to street litter, ocean pollution, marine, and other wildlife harm.

WHEREAS, using reusable dishware significantly reduces the generation of unnecessary waste, and in most applications saves money, reduces disposal costs, and improves customer experience.

WHEREAS, reducing the generation of non-reusable foodware including plastic utensils, plastic cups, plastic clamshells, and plastic straws maximizes the operating life of landfills, reduces litter, and helps to lessen the economic and environmental costs of managing waste. This will also help protect San Rafael's environment from contamination and degradation making it cleaner, healthier, and safer for all residents, businesses, and visitors.

WHEREAS, non-reusable foodware threatens public health because many types contain fluorinated chemical additives are known or suspected carcinogens or endocrine disruptors. These additives are known to leach from foodware into food and beverages and into compost, soil, and water.

WHEREAS, numerous jurisdictions in the San Francisco Bay Area and the State of California have adopted legislation reducing the use of non-reusable food packaging, with local and national businesses successfully replacing single-use food packaging with affordable durable and reusable foodware or, when needed, compliant compostable fiber foodware products.

WHEREAS, on May 10, 2022, the County of Marin adopted a local Reusable Foodware Ordinance which includes language offering enforcement services via the Environmental Health Services Food Program for cities/towns adopting the same ordinance for the food vendors in their jurisdictions.

WHEREAS, the City of San Rafael wishes to utilize the enforcement services offered by the County of Marin through the County's Environmental Health Services Food Program.

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

SECTION 2. AMENDMENT OF SAN RAFAEL MUNICIPAL CODE, CHAPTER 10.92

Chapter 10.92 – Prohibition on Use of Polystyrene Foam Disposable Food Packaging of the San Rafael Municipal Code is hereby repealed in its entirety, and replaced with a new Chapter 10.92 entitled “Regulation of Foodware for Retail Food Vendors” to read in its entirety as follows:

Chapter 10.92 – Regulation of Foodware for Retail Food Vendors

10.92.010 - Purpose.

The purpose of this chapter is to prevent actual or potential public health hazards and nuisance within the city of San Rafael, Marin County, state of California, by regulating reusable foodware for dine-in operations and compliant compostable foodware for take-out services. This chapter is intended to reduce the impacts of single-use plastic takeout containers which cause forms of pollution, including contaminating recycling and composting waste streams, clogging storm drains, and discharging into the Bay becoming a threat to wildlife.

10.92.020 - Definitions.

- (a) *“BPI Certified”* means those Compostable fiber Foodware products that have been certified by the Biodegradable Products Institute (BPI) to safely and readily biodegrade in an industrial composting facility in the typical processing time. As of January 1, 2020, BPI ensures all certified products are Fluorinated Chemical free.
- (b) *“Compliant Non-Reusable Foodware”* means that an item or product intended for disposal after one use and is: (1) accepted by the County of Marin through its composting collection program as Compostable as identified by the Deputy Director of Environmental Health Services or their designee; (2) certified by either BPI Certified or other third party product certification recognized by the County of Marin through its Deputy Director of Environmental Health Services or their designee to ensure the item is free of harmful chemicals including but not limited to Fluorinated Chemicals, that may have been used in foodware manufacture, and (3) made entirely of Natural Fiber, as defined that term is below, and including but not limited to paper, wood, or sugarcane fibers.
- (c) *“Compliant Foodware Accessory”* means that an item or material is (1) accepted in Marin County composting collection program as Compostable; and is (2) made entirely of Natural Fiber.
- (d) *“Compost Facility”* means compost facilities used by the city’s current waste haulers for composting organic material.
- (e) *“Compostable”* means an item or material (1) will break down, or otherwise become part of usable compost in a safe and timely manner and (2) is Natural Fiber-based or made from other materials approved by the Deputy Director of Environmental Health Services or designee.

- (f) *“Compostable Plastics or Biodegradable Plastics”* means the disposable products developed from polylactic acid (PLA), which require a specific set of conditions to compost and/or biodegrade that do not exist in the County of Marin or the region. These products are considered non-compliant.
- (g) *“City”* means the City of San Rafael.
- (h) *“City Facility”* means any building or structure owned, leased, or operated by the City of San Rafael.
- (i) *“Customer”* means any person obtaining Prepared Food from a Food Vendor.
- (j) *“Director”* means the County of Marin Deputy Director of Environmental Health Services or their designee.
- (k) *“Disposable (or Non-Reusable) Cup”* means a beverage cup designed for single-use to serve beverages such as water, hot and cold drinks, and alcoholic beverages.
- (l) *“Effective Date”* means June 14, 2023.
- (m) *“EPS”* means expanded polystyrene, also known as Polystyrene Foam.
- (n) *“Fluorinated Chemical”* means a class of fluorinated organic compounds containing at least one (1) fully fluorinated carbon atom, also known as perfluoroalkyl (PFOA) and polyfluoroalkyl (PFOS) substances, or PFAS chemicals. California Prop 65 lists PFOA and PFOS as reproductive toxicants.
- (o) *“Foodware”* means all containers, bowls, plates, food trays, cups, lids, boxes, and other like items that are used for Prepared Foods, including without limitation, Foodware for takeout foods and/or leftovers from partially consumed meals prepared by Food Vendors.
- (p) *“Foodware Accessories”* means types of items usually provided alongside Prepared Food including but not limited to forks, spoons, knives, chopsticks, napkins, cup sleeves, food wrappers, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, toothpicks, tray-liners, and plate-liners.
- (q) *“Food Vendor”* means a food facility as that term is defined in Health & Safety Code section 113789, or its successor, including but not limited to a restaurant, bar, grocery store, delicatessen, bakery, food service establishment (carry out, quick service, full-service), food truck, itinerant restaurant, pushcart, farmers market, caterer, microenterprise home kitchen operation, or cottage food operation, that sells Prepared Food to be consumed on and/or off the premises located or operating within the city, except that for purposes of this ordinance the term “food vendor” shall not include a public or private school cafeteria.
- (r) *“Natural Fiber”* means a plant-based, non-synthetic fiber, including but not limited to paper, wood, bamboo, palm leaf, wheat straw, or sugarcane. Natural Fiber does not include plastic of any kind.
- (s) *“On Request”* means that only at the request of a customer shall the compliant product be provided.

- (t) *“Polystyrene Foam”* means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene Foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, coolers, packing peanuts, and egg cartons.
- (u) *“Prepared Food”* means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises of the Food Vendor and includes Takeout Food. For the purposes of this chapter, Prepared Food does not include raw, butchered meats, fish and/or poultry, which are sold from a butcher case or similar appliance.
- (v) *“Reusable or Durable”* Foodware and Foodware Accessories, including plates, bowls, cups, jars, trays, glasses, straws, stirrers, condiment cups, utensils, etc. that are manufactured of durable materials and specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and are safe for washing and sanitizing according to applicable regulations.
- (w) *“Takeout Food”* means food or beverages requiring no further preparation to be consumed and which generally are purchased to be consumed off the premises of the Food Vendor.

10.92.030 - Dine-in Foodware regulations.

Food Vendors within the city:

- (a) Shall sell or provide food and beverages for consumption on the premises using Reusable Foodware and utensils (forks, spoons, knives, chopsticks) except as otherwise provided in section 10.92.040(b);
- (b) May provide all other Compliant Foodware Accessories, which are made of Natural Fibers, including napkins, food wrappers, straws, stirrers, cocktail sticks, toothpicks, tray-liners, and plate-liners;
- (c) Shall offer condiments in reusable containers or dispensers rather than pre-packaged single-use condiment packets; and
- (d) Food Vendors will have until November 10, 2023, before enforcement of this regulation begins.

10.92.040 - Takeout Foodware regulations.

Food Vendors within the city selling Takeout Food for consumption off premises:

- (a) Shall provide takeout food in Reusable Foodware, or compostable Natural Fiber Compliant Foodware, or items composed entirely of glass or aluminum;

- (b) Shall provide all other Compliant Foodware Accessories, which are made from Natural Fibers, including napkins, cup sleeves, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, and toothpicks only On Request or at self-serve stations;
- (c) Takeout food bags shall be Reusable, paper, or comply with Chapter 10.94 (regulations of single use carry out bags);
- (d) Takeout Food delivery services shall provide the option for Compliant Foodware Accessories (forks, spoons, knives, chopsticks) and single-use condiments only On Request. A Food Vendor or a Takeout Food delivery service may include lids, spill plugs, and sleeves without request for Non-Reusable Cups for delivery; and
- (e) Food Vendors shall provide plastic straws only On Request, to accommodate any person's access needs.

10.92.050 - City facilities and city-sponsored events.

The following regulations apply to Food Vendors at city facilities, and city-sponsored events:

- (a) Food Vendors shall use Reusable Foodware and Compliant Foodware Accessories at city facilities and city-sponsored events.
- (b) The city shall prohibit the use of EPS/Polystyrene Foam and Non-Reusable plastic foodware by Food Vendors at all city facilities. Prohibited products include, but are not limited to, EPS/Polystyrene Foam and Non-Reusable plastic food containers, straws, bowls, plates, trays, utensils, clamshells, and cups which are not intended for reuse, on or in which any foods or beverages are placed or packaged.
- (c) As of the Effective Date, all city departments that hold contracts, lease agreements, permits, or other agreements that involve food service shall incorporate this prohibition into all new and renewed contracts, leases, permits, agreements, etc.
- (d) The use or distribution of EPS/Polystyrene Foam, and Non-Reusable plastic foodware by Food Vendors at special events at city facilities that are sponsored or co-sponsored by the city shall be prohibited. This prohibition shall apply to the event organizers, agents of the event organizers, event vendors, and any other party (including non-profit organizations) who have an agreement with one or more of the co-sponsors of the event to sell goods or beverages at the event or otherwise provide an event-related service.
- (e) Written agreements with Food Vendors, including non-profit organizations, to sell food or beverages at an event that is sponsored or co-sponsored by the city, shall specifically prohibit the usage and distribution of EPS/Polystyrene Foam and Non-Reusable plastic foodware.

10.92.060 - Non-Reusable cup charge.

- (a) All Food Vendors shall charge customers twenty-five cents (\$0.25) at the point of sale for every Non-Reusable cup provided unless they are exempt under this chapter.
- (b) Income from the Non-Reusable cup charge shall be retained by the Food Vendor.

- (c) Charges for Non-Reusable cups shall be identified separately on any post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on media such as menus, ordering platforms, and/or menu boards. Customers placing orders by telephone shall be informed verbally of Non-Reusable cup charges.
- (d) All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to section 10072 of the California Welfare and Institutions Code, and individuals with disabilities shall be exempt from the Non-Reusable cup charge.

10.92.070 - Separate waste receptacles required.

- (a) All Food Vendors who provide solid waste containers for customer use, must provide separate receptacles for solid waste, recyclables, and organics. Receptacles shall be colored black or grey for garbage, blue for recycling, and green for compost/organics.
- (b) To the extent possible given space constraints, all receptacles for solid waste, recyclables, and organics should be placed adjacent to one another.
- (c) Graphic-rich signage must be posted on or above each receptacle following the waste hauler's guidelines.

10.92.080 - Exemptions.

- (a) Entities packaging Prepared Foods outside Marin County are exempt from the provisions of this chapter; provided, however, such entities are urged to follow the provisions of this chapter.
- (b) Non-Reusable Foodware and Foodware Accessories composed entirely of aluminum are exempt from the provisions of this chapter.
- (c) Should Foodware or Foodware Accessories made of Compliant compostable Natural Fiber not be commercially available, as determined by the Director or their designee, the County of Marin may approve temporary exemption of specific nonreusable Foodware or Foodware Accessories items until they are made commercially available. The County of Marin shall maintain a list, updated annually, with Foodware or Foodware Accessories deemed not available commercially.
- (d) For the immediate preservation of the public peace, health, or safety due to an emergency or natural disaster, the city council, or designee, may exempt Food Vendors, persons operating city facilities and agents, contractors, and vendors doing business with the city, from the provisions of this chapter.

10.92.090 - Enforcement.

- (a) Compliance with this ordinance is required as of the Effective Date.

- (b) Enforcement shall include written notice of non-compliance and a reasonable opportunity to correct, prior to issuance of any penalty.
- (c) It is found and determined to by the city council that the public interest, health, safety, and welfare of the residents of the city require that the Marin County Environmental Health Services Division be designated as the enforcement agency of and within city and as such enforcement agency it is authorized with the enforcement of the provisions of this chapter and the Marin County Environmental Health Services division is vested, for the purposes of enforcing this chapter within city, with all of the jurisdiction and powers vested in or available to said division by this Chapter and said health and safety code.
- (d) Enforcement of this chapter will begin on November 10, 2023. Enforcement will be then delegated to the County of Marin's Environmental Health Services. Enforcement will progress on the regular inspection schedule of all covered Food Vendors in the County as described in this chapter.

10.92.100 - Violations

On behalf of the city, the County of Marin may choose to undertake the following legal actions to correct and/or abate nuisances and violations of this ordinance. The Director of Environmental Health Services or their designee is authorized to promulgate regulations and take any and all other actions reasonable and necessary to enforce the provisions of this Chapter, including but not limited to, entering the premises of any food provider during regular business hours to verify compliance, and by the issuance of administrative citations. The remedies and penalties provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

- (a) **Administrative Citations.**
Administrative citations may be issued for violations of this Chapter at the discretion of the Director. The issuance of an administrative citation under this chapter shall not supersede or limit the remedies provided elsewhere in this Code or California law, including other administrative citation remedies. Issuance of an administrative citation may be exercised in place of, but shall not be considered a waiver of, the use of any other available enforcement remedy.
- (b) **Process and Service of Citation.**
 - 1. Prior to issuance of citation penalty, the County of Marin shall issue a violation warning letter to the facility operator and provide the facility operator thirty (30) days to correct the violation(s).
 - 2. The violation warning letter and/or citation shall be mailed to the food facility operator named in the facility's permit.
 - 3. The failure of any interested person to receive the violation warning letter and/or citation shall not affect the validity of the proceedings.
- (c) **Administrative Citation Penalty Schedule.**
Following the violation warning letter described in Section 10.92.100(b)(1) above and thirty (30) day cure period, if the violations remains, the County of Marin may issue the following administrative penalties:
 - 1. A fine not exceeding \$100.00 for the first violation;
 - 2. A fine not exceeding \$200.00 for a second violation of the same Code provision within one year; and

3. A fine not exceeding \$500.00 for each additional violation in excess of two, of the same Code provision within one year.

(d) Response to Citation Penalty

Following receipt of citation penalty, food facility operator shall have thirty (30) days to pay the fine as indicated on the citation, or to request a waiver of payment of the penalty due to unique undue hardship. This waiver may be granted by the Director upon demonstration by a food facility operator to the satisfaction of the Director that strict application of the requirements would cause undue hardship. An “undue hardship” includes but is not limited to the following: 1. A situation unique to the food facility where a suitable alternative that conforms with the requirements of this chapter does not exist for a specific application. 2. Imposing the provisions of this Chapter would cause significant economic hardship. “Significant economic hardship” may be based on, but not limited to, demonstrating that suitable Foodware or Foodware Accessories made of Compliant compostable Natural Fiber is not available at a commercially reasonable price and the additional cost associated with providing the Compliant Foodware or Foodware is particularly burdensome to the food facility based on the type of operation(s) affected, the overall size of the business/operation, the number, type and location of its facilities, the impact on the overall financial resources of the food facility, and other factors. Reasonable added cost for a suitable item as compared to a similar item that the food facility can no longer use shall not by itself constitute adequate grounds to support an exemption for such item. In determining whether a significant economic hardship has been established, the Director or designee shall consider the following information: ability of the food facility to recover the additional expense by increasing its prices; the availability of tax credits and deductions; outside funding; and other options.

(e) Nonpayment of Citation for More than One Year Deemed Nuisance.

Nonpayment of any assessed violation for longer than one year shall constitute a nuisance and be subject to the nuisance abatement procedures in Marin County Code Chapter 1.05, including payment of civil penalties of up to \$2,500 per violation per day and enforcement and other abatement costs incurred by the County of Marin.

SECTION 3. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the city. The city council hereby finds that under section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. It also finds the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION 4: SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases, and the remaining portions of this ordinance shall continue in full force and effect unless amended or modified by the city.

SECTION 5: EFFECTIVE DATE AND PUBLICATION

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published and circulated in the City of San Rafael and shall be in

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

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.

THE FOREGOING ORDINANCE was first read and introduced at a regular meeting of the San Rafael City Council on the 1st day of May 2023, and was passed and adopted at a regular meeting of the San Rafael City Council on the 15th day of May 2023 by the following vote, to wit:

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

Kate Colin, Mayor

Attest:

LINDSAY LARA, City Clerk

DRAFT

**AGREEMENT BETWEEN
COUNTY OF MARIN AND CITY OF SAN RAFAEL
REGARDING ENFORCEMENT OF THE FOODWARE ORDINANCE**

This AGREEMENT (AGREEMENT), made and entered into this _____ day of _____, 2023, by and between the COUNTY OF MARIN, hereinafter referred to as “COUNTY”, and CITY OF SAN RAFAEL, hereinafter referred to as “CITY”, both in the State of California, collectively the “PARTIES”, and individually a “PARTY”, for participation in the County Environmental Health Services (EHS) Reusable Foodware Ordinance Implementation and Enforcement Program (the “PROGRAM”).

SECTION 1: RECITALS

- 1.1 PARTIES have the mutual desire and responsibility to protect the health, welfare, and safety of its citizens and economy. The proliferation of non-reusable (or disposable) foodware, packaging, and plastics has contributed to street litter, ocean pollution, marine, and other wildlife harm along with the greenhouse gas emissions from the production of the disposable materials.
- 1.2 Using reusable foodware significantly reduces the generation of unnecessary waste, and in most applications saves money, reduces disposal costs, and improves customer experience.
- 1.3 Non-reusable foodware threatens public health because many types contain fluorinated chemical additives that are known or suspected carcinogens or endocrine disruptors. These additives are known to leach from foodware into the food and beverages being consumed, and into compost, soil, and water.
- 1.4 On May 10, 2022, COUNTY adopted a local Reusable Foodware Ordinance, and which includes language offering enforcement services via COUNTY’S Environmental Health Services for cities and towns in the County of Marin adopting substantially the same ordinance for the food vendors in their jurisdictions.
- 1.5 CITY (has/is) adopting a local Reusable Foodware Ordinance and wishes to utilize the enforcement services offered by COUNTY through COUNTY’S Environmental Health Services.
- 1.6 CITY and COUNTY have determined that the public interest would be best served by the performance of these functions as provided in the Reusable Foodware Ordinance and as provided in this AGREEMENT.

SECTION 2: PURPOSE OF THE AGREEMENT

This AGREEMENT is entered into by and between the PARTIES to define the responsibilities of the PARTIES for the implementation and enforcement of Reusable Foodware Regulations as defined in CITY’S Municipal Code Chapter 10.92 within the City of San Rafael.

SECTION 3: PROGRAM DEFINITION AND SCOPE

COUNTY shall act as the enforcement agency for the Reusable Foodware Ordinance, as detailed in CITY'S Municipal Code Chapter 10.92. As detailed in CITY'S Municipal Code Chapter 10.92 enforcement of CITY's Reusable Foodware Regulations will begin on November 10, 2023.

CITY participation in the PROGRAM is encouraged but completely voluntary. However, development and implementation of such a program requires staff time and resources which would be exacerbated if jurisdictions joined the PROGRAM piecemeal over the course of several years. To address these potential cost impacts, there will be a one-time fee to join the PROGRAM. However, to encourage and incentivize jurisdictions to join during the initial development phase, COUNTY will waive the on-boarding fee for any jurisdiction that opts into the program within twelve (12) months of the COUNTY'S adoption of the ordinance.

The one-time on-boarding fee was calculated based on the time and resources needed to revise COUNTY'S EHS Division systems to include additional businesses after the initial development period (estimated as 0.5 hours per food facility). The fee is scaled based on the number of food facility operators within the jurisdiction (see Table 1).

Table 1: Environmental Health Division One-Time Enforcement Program Fee for Reusable Foodware Ordinance

Jurisdiction	Number of Food Facilities	One-Time On-Boarding Fee
Belvedere	3	\$311
Corte Madera	58	\$6,003
Fairfax	45	\$4,658
Larkspur	49	\$5,072
Mill Valley	70	\$7,245
Novato	198	\$20,493
Ross	6	\$621
San Anselmo	56	\$5,796
San Rafael	322	\$33,327
Sausalito	70	\$7,245
Tiburon	31	\$3,209

If jurisdictions adopt or introduce the ordinance after the twelve (12) month period following COUNTY adoption, the EHS Division can still provide enforcement, but the fee would no longer be waived for those jurisdictions.

SECTION 4: RESPONSIBILITIES

4.1 CITY SHALL:

- a. CITY has or shall adopt a Reusable Foodware Ordinance in compliance with and mirroring the Reusable Foodware Ordinance adopted by the COUNTY on May 10, 2022.
- b. Pay the onboarding fee as detailed in Section 4 above within 30 (thirty) days of written request for payment by COUNTY, unless otherwise waived.

4.2 COUNTY SHALL:

- a. Act as enforcement agency for the Reusable Foodware Ordinance for the CITY as detailed in its Reusable Foodware Ordinance and in this AGREEMENT.
- b. Provide updates to CITY of any modifications to its Ordinance or modifications to the enforcement PROGRAM.

SECTION 5: TERM OF AGREEMENT AND TERMINATION.

5.1 This AGREEMENT shall remain in force unless terminated by either PARTY. Either PARTY may terminate this AGREEMENT by giving three (3) months written notice to the other PARTY.

5.2 In the event of termination of this AGREEMENT, any amendments may also be terminated in accordance with the termination provisions contained in such agreements.

5.3 If CITY amends its Reusable Foodware Ordinance which, in the COUNTY'S sole determination and discretion, does not comport with the COUNTY's Reusable Foodware Ordinance and PROGRAM, COUNTY may terminate this AGREEMENT at any time.

SECTION 6: COMPLIANCE WITH LAW.

In the performance of its obligations pursuant to this AGREEMENT, PARTIES shall comply with all applicable federal, state and local laws, ordinances and regulations in any manner affecting the performance of this AGREEMENT, and must at all times comply with such laws, ordinances, and regulations as they may be amended from time to time.

SECTION 7. INDEMNIFICATION AND GENERAL LIABILITY

CITY shall indemnify, hold harmless, release and defend COUNTY, its officers, agents and employees from any and all liability, actions, claims, damages, costs or expenses, including attorneys' fees and the costs and expenses of suit which may be asserted by any complainant, arising in any respect, out of CITY's negligent or intentional acts or omissions arising under or related to this AGREEMENT.

COUNTY shall indemnify, hold harmless, release, and defend CITY, its officers, agents, and employees from any and all liability, actions, claims, damages, costs or expenses, including attorneys' fees and the costs and expenses of suit which may be asserted by any complainant, arising in any respect, out of COUNTY's negligent or intentional acts or omissions arising under or related to this AGREEMENT.

SECTION 8. INSURANCE.

Each PARTY, at its sole cost and expense shall maintain insurance or shall self-insure its activities in connection with this AGREEMENT and obtain, keep in force, and maintain insurance or equivalent programs or self-insurance for general liability, worker's compensation, property, professional liability, environmental liability, and business automobile liability adequate to cover its potential liabilities hereunder. Each PARTY agrees to provide the other PARTY thirty (30) days advance written notice of any cancellation, termination, or lapse of any of the insurance or self-insurance coverage. Failure to maintain insurance as required in this AGREEMENT is a material breach of this AGREEMENT and may be grounds for termination of this AGREEMENT.

SECTION 9. OBLIGATIONS.

Termination of this AGREEMENT will not invalidate the indemnification obligations of the PARTIES and/or obligations properly incurred by the PARTIES before the termination date to the extent those obligations cannot be canceled.

SECTION 10. INTEGRATION.

This AGREEMENT represents the entire AGREEMENT of the PARTIES with respect to the subject matter thereof. No representations, warranties, inducements or oral agreements have been made by any of the PARTIES except as expressly set forth herein.

SECTION 11. AMENDMENT.

Except as otherwise provided herein, this AGREEMENT may not be changed, modified or rescinded except in writing and approved by all PARTIES hereto.

SECTION 12. INDEPENDENT AGENCY.

Each PARTY performs the terms and conditions of this AGREEMENT as an entity independent of the other PARTY. Each PARTY's agents or employees shall not be agents or employees of the other PARTY to this AGREEMENT.

SECTION 13. ASSIGNMENT.

This AGREEMENT may not be assigned, transferred, hypothecated, or pledged by any PARTY without the express written consent of the other PARTY.

SECTION 14. BINDING ON SUCCESSORS, ASSIGNEES OR TRANSFEREES.

This AGREEMENT shall be binding upon the successor(s), assignee(s) or transferee(s) of the PARTIES. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this AGREEMENT other than as provided above.

SECTION 15. SEVERABILITY.

Should any part of this AGREEMENT be declared unconstitutional, invalid, or beyond the authority of either PARTY to enter into or carry out, such decisions shall not affect the validity of the remainder of this AGREEMENT, which shall continue in full force and effect provided that the remainder of this AGREEMENT can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the PARTIES.

SECTION 16. SUCCESSORS; NO THIRD-PARTY BENEFICIARIES.

Nothing in this AGREEMENT, whether express or implied, shall be construed to give any person or entity (other than the PARTIES hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this AGREEMENT or any covenants, conditions or provisions contained herein.

SECTION 17. CONTACTS AND NOTICES.

All notices under this AGREEMENT shall be in writing (unless otherwise specified) delivered to the PARTIES by hand, by commercial courier service, or by United States mail, postage prepaid, addressed to the PARTIES at the addresses set forth below or such other addresses as the PARTIES may designate by notice.

For COUNTY:

Greg Pirie, Deputy Director, Environmental Health Services
County of Marin – Community Development Agency
3501 Civic Center Drive, Room 236
San Rafael, CA 94903

For CITY:

City Manager
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

SECTION 18. HEADINGS.

The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this AGREEMENT. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the language of the section or paragraph shall control and govern in the construction of this AGREEMENT.

SECTION 19. WAIVER.

Waiver by either PARTY to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition or covenant. Waiver by either PARTY to any breach of the provisions of this MOU shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT.

SECTION 20. GOVERNING LAW.

This AGREEMENT shall be governed and construed under California law. If a dispute occurs or claim arising out of this AGREEMENT, venue shall be in Marin County.

SECTION 21. NO PRESUMPTION AGAINST DRAFTER.

Each PARTY had an opportunity to consult with an attorney in reviewing and drafting this AGREEMENT. Any uncertainty or ambiguity shall not be construed for or against any PARTY based on attribution of drafting to any PARTY.

SECTION 22. COUNTERPARTS; ELECTRONIC SIGNATURES.

This AGREEMENT may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The PARTIES acknowledge and agree that this AGREEMENT may be executed by electronic signature, which shall be construed as an original signature for all purposes and shall have the same force and effect as an original signature.

TO EFFECTUATE THIS AGREEMENT, the PARTIES have caused their duly authorized representatives to execute this AGREEMENT on the dates set forth below.

COUNTY:

CITY:

By: _____

By: _____

Print Name

Print Name

Print Title

Print Title

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By:

By:

COUNTY Counsel

CITY Attorney

DRAFT

Reusable Foodware Ordinance: Outreach Update

November 19, 2021

The County of Marin has continued its efforts to develop a Reusable Foodware Ordinance and provide outreach to residents and businesses across Marin County. The goal of the Reusable Foodware Ordinance is a consistent, countywide ordinance to be adopted by Marin jurisdictions. If the model ordinance is adopted by all Marin cities and towns, the County will conduct enforcement on behalf of the cities and towns through its food service inspectors. Various outreach efforts were conducted by the County to garner feedback from residents and businesses in Marin County. Highlights from each of these efforts are listed below.

Food Vendor Grant Program and Technical Assistance	75 businesses called and 56 site visits completed across all jurisdictions. During site visits, businesses were informed of the ordinance features, provided outreach materials, and offered the opportunity to apply for the grant program and receive free technical assistance. 6 out of the 40 businesses visited were provided in-language Spanish assistance.
	11 businesses have been approved and are currently in the grant program. 3 out of the 6 Spanish speaking businesses are interested and have applied for the grant.
Food Vendor Survey Results <i>(provided in English + Spanish)</i>	97 responses
	Vendors are mostly concerned with cost, supply, and customer behavior change
	Vendors see the biggest benefits of this ordinance as less landfilled waste, reduced waste overall, and having more sustainable options for customers
	Over 50% of businesses support a \$0.25 charge
	68% do not think it would be difficult to switch to all reusables for dine in (of which 18% would want help from the County or cities)
Resident Survey Results <i>(provided in English + Spanish)</i>	338 responses
	95% are in favor of reducing plastic materials from going to landfill
	91% support Marin County requiring all food vendors use foodware that is either reusable or compostable
	79% support a County-wide cup charge
Business Workshop Meeting	Held on 9/15/2021 with over 45 attendees. Spanish translation services were offered at the meeting. The meeting was recorded and is publicly available on the County's website.
Resident Community Meeting	Held on 7/14/2021 with over 28 attendees. The meeting was recorded and is publicly available on the County's website.
20+ Meetings with Stakeholders	Stakeholders from across the County, including restaurant owners, various chamber of commerce groups (including the Council of Chambers), Latinx business leaders, disability advocates, haulers and processors, food inspectors, advocacy groups, etc.
1 Letter	Sent to all food vendors with information about the proposed ordinance, survey link, outreach flyer, and invitation to attend the business workshop meeting.
33 Public Comments	County received 33 public comments on the publicly available draft ordinance. Public comments on the ordinance have been accepted since February 2020.

The County Board of Supervisors will consider the ordinance in February 2022. Marin cities and towns must adopt the ordinance within 6 months of County adoption if they wish to benefit from County enforcement of the ordinance. Food Vendors covered by the ordinance would have 18 months after the Board of Supervisors adopt the ordinance before any enforcement would begin.

City of San Rafael 2021 Business Outreach– Key Findings

Over 50 surveys were conducted in fall 2021 throughout San Rafael, including in-person engagements at restaurants and other food service providers in the Canal, downtown, and in Terra Linda. A summary of findings can be found below.

Feedback	Responses
<p>Compostables are expensive</p>	<ul style="list-style-type: none"> • Depending on the product, compostables on average are an additional \$0.1-\$0.25 per unit, which can be included in the cost of the order. In some cases, compostable products are the same or slightly less expensive than plastic. • The County has created a purchasing guide for compliant takeout products. • The County is providing grants of up to \$599.00 to help businesses with the transition to reusable and compostable foodware. • Exemptions are available for items with no current alternatives. (see Marin County Foodware Ordinance Temporary Exempt Products List)
<p>\$0.25 cup charge only being applied to certain businesses could create unfair competition</p>	<ul style="list-style-type: none"> • Almost all jurisdictions in Marin are adopting the Model Ordinance, ensuring fair competition. • The ordinance will require that all cup charges be itemized, across all food vendor types which will reduce competition concerns. • Adequate enforcement: Reliable enforcement across the City and County for all businesses to implement the charge on an itemized receipt.
<p>Additional \$0.25 cup charge may disproportionately affect vulnerable communities</p>	<ul style="list-style-type: none"> • There are exemptions for WIC, EBT, and individuals with disabilities. • Customers can bring their own cups.
<p>\$0.25 cup charge may not encourage reuse</p>	<ul style="list-style-type: none"> • Provide point-of-sale signage for customers to best understand the charge and why it is being implemented. • Numerous behavior-change studies cite the success of charges like this.
<p>Timing (COVID-19)</p>	<ul style="list-style-type: none"> • COVID-19 restrictions and emergency order have been rescinded

<p>Businesses are concerned with the performance of compostable foodware</p>	<ul style="list-style-type: none"> • The County has established a list of temporary exempt products for items that don't perform well. (ex: cups, hot bowls, and lids) • Takeout food container manufacturers are developing new products based on this new demand. • Encourage customers to bring reusables (when applicable). • Businesses can establish reusable container offerings or partner with third party reusable providers such as Sparkl Reusables.
<p>Health concerns around encouraging customers to bring their own containers</p>	<ul style="list-style-type: none"> • State Assembly Bill 619 allows customers to bring their own reusables and limits liability for food vendors. • The County provided a "Best Practices for Reusable Products Guide" with health and safety guidelines.
<p>Supply Chain Concerns</p>	<ul style="list-style-type: none"> • As demand increases, more suppliers are developing compliant materials, which will bring down costs. • Exemptions are available for items with no feasible alternative. (see Marin County Foodware Ordinance Temporary Exempt Products List)
<p>Branding/Marketing for take-out containers</p>	<ul style="list-style-type: none"> • As the fiber-based product industry grows there will be more options for those who wish to have branded takeout containers.

Additional Findings from Outreach

Observation	Options
<p>Businesses need one-on-one assistance to comply with the ordinance.</p>	<p>The County has partnered with a consultant team to develop resources and provide direct outreach, education, and technical assistance to food facility operators.</p>
<p>Need for business staff education on compliance and waste management.</p>	<p>Education and Outreach for SB 1383 can, and will, be paired with Ordinance outreach and education.</p>
<p>There is a need for clear signage for customers and residents to prevent contamination in the waste stream.</p>	<p>The County has provided several forms of outreach materials and sign resources for Food Facilities. In addition, Marin Sanitary Service offers a variety of signage on their website for print.</p>
<p>Enforcement must be consistent across the city and county to reduce competition between local businesses.</p>	<p>The County is offering Countywide enforcement for all Marin jurisdictions that have adopted the ordinance, including San Rafael.</p>



March 22, 2023

Re: Marin County Reusable Foodware Ordinance; good for our environment, our communities, and our children.

To whom it may concern,

As waste haulers in Marin County, we are impacted daily by food packaging. This packaging often ends up in the recycling bin or the compost bin when it should not be. Here it contaminates truly recyclable material and hinders our ability to recover desired items. As businesses anchored in resource recovery, we support the County's efforts to reduce waste and are available as a resource for city staff and officials, members of the public and businesses with questions about the Reusable Foodware Ordinance.

A list of truly compostable and recyclable items has been developed as part of the roll-out of the ordinance and is available as a resource. It focuses on wood-based/paper compostable foodware, and aluminum which is infinitely recyclable. Much of the current plastic takeout containers are not recyclable. All plastics are not recyclable and this creates confusion among consumers. Only 9% of all plastics ever made have been recycled in the world. Hoping to recycle plastics will not solve our waste issue because most plastic packaging has no recycling market.

The ordinance addresses approved, recoverable packaging materials. In addition, it also addresses managing discarded materials. Containers and signage must be provided to ensure materials are placed in the proper receptacles. Having an approved list of containers will help reduce confusion on where these items can go. For the green bin for example, it is imperative that plastic lined paper and "compostable" plastics are not put into the green carts which are hauled to WM Earthcare in Novato. Having non-approved items in the material we send them can jeopardize our ability to continue hauling any compostable materials to this local facility. These standards ensure they can produce high quality compost certified for organic agriculture. This organic compost is used by local farmers who bring their food to our farmers markets, contributing to a circular economy.

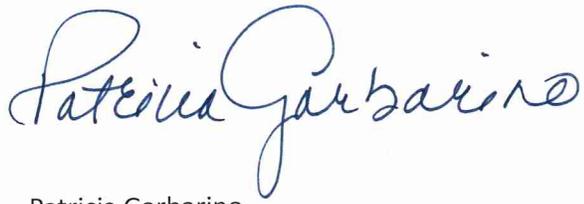
The ordinance has been approved by the County Board of Supervisors and is currently being discussed in the cities and towns in Marin County. Public workshops and council meetings provide an opportunity for residents and businesses to ask important questions about this new ordinance.

Although the requirements may look daunting, many food establishments are already close to complying! We have information and resources available to help you set up your compliant programs. We can also provide additional understanding as to the negative effects of poor foodware packaging. In

addition to local efforts to improve foodware packaging the state has also implemented regulation through SB 54. This new law will have a positive impact on reusable foodware ordinances as the law is designed to support the development of more sustainable products, increasing availability, and making these products more cost-effective.

We encourage all communities to review and adopt this important legislation which will help ensure these precious materials are recovered and continue to provide use and utility to Marin County.

Signed,



Patricia Garbarino

President

Marin Sanitary Service



Gene Della Zoppa

Managing Partner and Vice President

Mill Valley Refuse



Fred Stemmler

Senior General Manager

Recology



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development Department

Prepared by: Alicia M Giudice, AICP
Community Development Director

City Manager Approval: 

TOPIC: BIOMARIN DEVELOPMENT AGREEMENT

SUBJECT: ACCEPT THE 3rd ANNIVERSARY ANNUAL REPORT FOR THE EXECUTED DEVELOPMENT AGREEMENT (ORDINANCE NO. 1982) BETWEEN BIOMARIN PHARMACEUTICAL AND THE CITY OF SAN RAFAEL FOR THE DEVELOPMENT OF AN EXPANDED SAN RAFAEL CORPORATE CENTER (750-790 LINDARO STREET AND 781-791 LINCOLN AVENUE AND 999 3RD STREET); CASE NO.: P23-004

RECOMMENDATION:

Accept the 3rd Anniversary Annual Report for the Executed Development Agreement (Ordinance No. 1982) Between BioMarin Pharmaceutical and the City of San Rafael for the Development of An Expanded San Rafael Corporate Center (750-790 Lindaro Street and 781-791 Lincoln Avenue and 999 3rd Street).

EXECUTIVE SUMMARY:

On [March 23, 2020](#), the City Council adopted Ordinance No. 1982 approving a Development Agreement (DA) between BioMarin Pharmaceutical (BioMarin) and the City of San Rafael. This DA permits the phased development and expansion of the San Rafael Corporate Center and the 999 3rd Street property with laboratory and research and development (R&D) buildings. The DA vests the land use and development entitlements/approvals for 10 years.

The procedures and requirements for reviewing and approving DAs are prescribed by City Resolution No. 6089. The procedures require periodic review to ensure that the project is proceeding in good faith and that the terms of the DA are being met. Ordinance No. 1982 specifically requires an annual review for this DA. This report presents the 3rd anniversary annual review, and a public hearing is required to solicit comments on the review of the DA. BioMarin has submitted an Annual Report (Attachment 1) which demonstrates progress and compliance with the terms of the DA.

BACKGROUND:

In 2012, BioMarin purchased the San Rafael Corporate Center (SRCC), a 15.54-acre campus of office buildings located south of Second Street. Since the initial purchase, BioMarin has built-out the original campus of buildings (five office buildings and two parking garages) and now occupies the campus with corporate office, R&D, and laboratory uses. In 2015, BioMarin was granted entitlements to expand the SRCC campus to develop a sixth office/lab building on the surface parking lot west of Lindaro Street

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

(755 Lindaro Street), and to expand the existing parking garage located east of Lincoln Avenue. This expansion has not been built.

In 2018, BioMarin purchased the three-acre site at 999 3rd Street, formerly owned and occupied by PG&E. This property, which also fronts on Lindaro Street and 2nd Street is contiguous to the SRCC. This three-acre site previously underwent a two-phased soils remediation project administered by both PG&E and BioMarin. The fully remediated site is now vacant and paved with asphalt.

BioMarin & Vivalon/EDEN Housing Development Approvals

On March 23, 2020, the City Council approved entitlements to redevelop the 999 3rd Street site and append this site to the SRCC for an expanded campus. BioMarin intends to develop the properties over a phased period to maintain its corporate campus and increase laboratory and research and development space. The City Council actions for this approval included the following:

- Certification of a Final Environmental Impact Report (FEIR).
- Expansion of the Planned Development (PD) zoning District adopted for the SRCC to encompass/incorporate the 999 3rd St. property. Within the expanded PD District, a General Plan Amendment was granted to allow for a new floor area ratio allowance (development intensity) to govern the expanded SRCC as one project site. The approvals also extended and incorporated the previously approved expansion of the SRCC campus, which, as noted above is the development of an office/lab building at 755 Lindaro Street and expanded parking garage.
- Approval of a Master Use Permit, Environmental and Design Review Permit, and Tentative Parcel Map. The Vesting Parcel Map divides the three-acre, 999 3rd Street into two parcels: a large parcel (116,680 square feet), and a small parcel (15,000 square feet) at the northwestern portion of the site.
- Approval of most of the 999 3rd Street site (large parcel reference above) for development of the expanded BioMarin campus with 207,000 sq. ft. of laboratory/research and development (R&D) and office space (split about equally between the two uses). This development consists of two, 72-ft tall, four-story buildings. The ground floor is designed to provide amenities to support the BioMarin campus, which may include lobbies; an auditorium; conference rooms; a small café; and dining space. A useable roof top deck (above the ground floor between the two buildings) is proposed for employee use as noted in the concept drawing package.
- Approval of a senior center and senior housing on northwest portion of the property (15,000 square foot small parcel reference above) was allocated to Vivalon (formerly Whistlestop) and EDEN Housing was approved for development of a six-story building for a new senior center and senior housing (67 low-income rental units). The expanded PD District does not apply to this parcel.
- Approval of a Development Agreement (DA) (adopted on April 6, 2020) to vest the approvals for an extended period (10 years). The DA freezes the City's development fees at the current fee schedule rates in exchange for BioMarin providing certain public benefits (discussed below). The DA is applicable to the expanded BioMarin campus development only. Vivalon and EDEN Housing are not party to this DA, so the vesting does not apply to the senior center and senior housing.

A complete and detailed Background and Project Description discussion can be found in the [January 28, 2020 Planning Commission staff report](#) and the [March 23, 2020 City Council staff report](#). The Planning Commission and City Council meetings can also be viewed on the Meeting Agendas & Videos page, online at: <http://www.cityofsanrafael.org/meetings>. Referenced application material exhibits are also included within FEIR attachments, also online at: https://www.cityofsanrafael.org/999-3rd.

Terms of the Development Agreement

The DA afforded the City and the developer (BioMarin) the opportunity to negotiate terms and conditions, as well as public benefits, in exchange for the 10-year vesting of the project approvals. The executed DA, which can be accessed [here](#) includes the following list of the public benefits, as well as other obligations and requirements:

1. Northwestern Portion Donation. BioMarin is required to donate the 15,000 square foot northwestern parcel on the 999 3rd Street site to Vivalon (formerly Whistlestop). The donation is part of a land exchange; based on the final appraisals of the two properties exchanged and the delta in value reflected in those appraisals, BioMarin's donation to Vivalon is One Million Three Hundred and Thirty Thousand Dollars (\$1,330,000).
2. Remediation. For the benefit of development of a healthy aging campus and affordable senior housing, BioMarin is required to complete the second phase of the soil remediation for the 999 3rd Street Property by performing an investigation and cleanup under the State Department of Toxic Substance Control (DTSC) Voluntary Cleanup Program. BioMarin is responsible to fund this remediation (\$2,000,000). The total remediation costs for the entire three-acre site are over \$16,000,000.
3. Retail Space. BioMarin agreed to provide 3,500 square feet of retail space on a portion of the 999 3rd Street property (the actual layout and location of such space to be determined by BioMarin). The retail space is required to be open to the public during BioMarin's business hours (from 9 a.m. to 5:00 p.m.).
4. Public Plaza. BioMarin agreed to provide an approximately 6,000 square feet of landscaped plaza "Front Porch" located at the corner of 3rd Street and Lindaro Street (the actual layout of such plaza to be determined by BioMarin). This plaza is required to be open to the public from dawn to dusk.
5. Striping for Bike Lane. BioMarin is required to add striping for Class II Bike Lane on Lindaro Street from 3rd Street to Andersen Drive or up to one mile of an equivalent section of roadway in San Rafael that is determined by the City to meet the City's Bicycle & Pedestrian Master Plan.
6. Restriping for Pedestrian Safety. BioMarin is required to improve pedestrian safety with restriping at the corner of Lindaro Street and 3rd Street.
7. Contribution for Traffic Light Synchronization. BioMarin is required to contribute \$500,000 to the City towards the synchronization of traffic lights along the 2nd and 3rd Street corridors to improve traffic flow or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This obligation may be payable in full at the first anniversary of the Effective Date, or \$125,000 each year for four (4) years (commencing on the first anniversary of the Effective Date), at the option and sole discretion of BioMarin.
8. Contribution for Shuttle Service. BioMarin is required to contribute \$400,000 to the City for purposes of implementing a first mile/last mile shuttle service or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This obligation shall be payable in increments of \$100,000 each year for four (4) years (commencing on the first anniversary of the Effective Date).
9. City's Use for Public Parking and Ancillary Uses. Upon the effective date of the DA and until BioMarin submits any construction related permit (grading, building, etc.) for either Building A or

B, BioMarin is required to allow the City to utilize up to 70% of the surface area of the 999 3rd Street property (the exact layout to be reasonably negotiated and agreed to by the parties so as to maximize the utility of the portion to be used by the City and the remaining portion) for public parking and ancillary uses (such as food truck market, etc.) until such time as commencement of construction activities for either building on this property.

10. Donation of Lease to Vivalon. Upon BioMarin's acquisition of the Vivalon property at 648 Lindaro Avenue (land exchanged referenced above), BioMarin is required to donate to Vivalon a leaseback of 930 Tamalpais Avenue for three (3) years. The property continues to be leased back to Vivalon and is expected to be leased back through Jan. 2025 (beyond the 3 years)

Additional Obligations. BioMarin agreed to the following additional obligations if certain timing milestones in the DA are not met:

- If construction on the 999 3rd Street property (now 801/815 Lindaro (APN011-265-02) has not commenced by the sixth (6th) anniversary (2026) of the effective date of this DA, then BioMarin is required to construct the Class II Bike Lane along Lindaro Street from 3rd Street to Andersen Drive (Item #5 Above) and required improvements to the 2nd Street and Lindaro Street intersection; and
- If construction of the second building at the 999 3rd Street property (now 801/815 Lindaro (APN011-265-02) has not commenced by the eighth (8th) anniversary (2028) of the effective date of the DA, then the vesting of the entitlements for the SRCC expansion (approved office/lab building at 755 Lindaro Street) shall expire.

Continuing Obligations Relating to the Original SRCC Development Agreement. The 1998 DA executed for the SRCC campus (initially executed between Fair Isaac and the City of San Rafael) included the following ongoing obligations (in perpetuity), which were carried over into the current DA between the City and BioMarin:

1. Public Parking on Nights and Weekends. The Project shall continue to make available to the public parking on the western SRCC surface parking lot and garage (west of Lindaro Street) during evening and weekend hours.
2. Park Area. The Project shall continue to provide the publicly accessible park located along the south side of the SRCC campus (south of and between Building A at 750 Lindaro Street and Building B at 781 Lincoln Avenue). This park area shall be open to the public from dawn to dusk. The public's use of the park area shall be subject to the Reservation Rules and Policies on file with the City.
3. Conference Facility. The Project will continue to offer an after-business-hours publicly accessible, interior conference facility consisting of 2,500 square feet. At the sole option of BioMarin, this facility may be relocated from the current location on the SRCC property to a location within the 999 3rd Street property that provides substantially equivalent amenities and space, as determined upon the completion of the retail and plaza portions of the R&D Development Property. The public's use of the Conference Facility shall be subject to the scheduling, fee, priority use and rules, regulations and guidelines provisions set forth in the Reservation Rules and Policies on file with the City.

Annual Reporting. Upon the City's request, BioMarin is required to report to the City, no more frequently than once per calendar year, on the status of its development plans related to the DA.

ANALYSIS:

Annual Report on Development Agreement

Per City Resolution No. 6089, periodic review is required to ensure that the project is proceeding in good faith and that the terms of the DA are being met. Per the terms of the DA, BioMarin has submitted an Annual Report (Attachment 2), which represents the 3rd year anniversary status of the project. While the Annual Report states that there are no updates on the start of the project construction, it reports on the status of the DA terms and obligations. The following is the status of the key terms and obligations (listed above) that are pertinent to this 3rd anniversary annual review:

- Item #1-Northwestern Portion Donation [COMPLETED IN 2022]- BioMarin and Vivalon (previously Whistlestop) negotiated and executed a Charitable Contribution and Exchange Agreement on September 14, 2020, to effectuate BioMarin's donation of the northwest portion of the property for the benefit of development of a healthy aging campus and affordable senior housing. Parcel separation and transfer to Vivalon was completed on January 21, 2022. Based on the final appraisals of the two properties exchanged and the difference in value reflected in those appraisals, BioMarin's donation to Vivalon is One Million Three Hundred and Thirty Thousand Dollars (\$1,330,000).
- Item #2-Remediation [COMPLETED 2021]. BioMarin has completed the remediation of the western portion of the 999 3rd Street property. Final site certification for the completed remediation (for the entire three-acre site) was provided by DTSC on March 24, 2021.
- Item #7-Contribution for Traffic Light Synchronization [75% COMPLETE]. BioMarin submitted a check in the amount of \$125,000 to the City of San Rafael in April 2023 as contribution towards the synchronization of traffic lights along the 2nd and 3rd Street corridors to improve traffic flow or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This is the third of 4 annual payments. The total amount paid to date is \$375,000 of the required \$500,000.
- Item #8-Contribution to Shuttle Service [75% COMPLETE]. BioMarin submitted a check in the amount of \$100,000 to the City of San Rafael in April 2023. This contribution is to support the City of San Rafael implementing a first mile/last mile shuttle service or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This is the third of 4 annual payments. The total amount paid to date is \$300,000 of the required \$400,000.
- Item #9-City's Use for Public Parking and Ancillary Uses [COMPLETED AGREEMENTS IN 2022]. BioMarin negotiated a license agreement with the City San Rafael for temporary public parking and ancillary uses and the agreement was fully executed on February 2, 2022.
- Item #5-Striping for Bike Lane [NOT COMPLETED]. BioMarin is required to add striping for Class II Bike lane on Lindaro Street from 3rd Street to Anderson Drive or up to one mile of an equivalent section of roadway in San Rafael that is determined by the City to meet the City's Bicycle & Pedestrian Plan. This obligation will commence upon issuance of the certificate of occupancy for either building A or B.

Staff has concluded that BioMarin has demonstrated good faith in meeting the terms and obligations of the DA. Through the City Council's acceptance of BioMarin's Annual Report, the Council will find and determine on the basis of substantial evidence that the property owner has complied in good faith with

the terms and conditions of the agreement during the period under review, and that the 3rd anniversary annual review is concluded.

Status of Vivalon/EDEN Housing Senior Center and Senior Housing

As discussed above, the Vivalon/EDEN Housing Senior Center and Senior Housing project was entitled concurrent with the BioMarin project approvals. However, Vivalon/EDEN Housing is not party to the DA. This project has progressed through the City building permit process. Building permits have been issued and the project is currently under construction.

Environmental Review

As discussed above, the BioMarin and Vivalon/EDEN Housing development projects were subject to environmental review and a Final Environmental Impact Report was prepared and certified. As required by State law (California Environmental Quality Act), action on the annual review of the Development Agreement must be reviewed to determine if it is subject to environmental review. As the Annual Review is an informational report, it will have no physical impact on the environment, and is therefore exempt from environmental review per CEQA Guidelines under 14 CRR Section 15061(b).

FISCAL IMPACT:

This project is a private development and does not have a negative impact on the City budget given that the planning review and processing of these applications are subject to 100% cost recovery fees, paid for by the applicant.

As discussed above, the DA for the project will be subject to the City's development fees but the required fees and fee amounts are locked-in at the time the DA is executed. In exchange for the vesting of the fees, the DA obligates BioMarin to other financial contributions to the City which are discussed above.

OPTIONS:

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

1. Accept the Annual Report as recommended by staff;
2. Accept the Annual Report with modifications; or
3. Continue the public hearing and require additional information, study, or analysis.

ATTACHMENTS:

1. BioMarin Annual Report, March 30, 2023



BioMarin Annual Report
Obligations Relating to the R&D Development Agreement

March 30, 2023



BioMarin Annual Report

Obligations Relating to the R&D Development Agreement

San Rafael, CA

March 30, 2023

As required by the Development Agreement (“DA”), BioMarin is pleased to submit this annual report to provide an update on the status of the new projects and compliance with the DA’s terms and obligations, due on each anniversary of the Effective Date. While there are no updates on the start of construction of new R&D projects, the following addresses compliance with the obligations to date.

Northwestern Portion Donation. Developer shall donate the Northwestern Portion to Whistlestop as part of a land swap through which the delta in value of the swapped properties, as of a June 2018 appraisal, results in a One Million Two Hundred Thousand Dollars (\$1,200,000) donation. Developer shall donate the Northwestern Portion in its then current as-is condition, for development of a healthy aging campus and affordable senior housing.

BioMarin and Vivalon (previously Whistlestop) negotiated and executed a Charitable Contribution and Exchange Agreement on September 14, 2020 to effectuate BioMarin’s donation of the northwest portion of the property for the benefit of development of a healthy aging campus and affordable senior housing. The agreement was completed in 2021 and Parcel separation was completed.

Remediation. For the benefit of development of a healthy aging campus and affordable senior housing, Developer shall complete the second phase of the soil remediation for the 999 3rd Street Property by performing an investigation and cleanup under the DTSC’s Voluntary Cleanup Program. Developer shall complete such second phase of remediation prior to commencement of construction and development activities for the R&D Development Property, resulting in out-of-pocket costs for Developer of over Two Million Dollars (\$2,000,000) and total remediation costs of over Sixteen Million Dollars (\$16,000,000).

BioMarin completed the remediation of the west portion of the property and received DTSC’s final site certification for the entire property on March 24, 2021.

Retail Space: Developer agrees that a portion of the R&D Development Property consisting of approximately 3,500 square feet of retail space (the actual layout and location of such space to be determined by Developer) (the “Retail Space”) shall be open to the public during Developer’s business hours (from 9 a.m. to 5:00 p.m.). This obligation shall commence upon the issuance of the certificate of occupancy for the Retail Space and when the Retail Space is open for business and continue until such time as the Retail Space is vacant because a tenant cannot be found despite commercially reasonable efforts to market the space at a commercially reasonable rent for three years.

This obligation will commence upon the issuance of the certificate of occupancy for retail space.



Public Plaza: Developer agrees to provide an approximately 6,000 square feet of landscaped plaza “Front Porch” located at the corner of 3rd Street and Lindaro Street (the actual layout of such plaza to be determined by Developer) that will be open to the public from dawn to dusk. This obligation shall commence upon the issuance of the certificate of occupancy for such plaza.

This obligation will commence upon the issuance of the certificate of occupancy for retail space.

Striping for Bike Lane: Developer shall add striping for Class II Bike lane on Lindaro Street from 3rd Street to Anderson Drive or up to one mile of an equivalent section of roadway in San Rafael that is determined by the City to meet the City’s Bicycle & Pedestrian Plan. This obligation shall be required at the time of the issuance of the first certificate of occupancy for either Building A or B, unless otherwise required by Section 4.11.1.

This obligation will commence upon issuance of the certificate of occupancy for either building A or B.

Contribution for Traffic Light Synchronization: Developer shall contribute \$500,000 to the City towards the synchronization of traffic lights along the 2nd and 3rd Street corridors to improve traffic flow or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This obligation may be payable in full at the first anniversary of the Effective Date, or \$125,000 each year for four (4) years (commencing on the first anniversary of the Effective Date and continuing for the next three (3) anniversaries of the Effective Date), at the option of Developer, in Developer’s sole discretion. In exchange for this \$500,000 contribution and in light of significant concerns about pedestrian safety and the fact that a parallel public path already exists, the City is eliminating a prior requirement that the Lindaro and Parking Expansion Project develop and maintain a trail along the backside of the Lincoln Avenue garage which is along southern edge of the campus abutting Mahon Creek.

BioMarin submitted checks in the amount of \$125,000 to the City of San Rafael in April 2021 and 2022 as contribution towards the synchronization of traffic lights along the 2nd and 3rd Street corridors to improve traffic flow or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This is the 3rd of four annual payments for a total of \$500,000.

Contribution for Shuttle Service: Developer shall contribute \$400,000 to the City for purposes of implementing a first mile/last mile shuttle service or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This obligation shall be payable in increments of \$100,000 each year for four (4) years (commencing on the first anniversary of the Effective Date and continuing for the next three (3) anniversaries of the Effective Date).

BioMarin submitted two checks each in the amount of \$100,000 to the City of San Rafael in April 2021 & 2022. This contribution is to support the City of San Rafael implementing a first mile/last mile shuttle service or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This is the 3rd of four annual payments for a total of \$400,000.



City's Use for Public Parking and Ancillary Uses. As of the Effective Date of this Agreement and until Developer submits any construction related permit (grading, building, etc.) for either Building A or B, the Developer shall allow the City to utilize up to 70% of the surface area of the R&D Development Property (the exact layout to be reasonably negotiated and agreed to by the parties so as to maximize the utility of the portion to be used by the City and the remaining portion) for public parking and ancillary uses (such as food truck market, etc.) (the "Temporary Public Parking Parcel") until such time as commencement of construction activities for either building on the R&D Development Property. City shall be financially and legally responsible for (i) any improvements or modifications to the R&D Development Property that

BioMarin entered into the License Agreement for a Right of Entry for Temporary Use with the City of San Rafael on February 2, 2022. This License Agreement, which was amended in November 2022, allows for temporary public parking and ancillary uses, including construction lay down activities. City has been using the area for construction layout to support the 3rd street improvements and Eden Housing and Vivalon's construction activities.



Agenda Item No: 6.a
Meeting Date: May 1, 2023

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Economic Development and Innovation

Prepared by: Micah Hinkle,
Economic Development Director

City Manager Approval: _____ 

TOPIC: DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT

SUBJECT: APPROVAL OF ACTIONS SUPPORTING THE DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT CAPACITY BUILDING AND MANAGEMENT:

- I. RESOLUTION APPROPRIATING FUNDS AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AND ENHANCEMENT AGREEMENT WITH THE SAN RAFAEL CHAMBER OF COMMERCE IN AN AMOUNT OF \$100,000**
- ii. RESOLUTION APPOINTING DOWNTOWN BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD MEMBERS**
- iii. RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT TRANSITION AGREEMENT WITH THE DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT (BID CORPORATION) IN AN AMOUNT OF \$5,000**
- IV. RESOLUTION ADOPTING THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT ADMINISTRATIVE GUIDELINES**

RECOMMENDATION:

It is recommended that the City Council take the following actions:

- 1. Adopt Resolution Appropriating Funds and Authorizing the City Manager to Negotiate and Execute a Downtown Business Improvement District Management and Enhancement Agreement with the San Rafael Chamber of Commerce in an Amount of \$100,000
- 2. Adopt Resolution Appointing Downtown Business Improvement District Advisory Board Members
- 3. Adopt Resolution Authorizing the City Manager to Negotiate and Execute a Downtown Business Improvement District Transition Agreement with the Downtown San Rafael Business Improvement District (BID Corporation) in an Amount of \$5,000
- 4. Adopt Resolution Adopting the Downtown Business Improvement District Administrative Guidelines

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

EXECUTIVE SUMMARY:

Since 1979, the Downtown San Rafael business district has supported assessments to support economic vitality. The assessment has been collected through the provisions of the California Streets and Highways Code and are authorized by City Council on an annual basis. Business Improvement District funds are collected through the City's annual business license process and passed through to the San Rafael Business Improvement District, a California non-profit mutual benefit corporation (BID Corporation) for management, marketing, and support of business activities within the district boundaries.

The impacts of the COVID-19 pandemic have significantly reduced the businesses and collections of BID assessments in Downtown and have triggered the BID Corporation to modify operations and use reserve funds. With the uncertainty of business recovery from the pandemic and the shifting needs of the Downtown San Rafael, the BID Corporation, San Rafael Chamber of Commerce (Chamber), and the City have been working together to support a transition pathway for long-term growth of Downtown San Rafael.

For the next two years, the identified pathway to support Downtown BID operations and support the business community is to enter into a BID management and enhancement agreement with the Chamber. The Chamber would be able to provide management, fiscal oversight, operations, and annual reporting, build business support capacity, and explore BID enhancements through a contractual agreement with the City. The intent is to continue the Downtown BID program operations over the next two years and to evaluate the business and property owner needs and recommend modifications to the BID Program for long-term sustainability.

To retain BID programmatic consistencies, it is recommended that the current BID Corporation Board of Directors be appointed as the City's BID Advisory Board with an additional Board appointee recommended by the Chamber of Commerce and, if the agreement with the Chamber is approved, the City's BID Advisory Board would be supported by the Chamber. While there is a recommended change in the BID management entity, the business community stakeholders and interested parties would remain the same.

BACKGROUND:

Section 36500 of the California Streets and Highways Code allows for the creation of a business improvement district (BID) within a municipality, whereby businesses within the district self-assess an annual fee to pay for improvements and activities which benefit the overall business district. The intent of the state law is to provide a funding mechanism for business districts to promote economic vitality.

In 1979, businesses in Downtown San Rafael first voted to set up a business improvement district. This original district included approximately 125 businesses along Fourth Street between Lincoln Avenue and E Street. In 2013, the BID was expanded and now includes approximately 700 businesses along the downtown core anchored along the Fourth Street corridor (See Attachment with map of the BID district). The BID Corporation was created to receive the collected BID assessments and implement and manage programs supporting businesses within the district boundaries. Funds have been spent on program administration, marketing, physical improvements, and special events. Historically, special events have been the core program focus of collected assessment funds.

The BID Corporation is comprised of volunteer board of directors made up of primarily small business owners or business representatives within the BID boundaries. The BID Corporation currently employs a part-time executive director. The City Council has typically appointed the BID Corporation Board of Directors as the BID Advisory Board that is required by the San Rafael Municipal Code Section 10.09 (Downtown BID Ordinance).

On December 5, 2022, City Council authorized the 2023 annual business assessment for the Downtown BID pursuant to the Downtown BID Ordinance. As part of the 2022 BID annual report, the BID fiscal operations and underlying BID Corporation operations and structure were identified as areas for exploration for operational efficiencies and strategic partnership between the BID Corporation, Chamber, and the City. This expanded partnership exploration is a direct result of business recovery from the COVID-19 pandemic, evolving business needs, and resources available in Downtown San Rafael. The BID Corporation and Chamber have already moved toward some shared operational efficiencies with office space. Over the past four months, the BID Corporation, Chamber, and City staff have worked on developing a framework for operational efficiencies, continuance of Downtown BID programming, and exploration of a pathway for long-term feasibility to enhance Downtown San Rafael.

ANALYSIS:

After collaborating with the BID Corporation and Chamber representatives about shared goals, City staff have developed the following actions to support the downtown and utilize the synergies of the BID Corporation, Chamber and City:

Business Improvement District Management and Enhancement Agreement – San Rafael Chamber of Commerce:

The San Rafael Chamber of Commerce is the premier business organization in Marin County and has been a key partner supporting economic recovery and development initiatives, including small business support, economic development strategic planning, and support of economic vitality through business expansion, attraction, and retention. The cross-memberships and existing partnerships with downtown businesses and property owners allow the Chamber to have an in-depth understanding of business needs and growth opportunities. The Chamber's organizational capacity would allow them to step into BID management and implementation and allow a transitional partnership with the BID Corporation and the City. If approved by the Council, it is envisioned that the Chamber would be able to support the Council appointed BID Advisory Board, continue BID programming for the downtown business community and explore programmatic BID enhancements. Tasks would include engagement of property owners and business outreach associated with feasibility and needs analysis of a property-based improvement district or rate modifications to the business improvement district to establish a sustainable fiscal model for an enhanced San Rafael Downtown. The contract would be for an amount of \$100,000 (\$50,000 annually) for a two-year term, funded using City COVID-19 relief funds.

Appointment of 2023 Business Improvement District Advisory Board:

The City Council is required to appoint a BID Advisory Board. Listed below is the relevant text from the San Rafael Municipal Code:

10.09.080 - Advisory board and annual report.

The city council shall appoint an advisory board pursuant to Streets and Highways Code Section 36501 et seq. to administer the affairs of the BID. Members of the advisory board must own or represent a business in the BID, or be a voluntary member. The advisory board shall prepare an annual report for each year for which assessments are to be levied. The report shall be filed with the city clerk and shall comply with all requirements as stated in Streets and Highways Code Section 36501 et seq.

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 4

The City Council-appointed BID Advisory Board has historically been the same as the Board of Directors for the BID Corporation. The last City Council appointed BID Advisory Board was in 2017 with terms that expired during the COVID-19 Pandemic. The City has not appointed an updated 2023 BID Advisory Board as members of the BID Corporation Board have changed since the last Council BID Advisory Board appointments. It is recommended that the City Council appoint the current BID Corporation Board of Directors with an addition of a Chamber of Commerce recommended appointment to the Business Improvement District Advisory Board to maintain programmatic consistency, meet required membership, and serve as the Board advisors for the Business Improvement District. The recommended BID Advisory Board Members for 2023 are:

Name	Business
Terrance Thornton	San Rafael Martial Arts
Adam Dawson	Mike's Bikes
Erika Bowker	Pleasures of the Heart
Jeff Brusati	T & B Sports
Amy & Bishlam Bullock	Salon B Style Lab (1 Vote)
Joe McCallum	Newmark*
Jed Greene	Five Corners Consulting Group
Tobi Lessem	Bodywise Massage
Kelly Phu	Vin Antico
Morgan Schaffler	Youth in Arts
Elisabeth Setten	Artworks Downtown

*Chamber Recommendation

The BID Advisory Board term is recommended to be for the calendar year 2023. This would allow the BID Board oversight to remain in place during the proposed transition and allow for the BID Board and Chamber of Commerce to query interested and eligible businesses owners, representatives, and volunteers to make recommendations to the City Council for the 2024 BID Board as part of the Annual reporting for the BID, which would return to City Council in November/December of 2023.

BID Corporation Transition Agreement:

The exploration of BID program enhancement, capacity building, and support has been over the past few years a focus of City staff given the growing and changing needs of the Downtown business community. The BID Corporation has been adapting to the pandemic impacts by evaluating and implementing operational efficiencies and seeking partnerships to strengthen shared targeted outcomes. Unfortunately, sustainable revenue generation continues to erode BID viability. The Chamber and BID Corporation share a cross membership of businesses and have aligned goals for supporting and enhancing the San Rafael downtown and business community. As a pathway for transitioning the administrative and operational burden of the BID program, the City, Chamber, and BID Corporation have developed a transition framework between the City and BID Corporation to shift administrative and operational responsibilities and complete financial reporting requirements. It is anticipated that the transition activities would be completed by June 2023. Transition tasks include completion of Special Events: 1) May Madness and Dining Under the lights for May and June 2023. In addition, a financial close out report will be provided. This timeframe would correspond with the proposed start of the Chamber Agreement for BID Management.

BID Administrative Guidelines:

Lastly, staff recommends the Council adopt BID Administrative Guidelines. The administrative guidelines provide the rules and procedures for the BID Advisory Board and the BID management entity to

administer and operate the affairs of the BID, including how the City Council appoints members of the Advisory Board, how meetings of the BID Advisory Board are conducted in conformance with the Brown Act, and requirements for the BID Advisory Board to submit an annual report and spend BID funds in conformance with law. These guidelines will provide clarity to the Chamber of Commerce, the BID Board, and the City on roles and responsibilities in administering assessments and affairs of the BID, and will be incorporated into the Management and Enhancement Agreement with the Chamber.

FISCAL IMPACT:

Chamber BID Management/Enhancement Agreement: To support the transition and enhancement of the Downtown BID, staff is recommending General Fund support of an amount of \$100,000 (\$50,000 annually) for a two-year term for the BID Management and Enhancement Agreement with the San Rafael Chamber of Commerce. Staff is requesting an appropriation of \$100,000 from the General Fund, using COVID-19 relief funds, to support the downtown economic vitality.

BID Corporation Transition Agreement: Prior to the COVID-19 pandemic, typical BID collected funds were approximately \$83,000 annually. In 2022, the BID received approximately 25% less in assessment collections in the amount of \$61,600 and is projecting \$60,000 for 2023. The BID Corporation is operating at a deficit and has limited operational fund reserves. The transition agreement with the BID Corporation would be funded using \$15,000 from 2023 BID assessment funds for operational expenses and \$5,000 from the Economic Development Department Professional Services budget to support financial closeout reporting. The remaining 2023 BID funds will be held by the City until a BID Management and Enhancement Agreement is authorized and executed with the Chamber of Commerce.

BID Advisory Board and BID Administrative Guidelines: There is no fiscal impact associated with appointing the BID Advisory Board and adopting administrative guidelines.

OPTIONS:

The Downtown BID is a longstanding program supported by the business community and City for over 40 years. The staff recommended actions support community partnership opportunities to achieve shared goals and outcomes and build business capacity with the business/community and partners.

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

1. Approve staff's recommended actions.
2. Adopt resolutions with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

It is recommended that the City Council take the following actions:

1. Adopt Resolution Appropriating Funds and Authorizing the City Manager to Negotiate and Execute a Downtown Business Improvement District Management and Enhancement Agreement with the San Rafael Chamber of Commerce in an Amount of \$100,000
2. Adopt Resolution Appointing Downtown Business Improvement District Advisory Board Members
3. Adopt Resolution Authorizing the City Manager to Negotiate and Execute a Downtown Business Improvement District Transition Agreement with the Downtown San Rafael Business Improvement District (BID Corporation) in an Amount of \$5,000
4. Adopt Resolution Adopting the Downtown Business Improvement District Administrative Guidelines

ATTACHMENTS:

1. Resolution Approving BID Management and Enhancement Agreement with San Rafael Chamber of Commerce
2. Draft BID Management and Enhancement Agreement with San Rafael Chamber of Commerce
3. Resolution Appointing BID Advisory Board
4. Resolution Approving BID Transition Agreement with BID Corporation
5. Draft BID Transition Agreement with BID Corporation
6. Resolution Adopting BID Administrative Guidelines
7. BID Map

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROPRIATING FUNDS AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AND ENHANCEMENT AGREEMENT WITH THE SAN RAFAEL CHAMBER OF COMMERCE IN AN AMOUNT OF \$100,000

WHEREAS, the Parking and Business Improvement Area Law of 1989, Cal. Strs. & Hwys. Code § 36500 *et seq.* (“1989 Act”), authorizes cities to establish parking and business improvement areas for the purpose of promoting economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses and prevent erosion of business districts; and

WHEREAS, pursuant to the 1989 Act, in June 2013 the City Council of San Rafael adopted Ordinance No. 1912 (“Ordinance”), codified in the San Rafael Municipal Code (“SRMC”) Chapter 10.09, establishing the Downtown San Rafael Business Improvement District (“District”) to replace a former Parking and Business Improvements Area Business Improvement District established in 1979; and

WHEREAS, the Ordinance provides for the City’s collection of assessments on approximately 700 businesses that operate within the District’s boundaries; and

WHEREAS, the revenues derived from the assessments are used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses; and the acquisition, construction, installation and maintenance of tangible property that provide a specific benefit to the assessed businesses; and

WHEREAS, pursuant to section 36530 of the 1989 Act and SRMC Section 10.09.080, the Council appoints a District Advisory Board consisting of members that own or represent a business in the District or voluntary members; and

WHEREAS, the District Advisory Board administers the affairs of the District and prepares an annual report each year describing which assessments are to be levied and files the report with the City Clerk; and

WHEREAS, the District Advisory Board is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code) at all times when matters within the subject matter of the District are heard, and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), for all records relating to activities of the District; and

WHEREAS, each year, the District Advisory Board administers those revenues and uses them for authorized purposes that benefit the assessed businesses and to prepare and to submit the annual report to the City Clerk reporting activities and finances of the District; and

WHEREAS, the Chamber is a California nonprofit mutual benefit corporation that is a member-based business advocacy organization supporting local businesses of San Rafael; and

WHEREAS, the COVID-19 pandemic significantly reduced the businesses and collections of District assessments and the District has operated with reserve funds; and

WHEREAS, with the uncertainty of business recovery from the pandemic and improvement of economic conditions, the City believes that the District would benefit from assistance of the Chamber to create capacity building and pathways for long-term sustainability to support Downtown San Rafael; and

WHEREAS, the City and the Chamber desire to enter into an Agreement for the Chamber to provide management and enhancement services for the District.

NOW, THEREFORE BE IT RESOLVED, that the City Council hereby appropriates \$100,000 from the General Fund COVID-19 relief funds and authorizes the City Manager to negotiate and execute a downtown business improvement district management and enhancement agreement with the San Rafael Chamber of Commerce in an amount of \$100,000, subject to form approved by the City Attorney.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 1st day of May 2023, by the following vote, to wit:

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

Lindsay Lara, City Clerk

**AGREEMENT FOR THE MANAGEMENT AND ENHANCEMENT
OF THE DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT**

This Agreement (“Agreement”) is entered into as of _____ (the “Effective Date”), between the CITY OF SAN RAFAEL, a municipal corporation of the State of California (“City”) and the SAN RAFAEL CHAMBER OF COMMERCE, a California nonprofit mutual benefit corporation (“Chamber”).

RECITALS

WHEREAS, the Parking and Business Improvement Area Law of 1989, Cal. Strs. & Hwys. Code § 36500 *et seq.* (“1989 Act”), authorizes cities to establish parking and business improvement areas for the purpose of promoting economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses and prevent erosion of business districts; and

WHEREAS, pursuant to the 1989 Act, in June 2013 the City Council of San Rafael adopted Ordinance No. 1912 (“Ordinance”), codified in the San Rafael Municipal Code (“SRMC”) Chapter 10.09, establishing a reorganized Downtown San Rafael Business Improvement District (“District”) to replace a former Parking and Business Improvements Area Business Improvement District established in 1979; and

WHEREAS, the Ordinance extended the collection boundaries beyond ground floor retail and provides for the City’s collection of assessments on approximately 700 businesses that operate within the District’s boundaries including offices and financial institutions; and

WHEREAS, the revenues derived from the assessments are used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses; and the acquisition, construction, installation and maintenance of tangible property that provide a specific benefit to the assessed businesses; and

WHEREAS, pursuant to section 36530 of the 1989 Act and SRMC Section 10.09.080, the Council appoints a District Advisory Board consisting of members who own or represent a business in the District or voluntary members; and

WHEREAS, the District Advisory Board primary function is to administer the affairs of the District and prepare an annual report each year describing which assessments are to be levied and files the report with the City Clerk; and

WHEREAS, the District Advisory Board is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code) at all times when matters within the subject matter of the District are heard, and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), for all records relating to activities of the District; and

WHEREAS, a separate California nonprofit mutual benefit corporation - the San

Rafael Business Improvement District – was established by representatives of businesses in the District in 2012. This private corporation is referred to herein as the “BID Corporation” and its Board of Directors is the “BID Corporation Board”; and

WHEREAS, the City Council from time to time has updated its appointments to the District Advisory Board to be the same as the members of the BID Corporation Board; and

WHEREAS, each year, the City has distributed the District’s assessment revenues to the BID Corporation, and the District Advisory Board administers those revenues to ensure that the BID Corporation uses them for authorized purposes that benefit the assessed businesses and to prepare and to submit the annual report to the City Clerk reporting activities and finances of the District; and

WHEREAS, the Chamber is a California nonprofit mutual benefit corporation that is a member-based business advocacy organization supporting local businesses of San Rafael; and

WHEREAS, the Chamber has been operating and serving the business community for over one hundred years; and

WHEREAS, the Chamber staff has proven management skills, strong leadership and financial acumen and has worked closely with City staff and BID Corporation staff for over 30 years; and

WHEREAS, the BID Corporation now operates in the Chamber’s offices and has a close working relationship with the Chamber; and

WHEREAS, the COVID-19 pandemic significantly reduced the businesses and collections of District assessments and the BID Corporation has operated with reserve funds; and

WHEREAS, with the uncertainty of business recovery from the pandemic and improvement of economic conditions, the City believes that the District would benefit from assistance of the Chamber to create capacity building and pathways for long-term sustainability to support Downtown San Rafael; and

WHEREAS, the Chamber can provide leadership, governance and administrative services in the execution of the District’s activities; and

WHEREAS, the City and the Chamber desire to enter into this Agreement for the Chamber to support City staff by providing fiscal oversight, operations, and annual reporting of the District, and build capacity and explore District enhancements; and

WHEREAS, the Chamber is the best organization suited to provide this support during a time of transition and help create capacity building and pathways for long-term sustainability to support Downtown San Rafael; and

WHEREAS, coincident with this Agreement, the City and the BID Corporation are entering into a separate transition agreement under which the BID Corporation will transition its affairs related to administration of the District and transfer all remaining District Funds back to the City.

NOW, THEREFORE, in consideration of the above recitals and for other good and sufficient consideration, the City and the Chamber agree as set forth herein.

AGREEMENT

1. The Chamber's Duties.

The Chamber will furnish all technical and professional services, including labor, material, office space, equipment, transportation, supervision, and expertise to perform the following duties:

- a. *District Management Services.* The Chamber will perform the following management services to the District (collectively, the "District Management Services"):
 - i. Provide administrative oversight of the District and ensure that the affairs and duties of the District Advisory Board are conducted in conformance with the 1989 Act, Chapter 10.09 of the San Rafael Municipal Code (a copy of which is attached hereto as Exhibit A), and the District Administrative Guidelines (attached hereto as Exhibit B);
 - ii. Receive, hold and distribute District Funds, pursuant to paragraph 4 of this Agreement;
 - iii. Develop the Annual Report and Budget for review and approval by the District Advisory Board, and submit to the City Clerk;
 - iv. Monitor the Budget and ensure monthly financial reports are prepared and presented to the District Advisory Board (including income statement, balance sheet and budget performance);
 - v. Assist with annual planning calendar and preparation and implementation of the District's meetings, District Advisory Board member selection recommendations to the City Council, and annual reports;
 - vi. Schedule, plan and host meetings of the District Advisory Board, including a meeting of the District Advisory Board within one (1) month of the Chamber's receipt of the first payment of District Funds;
 - vii. Provide special event marketing support, as outlined in the annual scope of work;
 - viii. Provide administrative services and support to the District to implement District program activities within the approved budget as needed;
 - ix. Provide District member support related to District program activities as business issues may arise;
 - x. Award and administer contracts on behalf of the District for District activities;
 - xi. Market and promote the District's events and activities within budget;

- xii. Maintain a webpage dedicated to, promoting, and marketing the District, and events and activities of the District; and
 - xiii. Mail one delinquent notice annually to each business who has not paid the annual assessment, with instructions on how to pay the annual assessment. City will provide the Chamber with a list of delinquent businesses and their addresses for the notice.
- b. *District Enhancement Services.* The Chamber will provide the following enhancement services to the City related to the District (collectively, “District Enhancement Services”):
- i. Identify strategic partners, resources, and programs that could benefit San Rafael Downtown businesses and property owners for improved physical upgrades, safety, and marketing;
 - ii. Provide leadership training and orientation for hired staff supporting District activities;
 - iii. With City staff, liaison to the District to keep members informed of City issues and construction that may affect the District and its members;
 - iv. Building upon the Economic Development Strategic Plan Draft and Downtown Precise Plan, conduct needs assessment outreach to businesses and property owners within the downtown on desired programming and needs to enhance economic vitality with specific focus on safety, cleanliness, marketing, and physical upgrades; and
 - v. Develop a database of property, business owner, and representative contact information including mailing addresses, phone numbers, and emails; and
 - vi. Conduct outreach and host informational sessions with property owners and businesses to assist the City feasibility analysis of a property-based improvement district or modifications to the District business assessment rate structure to enhance economic vitality.

2. **The City’s Duties.**

- a. *Collection of assessments.* The City will bill and collect assessments from businesses within the boundaries of the District annually in conjunction with the City’s annual business license.
- b. *Distribution of District Funds to the Chamber.* The City will distribute to the Chamber the assessment funds actually collected by the City, with any interest that actually accrues upon such funds while in the City’s possession and control, plus interest and penalties actually received by the City with respect to delinquent District assessment payments (collectively, the “District Funds”). The City will disburse the District Funds held by the City for the 2023 assessments in a lump sum payment by no later than June 1, 2023; except that \$15,000 of the 2023 assessments will be disbursed to the BID Corporation to support their transition activities. Any District Funds collected by the City thereafter, including any remaining District Funds of the BID Corporation, will be disbursed to the Chamber when reasonably practical thereafter. Notwithstanding the forgoing, in the event of a legal challenge

against any District assessments, or threat thereof, the City will have the right to delay disbursement or impound the District Funds, so that the assessments are available for refunds or satisfaction of judgments. Such right shall extend through the expiration of the legal challenge or threat thereof.

- c. *Annual renewal for levy of assessments.* The City Council will adopt a Resolution of Intention to Levy an Annual Assessment and hold a public hearing to confirm the District's annual report and renew the assessments for the next calendar year. The public hearing is expected to occur in December each year, following the District Advisory Board's submission of its annual report, as provided in the Administrative Guidelines (Exhibit B).

- 3) **Compensation.** For performance of District Management Services and District Enhancement Services by the Chamber described in paragraph 1a-b, the Chamber will be compensated by the City in the amount of \$100,000, in two annual payments as follows:

- i. \$50,000 for the period of the Effective Date of this Agreement through June 30, 2024, payable within 30 days of receipt of invoice from the Chamber; and
- ii. \$50,000 for the period of July 1, 2024 through June 30, 2025, payable within 30 days of receipt of invoice to be submitted by the Chamber after March 31, 2024.

The compensation described in this paragraph is not considered District Funds under this Agreement and upon payment by the City will be separate funds of the Chamber.

- 4) **District Funds Budgetary, Auditing, and Financial Obligations.**

- a. *District Funds Held in Restricted Funds Account.* All District Funds in the possession/control of the Chamber hereunder are the property of the District and shall be held in a separate bank account by the Chamber solely for the benefit of the District. Such District Funds shall only be expended as outlined in the annual report approved by the City Council at the direction of the District Advisory Board.
- b. *Chamber's Use of District Funds.* If the Chamber's actual costs exceed \$50,000 for each annual period listed above in paragraph 3, the Chamber will then be entitled to deduct its actual costs, to include overhead and staffing expenses, from any remaining District Funds, not to exceed 15% of the total amount of District Funds collected each year (based on 2023 assessments for the 2023-2024 period and 2024 assessments for the 2024-2025 period). The Chamber will provide an accounting of its costs to the District Advisory Board and the City to support such deductions.
- c. *Budget Compliance.* The Chamber will act as the fiscal agent of the District to administer District Funds in compliance with each annual report approved by the City Council and resolution adopted by the City Council levying the annual District assessment (collectively referred to as the "Budget"). All District Funds will be

separately accounted for by the Chamber, and segmented from other revenue collected by the Chamber in its accounting and financial records.

- d. *Records/Audit.* During the term of this Agreement, and for four years after this Agreement's term expires or terminates, the Chamber will maintain detailed financial records pertaining to District administration sufficient to provide the basis for an unqualified opinion by an independent auditor, including but not limited to records concerning budgeting, expenditures, subcontracts, insurance, permits, administrative expenses, and overhead. The Chamber agrees to make all such records available to the City upon request at all reasonable times.
- e. *Confidentiality.* The Chamber will comply with all laws governing the confidentiality of District assessment records, reports, and related information that may be provided to the Chamber by the City. A record of the total assessment of an individual business, or the fact that said business has allowed the assessment payment to become delinquent, is not deemed to be confidential.
- f. *Compensation for District Management and Enhancement Services.* The \$100,000 compensation paid by the City to the Chamber for District Management Services and District Enhancement Services described in paragraph 3 will not be considered District Funds and are not subject to the terms of this paragraph 4.

5) Term and Termination.

- a. *Term.* The term of this Agreement (the "Term") will be from the Effective Date through June 30, 2025, unless mutually extended by the parties in writing.
- b. *Termination for cause.* If the City determines that the Chamber has misappropriated District Funds, committed malfeasance, or violated any law in providing the activities identified in the approved Budget or otherwise conducted by or on behalf of the District, or in otherwise administering the District, the City will have the right to immediately terminate this Agreement via written notice to the Chamber.
- c. *Termination for convenience.* Either party will have the right to terminate this Agreement for any reason with 90 days' written notice to the other party.
- d. *Obligations on Termination.* Immediately following the expiration or earlier termination of this Agreement, the Chamber will do all of the following:
 - i. Terminate all activities of the Chamber covered by this Agreement;
 - ii. Pay all obligations it incurred on behalf of the District;
 - iii. Return to the City all remaining District Funds and all assets acquired with District Funds, together with an accounting thereof; and
 - iv. Reimburse the City the total amount of compensation paid to the Chamber for District Management Services and District Enhancement Services pro-rated for the period of time after the effective date of termination.

Immediately following any early termination of this Agreement, the City will pay

the Chamber any amount of compensation it may owe for District Management Services and District Enhancement Services pro-rated for the period of time up to the effective date of termination.

This provision will survive termination of this Agreement.

6) Indemnity and Insurance.

a. *Indemnity.*

- i. All work done and performed by the Chamber pursuant to this Agreement, and all events held or conducted pursuant hereto shall be solely the responsibility of the Chamber and in this connection the Chamber agrees to indemnify and hold the City and each of its officers, officials, employees, agents and volunteers harmless of and from all claims of any kind and character for injuries to person or property, the Chamber's use of the District Funds disbursed to it or debts which may be incurred arising out of or, in anywise connected, directly or indirectly, with the Chamber's performance under the terms of this Agreement. In this connection, it is understood that the City is solely a disbursing agency of the District Funds, for the account of the District, and said District Funds will not become a part of any general fund or any other special fund of the Chamber or the City of San Rafael.
- ii. Any and all obligations incurred by the Chamber hereunder, or otherwise, will be the sole obligation of the Chamber, and the Chamber shall have no authority to incur any obligations in the name of, or on behalf of, the City of San Rafael, or any department thereof. The City's obligations will be solely those described in paragraph 2.
- iii. The Chamber shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, the District Advisory Board, the District members, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of any of the terms of this Agreement or performance of this Agreement. The Chamber's obligations under the preceding sentence will not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of the City or any of its officers, officials, employees, agents or authorized volunteers.
- iv. If the Chamber subcontracts all or any portion of the services to be provided by the Chamber under this Agreement, the Chamber shall require each

subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

v. This subsection shall survive termination or expiration of this Agreement.

7) **Insurance.** The Chamber will maintain insurance and comply with the insurance requirements provided in Exhibit C on forms approved by the City.

8) **General Provisions**

a. *Notice.* To be effective, any notice concerning this Agreement must be served by placing it in the U.S. Mail with postage prepaid to the following addressees. Either party may change the addressee by providing written notice to the other party. Notice will be considered delivered two business days after the date of deposit in the U.S. Mail.

To City:
City of San Rafael
Director of Economic Development
1400 Fifth Avenue
San Rafael, CA 94901
micah.hinkle@cityofsanrafael.org

To Chamber:
Chamber of Commerce
President and CEO
817 Mission Avenue
San Rafael, CA 94901
jwebster@srchamber.com

b. *Independent Contractor Status.* The Chamber will perform under this Agreement as an independent contractor and will be responsible for any federal, state, or local taxes or fees that apply to compensation the Chamber receives from the City under this Agreement. The Chamber's employees and subcontractors will not be employees of the City and will not be eligible for any benefits provided through the City, including but not limited to social security, health, workers' compensation, unemployment compensation, or retirement benefits. Neither the District nor any of its officers, employees, agents, volunteers, or subcontractors are or will be considered to be agents of the City in connection with the Chamber's performance under this Agreement.

c. *General Fund Not Liable for District Funds.* Neither the taxing authority, nor the bonding capacity, nor the general fund, nor any other fund or monies of the City other than actual District Funds received from businesses located within the District will be liable for payment of any obligations in connection with the District Funds arising from this Agreement. Obligations of the District Funds are not a debt of the City, nor are they a legal or equitable pledge, charge, lien, or encumbrance upon any of the City's property, income, receipts, or revenues. This Agreement embodies all of the Chamber's reimbursement rights with respect to the District Funds, and the City is not required to execute any additional note or document.

d. *Attorneys' Fees.* The prevailing party in any litigation or arbitration brought to enforce this Agreement will be entitled to recover reasonable attorneys' fees and

costs (including the reasonable costs of City Attorney staff) incurred in connection with the litigation or arbitration, through final resolution.

- e. *Interpretation and Venue.* This Agreement is to be interpreted in accordance with California law. Any litigation concerning this Agreement must be brought and prosecuted in the Marin County Superior Court.
- f. *Waiver.* A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other party's breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.
- g. *Entire Agreement.* Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement sets forth the parties' entire understanding regarding the subjects covered. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those subjects (whether written, oral, express, or implied) and may be modified only by another written agreement signed by both parties.
- h. *Counterparts.* The parties may execute this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
- i. *Precedence of Documents.* In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment.
- j. *Amendment.* This Agreement may be modified only by written instrument duly authorized and executed by all the parties.
- k. *Successors and Assigns.* Subject to limitations on assignment provided herein, this Agreement shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives. The Chamber may not assign its rights or obligations under this Agreement without the prior written consent of City, which consent may be withheld at City's sole and absolute discretion. Any attempted assignment by the Chamber, its successors or assigns, shall be null and void unless approved in writing by the City.

1. *Authority to Sign.* Each individual executing this Agreement, or its counterpart, warrants that they are authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which they represent.

[Signatures are on the following page.]

DRAFT

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

CITY OF SAN RAFAEL:

CHAMBER OF COMMERCE:

JIM SCHUTZ, City Manager

JOANNE WEBSTER, President
and CEO

APPROVED AS TO FORM:
Office of the City Attorney

By: GENEVIEVE COYLE,
Assistant City Attorney

[Other Corporate Officer]

ATTEST:
City Clerk

LINDSAY LARA, City Clerk

Exhibits (incorporated by this reference):

Exhibit A: Chapter 10.09 of the San Rafael Municipal Code

Exhibit B: San Rafael Improvement District Administrative Guidelines

Exhibit C: Insurance Requirements

Exhibit A

San Rafael Municipal Code, Chapter 10.09

Title 10 - BUSINESSES, PROFESSIONS, OCCUPATIONS, INDUSTRIES AND TRADES
Chapter 10.09 DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT
(Current through March 10, 2023)

Chapter 10.09 DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT

10.09.010 Purpose.

The purpose of this chapter is to authorize the city to impose assessments on business within a parking and business improvement area which are in addition to any assessments, fees, charges, or taxes imposed in the city, and to use such proceeds for the benefit of businesses within such area.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014)

10.09.020 Definitions.

For the purposes of this chapter and for identifying businesses in the Downtown San Rafael Business Improvement District and for calculating and applying the assessments owed, the following definitions shall apply:

- A. "Financial institutions"—Banks (retail and full service), savings and loans, credit unions as allowed in the underlying zoning district.
- B. "Non-Profit organizations"—Organizations registered as a non-profit corporation with the State of California and fine artists.
- C. "Fine artists"—Artists that produce art that is intended primarily for beauty rather than utility or commercial purposes.
- D. "Offices"—Businesses providing administrative or business services such as company headquarters, employment agencies, management services as allowed in the underlying zoning district.
- E. "Personal services"—Businesses that sell services such as hair salons, nail salons and day spas as allowed in the underlying zoning district, and may combine some retail sales with product services, and may be associated with sole practitioners.
- F. "Personal services, not on ground floor"—Personal service businesses that are not located on the ground floor of a building and do not have a retail presence on the street.
- G. "Personal services sole practitioner"—Businesses that are sole practitioners in personal services businesses, including barbershop chairs, manicurists chairs, beauty shop chairs and miscellaneous personal care chairs.
- H. "Professionals"—Businesses that require advanced and/or specialized licenses and/or advanced academic degrees, such as architects, engineers, attorneys, accountants, therapists, counselors, realtors, mortgage brokers as allowed in the underlying zoning district. Professionals working as sole practitioners are in this category.
- I. "Restaurant"—Businesses that sell prepared foods and drinks as allowed in the underlying zoning district.
- J. "Retail"—Businesses that buy and sell goods, such as clothing stores, shoe stores, office supplies as allowed in the underlying zoning district.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014)

10.09.030 District established.

Pursuant to the provisions of Streets and Highways Code Section 36501 et seq., a parking and business improvement district is hereby established, named "Downtown San Rafael Business Improvement District" (the "BID").

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014)

10.09.040 Boundaries of district and benefit zones.

The parking and business improvement area created herein includes businesses situated within the boundaries described as follows:

Those businesses situated on parcels fronting on the north side of Fourth Street from Second Street to E Street, more particularly assessor's parcels as shown on the 2012 Assessor's Maps as follows: 010-291-57, 35, 34, 33, 49, 69; 011-192-18, 08, 07; 011-194-11, 13, 08, 07; 011-196-12, 11, 10, 09, 08, 07; 011-202-13, 12, 11, 14; those businesses situated on parcels bound by Fourth Street, Second Street and Ida Street, more particularly assessor's parcels as shown on the 2012 Assessor's Maps as follows: 011-231-24, 25, 03, 04, 05, 06, 21, 17, 16; those businesses situated on parcels fronting on the south side of Fourth Street from Ida Street to E Street, more particularly assessor's parcels as shown on the 2012 Assessor's Maps as follows: 011-232-01, 02, 03; 011-241-01, 30, 31, 32, 33; 011-242-01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11; 011-245-26; those businesses situated on parcels bound by E Street, Hetherton Street, Fifth Avenue and Third Street, more particularly assessor's parcels as shown on the 2012 Assessor's Maps as follows: 011-204-01, 16, 15, 14, 13, 17, 09, 08, 20, 18, 19; 011-205-01, 15, 14, 13, 12, 11, 10, 09, 08, 16, 05, 04, 17; 011-212-15, 14, 16, 11, 06, 05, 04, 03; 011-214-10; 011-215-01, 02, 04, 05; 011-216-01; 011-222-08, 05; 011-224-01, 18, 17, 20, 15, 14, 13, 12, 11, 10, 19, 08, 06, 05, 04, 03, 02, 21; 011-227-01, 08, 07, 06, 05, 04, 10, 09, 02; 011-251-01, 13, 12, 11, 10, 09, 08, 07, 06, 05, 04, 03, 02; 011-253-01, 09, 08, 07, 06, 11, 10, 04, 03, 02; 011-255-27, 15, 14, 13, 18, 10, 29, 33, 19, 20, 07, 31, 30, 32, 23, 28, 03; 011-261-01, 13, 12, 20, 26, 29, 30, 17, 31; 011-263-20, 21, 02, 19, 04, 16, 22, 13, 11, 10, 09, 08, 07, 06, 05, 02; 011-271-01, 16, 15, 14, 13, 12, 11, 17, 07, 06, 05, 04, 03, 02, 01; 011-273-01, 17, 18, 12, 11, 10, 09, 08, 24, 06, 05, 04, 23, 02; 011-275-01, 12, 11, 10, 09, 13, 05, 04, 03, 02; 011-277-01; 014-084-13, 14, 02; 014-121-14; those businesses situated on parcels fronting on B Street from Third Street to Second Street, more particularly assessor's parcels as shown on the 2012 Assessor's Maps as follows: 011-256-26, 07, 08, 09, 32, 12; 011-262-01, 21, 22, 16, 15, 14, 23.

The standard benefit zone is that portion of the Downtown San Rafael Business Improvement District located to the west of E Street, that portion to the east of Lincoln Avenue, and that portion fronting on B Street from Third to Second Street.

The premium benefit zone is the remainder of the Downtown San Rafael Business Improvement District; specifically that portion located the east of E Street and west of Lincoln Avenue, between Fifth Avenue and Third Street.

Said area zones are reflected on a graphic, Exhibit A, attached to the ordinance codified in this chapter and incorporated in this chapter by reference.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014)

10.09.050 Calculation of assessments.

All businesses in the BID shall, commencing on January 1, 2015 pay an annual benefit assessment to the BID in the amounts shown in Table 10.09.050-1.

Table 10.09.050-1

Type of Business	Annual Assessment	
	Standard	Premium
Retail on the ground floor, restaurant, personal services on ground floor	\$175	\$225
Retail on the ground floor, restaurant, personal services on ground floor—Businesses with less than \$100,000 in gross receipts	\$150	\$175
Offices, professional, personal services, not on ground floor, retail, not on ground floor	\$75	\$100
Personal services sole practitioner	\$25	\$50
Non-profit organization and fine artists	\$50	\$50
Financial institution	\$375	\$425

Assessments based upon 'gross receipts' shall be based upon the previous year's annualized gross receipts. An individual who has multiple business licenses in their name at a single address shall only pay one assessment fee. No person or business shall be required to pay an assessment for residential uses, residential businesses or home occupations. Any business outside the BID may voluntarily pay the standard zone assessment.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014)

10.09.060 Use of revenue.

The revenues derived from the assessments shall be used for the purposes as stated in Streets and Highways Code Section 36501 et seq. for the specific benefit of assessed businesses which may include:

- A. General promotion of businesses activities which provide a specific benefit to assessed businesses within the BID;
- B. Promotion of public events which provide a specific benefit to assessed businesses within the BID and which take place on or in public places within the BID;
- C. The acquisition, construction, installation and maintenance of any tangible property including but not limited to benches, trash receptacles, decorations and landscaping which provide a specific benefit to assessed businesses within the BID;
- D. Activities which provide a specific benefit to assessed businesses located and operating in the BID.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014)

10.09.070 Collection of assessments.

The benefit assessment shall be billed annually by the city in conjunction with the city's annual business license. Any business exempt from paying city business license fees shall be assessed in January of each year. All assessments collected shall be held in a separate account and expended in accordance with this chapter and any subsequent resolutions and funds management agreement.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014)

10.09.080 Advisory board and annual report.

The city council shall appoint an advisory board pursuant to Streets and Highways Code Section 36501 et seq. to administer the affairs of the BID. Members of the advisory board must own or represent a business in the BID, or be a voluntary member. The advisory board shall prepare an annual report for each year for which assessments are to be levied. The report shall be filed with the city clerk and shall comply with all requirements as stated in Streets and Highways Code Section 36501 et seq.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014)

10.09.090 District proceeds do not offset city services.

Funds derived from the BID assessments shall not be used to offset or diminish current maintenance or capital improvement programs, including but not limited to public property and sidewalk cleaning and maintenance, street cleaning and maintenance, tree maintenance.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014)

10.09.100 Boundary and assessment modifications.

The city council may, at the advisory board's recommendation, modify the boundaries or assessments. Such modifications shall be made pursuant to the requirements of Streets and Highways Code Section 36501 et seq.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014)

Exhibit B

Downtown San Rafael Business Improvement District Administrative Guidelines

1. **District.** The Downtown San Rafael Business Improvement District (“District”) is a parking and business improvement district established pursuant to the provisions of Streets and Highways Code Section 36501 et seq., and codified in Chapter 10.09 of the San Rafael Municipal Code.
2. **Appointment of District Advisory Board.** The City Council, in its sole and absolute discretion, will appoint the District Advisory Board, pursuant to the Streets and Highways Code Section 36501 et seq. and San Rafael Municipal Code section 10.09.080, to administer the affairs of the District. The City Council will review and update the District Advisory Board appointments as it deems appropriate. The City Council may, but is not required to, appoint any members of the Board of Directors of the San Rafael Chamber of Commerce (“Chamber”) to the District Advisory Board, provided that such members meet the eligibility requirements under San Rafael Municipal Code section 10.09.080.
 - a. **District Advisory Board Nominations.** The District Advisory Board will conduct an annual meeting to select the nominations for District Advisory Board. The District Advisory Board nominations will be provided to the City Clerk at the time of the submittal of the District Annual Report. The Advisory Board nominations should reflect a balance of downtown business representation including retail businesses, non-retail businesses, and at least one district eligible Chamber business recommended by the Chamber.
3. **Management and Enhancement Services of the Chamber of Commerce.** The City has contracted with the Chamber to provide District management and enhancement services to the District, and act as the fiscal agent of District Funds. The Advisory Board will conduct all of its affairs consistent with the City’s agreement with the Chamber.
4. **Governance; meetings.** The District Advisory Board is a separate, standalone advisory board appointed by the City Council to administer the affairs of the District. To the extent determined necessary by the District Advisory Board, it will develop its own bylaws or operating rules, separate from the Chamber Board of Director’s bylaws. The District Advisory Board will conduct its meetings, and meet separately and at a different time than the Chamber Board of Directors. If these meeting are to occur on the same date, before or after each other, the meeting agendas will be clearly delineated to specify which organization is meeting at which time. In noticing and conducting its meetings as the District Advisory Board, the District Advisory Board will, in all respects, comply with the Brown Act, as specified below.
5. **Compliance with Brown Act and Public Records Act.** The District Advisory Board must comply with all federal, state, and local laws, including The Ralph M. Brown Act (Government Code § 54950 et seq.) (“Brown Act”) whenever matters within the subject matter of the District are heard, discussed, or deliberated, and the California Public Records Act (Government Code § 6250 et seq.) for all documents relating to activities of the District. See Exhibit B-1 for more information on the Brown Act.
6. **Conflicts of interest.** Members of the District Advisory Board will serve without compensation and may not have any interest in any agreement for compensation entered into by or on behalf of the District.
7. **District Funds.** District Funds (revenues derived from the assessments and transferred from the City to the Chamber) shall be used solely for the purposes as stated in Streets and Highways Code section

36501 et seq. and San Rafael Municipal Code section 10.09.060.

8. **Annual Reports.** The District Advisory Board will submit annual reports to the City, no later than October 15 of each year. The annual report contents and filing will conform with the 1989 Act, Streets and Highways Code section 36533, as follows:

§ 36533. Annual report; contents; filing

(a) The advisory board shall cause to be prepared a report for each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The report may propose changes, including, but not limited to, the boundaries of the parking and business improvement area or any benefit zones within the area, the basis and method of levying the assessments, and any changes in the classification of businesses, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the parking and business improvement area by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following:

(1) Any proposed changes in the boundaries of the parking and business improvement area or in any benefit zones within the area.

(2) The improvements and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements and the activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.

(5) The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the advisory board or may modify any particular contained in the report and approve it as modified. The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments.

Exhibit B-1

Summary of The Brown Act Provisions

The Advisory Board of the Downtown San Rafael Business Improvement District (“District”) is subject to the Ralph M. Brown Act when matters within the subject matter of the District are heard, discussed, or deliberated and shall comply with the California Public Records Act. The California Public Records Act requires that non-exempt records of the District be accessible by the public. The Brown Act is intended to ensure that “actions be taken openly and that deliberations be conducted openly” by boards who are created by formal action of city councils. Some of the more important requirements of the Brown Act are listed below.

The Advisory Board and any standing committees and committees comprised of at least a majority of the Board members are subject to the following requirements:

- Except for closed sessions which are expressly permitted under the Brown Act, all meetings must be open to the public and must allow public comment;
- Some closed sessions are allowed based on limited exceptions (litigation, employment issues, etc.);
- A meeting is defined as a congregation of a majority of Board members, or serial individual meetings involving a majority or more of the Board members wherein District business is discussed or conducted;
- Agendas for upcoming, regular meetings must be posted at least 72 hours in advance; and
- Action can only be taken on items listed on the posted agenda.

The above list provides a simple overview. The Brown Act is updated routinely by the State of California and has more requirements. City staff should be contacted for current Brown Act resources, information and training.

Exhibit C

Insurance Requirements

During the term of this Agreement, and for any time period set forth below, the **CHAMBER OF COMMERCE (as CONSULTANT)** shall procure and maintain in full force and effect, at no cost to **CITY** insurance policies with respect to employees and vehicles assigned to the performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in this Exhibit B.

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

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

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

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

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

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

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

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

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

6. The insurance policies shall provide for a retroactive date of placement coinciding with

the Effective Date of this Agreement.

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

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

9. **CONSULTANT** agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by **CONSULTANT**, provide the same minimum insurance coverage required of **CONSULTANT**, except as with respect to limits. **CONSULTANT** agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. **CONSULTANT** agrees that upon request by **CITY**, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the performance of Services will be submitted to **CITY** for review.

10. **CONSULTANT** agrees to be responsible for ensuring that no contract used by any party involved in any way with the Services reserves the right to charge **CITY** or **CONSULTANT** for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to **CITY**. It is not the intent of **CITY** to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against **CITY** for payment of premiums or other amounts with respect thereto.

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

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

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPOINTING DOWNTOWN BUSINESS IMPROVEMENT DISTRICT (BID) ADVISORY BOARD MEMBERS

WHEREAS, the Parking and Business Improvement Area Law of 1989, Cal. Strs. & Hwys. Code § 36500 *et seq.* (“1989 Act”), authorizes cities to establish parking and business improvement areas for the purpose of promoting economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses and prevent erosion of business districts; and

WHEREAS, pursuant to the 1989 Act, in June 2013 the City Council of San Rafael adopted Ordinance No. 1912 (“Ordinance”), codified in the San Rafael Municipal Code (“SRMC”) Chapter 10.09, establishing the Downtown San Rafael Business Improvement District (“District”) to replace a former Parking and Business Improvements Area Business Improvement District established in 1979; and

WHEREAS, the Ordinance provides for the City’s collection of assessments on approximately 700 businesses that operate within the District’s boundaries; and

WHEREAS, the revenues derived from the assessments (further defined herein as “District Funds”) are used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses; and the acquisition, construction, installation and maintenance of tangible property that provide a specific benefit to the assessed businesses; and

WHEREAS, pursuant to section 36530 of the 1989 Act and SRMC Section 10.09.080, the Council appoints a District Advisory Board consisting of members that own or represent a business in the District or voluntary members; and

WHEREAS, the District Advisory Board administers the affairs of the District and prepares an annual report each year describing which assessments are to be levied and files the report with the City Clerk; and

WHEREAS, the District Advisory Board is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code) at all times when matters within the subject matter of the District are heard, and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), for all records relating to activities of the District; and

WHEREAS, the City Council has not made updated appointments to the District Advisory Board since 2018 given the COVID-19 Pandemic; and

WHEREAS, the City Council wishes to update its appointed members to the BID Advisory Board; and

NOW, THEREFORE, BE IT RESOLVED that the following persons shall be appointed to the BID Advisory Board effective immediately with terms expiring on December 31, 2023:

Terrence Thornton	San Rafael Martial Arts
Erika Bowker	Pleasures of the Heart
Adam Dawson	Mike's Bikes
Jed Greene	Five Corners Consulting Group
Tobi Lessem	Bodywise Massage
Jeff Brusati	T&B Sports
Amy & Bishlam Bullock (1 vote)	Salon B Style Lab
Morgan Schauffler	Youth in Arts
Elisabeth Setten	Artworks Downtown
Kelly Phu	Vin Antico
Joe McCallum	Newmark

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 1st day of May 2023, by the following vote, to wit:

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

Lindsay Lara, City Clerk

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT TRANSITION AGREEMENT WITH THE DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT (BID CORPORATION) IN THE AMOUNT OF \$5,000

WHEREAS, the Parking and Business Improvement Area Law of 1989, Cal. Strs. & Hwys. Code § 36500 *et seq.* (“1989 Act”), authorizes cities to establish parking and business improvement areas for the purpose of promoting economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses and prevent erosion of business districts; and

WHEREAS, pursuant to the 1989 Act, in June 2013 the City Council of San Rafael adopted Ordinance No. 1912 (“Ordinance”), codified in the San Rafael Municipal Code (“SRMC”) Chapter 10.09, establishing the Downtown San Rafael Business Improvement District (“District”) to replace a former Parking and Business Improvements Area Business Improvement District established in 1979; and

WHEREAS, the Ordinance provides for the City’s collection of assessments on approximately 700 businesses that operate within the District’s boundaries; and

WHEREAS, the revenues derived from the assessments (“District Funds”) are used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses; and the acquisition, construction, installation and maintenance of tangible property that provide a specific benefit to the assessed businesses; and

WHEREAS, pursuant to section 36530 of the 1989 Act and SRMC Section 10.09.080, the Council appoints a District Advisory Board consisting of members that own or represent a business in the District or voluntary members; and

WHEREAS, the District Advisory Board administers the affairs of the District and prepares an annual report each year describing which assessments are to be levied and files the report with the City Clerk; and

WHEREAS, the District Advisory Board is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code) at all times when matters within the subject matter of the District are heard, and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), for all records relating to activities of the District; and

WHEREAS, the BID Corporation, which operates as a separate California nonprofit mutual benefit corporation under direction of its Board of Directors (the “BID Corporation Board”) was established by representatives of businesses in the District in 2012; and

WHEREAS, each year, the City has distributed the District Funds to the BID Corporation, and the District Advisory Board administers those revenues to use them for authorized purposes that benefit the assessed businesses and to prepare and to submit the annual report to the City Clerk reporting activities and finances of the District; and

WHEREAS, all District Funds in the possession/control of the BID Corporation are the property of the District and are held in trust by the BID Corporation solely for the benefit of the District; and

WHEREAS, the San Rafael Chamber of Commerce (“Chamber”) is a California nonprofit mutual benefit corporation that is a member-based business advocacy organization supporting local businesses of San Rafael; and

WHEREAS, the BID Corporation now operates in the Chamber’s offices and has a close working relationship with the Chamber; and

WHEREAS, the COVID-19 pandemic significantly reduced the businesses and collections of District assessments in 2022 and the District, in 2022, reduced its operations and operated with reserve funds; and

WHEREAS, with the uncertainty of business recovery from the pandemic and improvement of economic conditions, the City believes that the District would benefit from administration by the Chamber to create capacity building and pathways for long-term sustainability to support Downtown San Rafael; and

WHEREAS, the City and the Chamber are entering into a separate agreement under which the Chamber will provide District management and enhancement services; and

WHEREAS, the City and the BID Corporation desire to enter into an Agreement for the BID Corporation to winddown its affairs related to administration of the District and transfer all remaining District Funds in its possession or control back to the City.

NOW, THEREFORE BE IT RESOLVED, that the City Council hereby authorizes the City Manager to negotiate and execute a downtown business improvement district transition agreement with the Downtown San Rafael Business Improvement District (BID Corporation) in an amount of \$5,000, subject to form approved by the City Attorney.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the

City Council of the City of San Rafael, held on Monday, the 1st day of May 2023, by the following vote, to wit:

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

Lindsay Lara, City Clerk

**AGREEMENT FOR TRANSITION
OF THE DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT**

This Agreement (“Agreement”) is entered into as of _____ (the “Effective Date”), between the CITY OF SAN RAFAEL, a municipal corporation of the State of California (“City”) and the SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT, a California nonprofit mutual benefit corporation (“BID Corporation”).

RECITALS

WHEREAS, the Parking and Business Improvement Area Law of 1989, Cal. Strs. & Hwys. Code § 36500 *et seq.* (“1989 Act”), authorizes cities to establish parking and business improvement areas for the purpose of promoting economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses and prevent erosion of business districts; and

WHEREAS, pursuant to the 1989 Act, in June 2013 the City Council of San Rafael adopted Ordinance No. 1912 (“Ordinance”), codified in the San Rafael Municipal Code (“SRMC”) Chapter 10.09, establishing a reorganized Downtown San Rafael Business Improvement District (“District”) to replace a former Parking and Business Improvements Area Business Improvement District established in 1979; and

WHEREAS, the Ordinance extended the collection boundaries beyond ground floor retail and provides for the City’s collection of assessments on approximately 700 businesses that operate within the District’s boundaries including offices and financial institutions; and

WHEREAS, the revenues derived from the assessments (defined herein as “District Funds”) are used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses; and the acquisition, construction, installation and maintenance of tangible property that provide a specific benefit to the assessed businesses; and

WHEREAS, pursuant to section 36530 of the 1989 Act and SRMC Section 10.09.080, the Council appoints a District Advisory Board consisting of members who own or represent a business in the District or voluntary members; and

WHEREAS, the District Advisory Board’s primary function is to administer the affairs of the District and prepare an annual report each year describing which assessments are to be levied and files the report with the City Clerk; and

WHEREAS, the District Advisory Board is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code) at all times when matters within the subject matter of the District are heard, and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), for all records relating to activities of the District; and

WHEREAS, the BID Corporation, which operates as a separate California nonprofit mutual benefit corporation under direction of its Board of Directors (the “BID Corporation Board”) was established by representatives of businesses in the District in 2012; and

WHEREAS, the City Council from time to time has updated its appointments to the District Advisory Board to be the same as the members of the BID Corporation Board; and

WHEREAS, each year, the City has distributed the District Funds to the BID Corporation, and the District Advisory Board administers those revenues to ensure that the BID Corporation uses them for authorized purposes that benefit the assessed businesses and to prepare and to submit the annual report to the City Clerk reporting activities and finances of the District; and

WHEREAS, all District Funds in the possession/control of the BID Corporation are the property of the District and are held in trust by the BID Corporation solely for the benefit of the District; and

WHEREAS, the San Rafael Chamber of Commerce (“Chamber”) is a California nonprofit mutual benefit corporation that is a member-based business advocacy organization supporting local businesses of San Rafael; and

WHEREAS, the Chamber has been operating and serving the business community for over one hundred years; and

WHEREAS, the Chamber staff has proven management skills, strong leadership and financial acumen and has worked closely with City staff and the BID Corporation staff for over 30 years; and

WHEREAS, the BID Corporation now operates in the Chamber’s offices and has a close working relationship with the Chamber; and

WHEREAS, the COVID-19 pandemic significantly reduced the businesses and collections of District assessments in 2022 and the BID Corporation, in 2022, reduced its operations and operated with reserve funds; and

WHEREAS, with the uncertainty of business recovery from the pandemic and improvement of economic conditions, the City believes that the District would benefit from administration by the Chamber to create capacity building and pathways for long-term sustainability to support Downtown San Rafael; and

WHEREAS, the Chamber can provide leadership, governance and administrative services in the execution of the District’s activities; and

WHEREAS, coincident with this Agreement, the City and the Chamber are entering into a separate agreement under which the Chamber will provide management and enhancement services for the District; and

WHEREAS, the City and the BID Corporation desire to enter into this Agreement for the BID Corporation to transition its affairs related to administration of the District and transfer all remaining District Funds back to the City.

NOW, THEREFORE, in consideration of the above recitals and for other good and sufficient consideration, the City and the BID Corporation agree as set forth herein.

AGREEMENT

1. The BID Corporation's Duties.

- a. *Transition of District Activities.* Until such date that it returns the District Funds to the City in accordance with subparagraph (b), the BID Corporation will continue to administer ongoing activities of the District but will not enter into any new contracts or obligations on behalf of the District. The BID Corporation will complete the following District improvements and activities that are currently obligated:
- i. Special Event Activities: 1) May Madness may 6, 2023 and 2) Dining Under the Lights May 12, 2023 and June 12, 2023.

The BID Corporation will not perform, schedule or obligate any other District improvements or activities.

- b. *Termination of District Activities.* No later than June 30, 2023, the BID Corporation will:
- i. Terminate all administration, improvements and activities of the District;
 - ii. Pay all obligations and administration costs it incurred on behalf of the District; and
 - iii. Return to the City all remaining District Funds, including reserves, and all assets acquired with District Funds, together with an accounting thereof.
- b. *Closure Report.* No later than June 30, 2023, prepare and submit to the City a closure report ("Closure Report") detailing the activities and finances of the District, including:
- i. The District improvements and activities completed or partially completed since the date of its 2022 annual report submitted to the City;
 - ii. Planned and scheduled improvements and activities of the District for the remainder of 2023; and
 - iii. Budget and accounting records pertaining to the District administration sufficient to provide the basis for an unqualified opinion by an independent auditor, including but not limited to budget, expenditures, subcontracts, insurance, permits, administrative expenses, overhead, and any contributions to District Funds made from sources other than assessments.

- c. *Supplemental Post-Closure Report and Payment.* No later than August 31, 2023, prepare and submit to the City a supplemental post-closure report ("Post-Closure Report") detailing any additions or changes to the information reported in the Closure Report. Said report will cover the time period of the date of the Closure Report through the date of the Post-Closure Report. The BID Corporation will further return to the City any remaining District Funds not previously accounted for.

2. The City's Duties.

- a. *Compensation.* In exchange for the BID Corporation's performance of services for the City in this Agreement, the City will compensate the BID Corporation in the amount of \$5,000, payable in one lump sum within ten (10) days of the Effective Date of this Agreement. This compensation is separate from the District Funds and is intended to compensate the BID Corporation directly for its services provided under this Agreement.

- b. *Distribution of District Funds.* The City will distribute \$15,000 of District Funds collected by the City through assessments levied in 2023 to the BID Corporation for District activities to be performed through June 30, 2023, payable in one lump sum within ten (10) days of the Effective Date of this Agreement. The BID Corporation may only use the District Funds for the purposes authorized under the 1989 Act and the Ordinance.
- 3) **Term.** The term of this Agreement (the “Term”) will be from the Effective Date through August 31, 2023.
- 4) **Obligations of the BID Corporation.** Any and all obligations incurred by the BID Corporation hereunder, or otherwise, will be the sole obligation of the BID Corporation, and the BID Corporation shall have no authority to incur any obligations in the name of, or on behalf of, the City of San Rafael, or any department thereof, or the District, except where expressly stated in paragraph 1 regarding obligations of the District.
- 5) **General provisions**

- a. *Notice.* To be effective, any notice concerning this Agreement must be served by placing it in the U.S. Mail with postage prepaid (registered or certified mail, return receipt requested) to the following addressees. Either party may change the addressee by providing written notice to the other party. Notice will be considered delivered two business days after the date of deposit in the U.S. Mail.

To City:
City of San Rafael
Director of Economic Development
1400 Fifth Avenue
San Rafael, CA 94901
micah.hinkle@cityofsanrafael.org

To BID Corporation:
San Rafael Business Improvement District
Terrence Thornton, President
P.O. Box 151050
San Rafael, CA 94915
terrance@sanrafaelmartialarts.com

- b. *Independent Contractor Status.* The BID Corporation will perform under this Agreement as an independent contractor and will be responsible for any federal, state, or local taxes or fees that apply to compensation the BID Corporation receives from the City under this Agreement. The BID Corporation’s employees and subcontractors will not be employees of the City and will not be eligible for any benefits provided through the City, including but not limited to social security, health, workers' compensation, unemployment compensation, or retirement benefits. Neither the District nor any of its officers, employees, agents, volunteers, or subcontractors are or will be considered to be agents of the City in connection with the BID Corporation's performance under this Agreement.
- c. *General Fund Not Liable.* Neither the taxing authority, nor the bonding capacity, nor the general fund, nor any other fund or monies of the City other than actual District Funds received from businesses located within the District will be liable for payment of any obligations in connection with the District Funds arising from this Agreement. Obligations of the District Funds are not a debt of the City, nor are they a legal or equitable pledge, charge, lien, or encumbrance upon any of the City's property, income, receipts, or revenues. This Agreement embodies all of the BID Corporation’s reimbursement rights with respect to the District Funds, and the City is not required to execute any additional note or document.

- d. *Attorneys' Fees.* The prevailing party in any litigation or arbitration brought to enforce this Agreement will be entitled to recover reasonable attorneys' fees and costs (including the reasonable costs of City Attorney staff) incurred in connection with the litigation or arbitration, through final resolution.
- e. *Interpretation and Venue.* This Agreement is to be interpreted in accordance with California law. Any litigation concerning this Agreement must be brought and prosecuted in the Marin County Superior Court.
- f. *Waiver.* A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other party's breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.
- g. *Entire Agreement.* Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement sets forth the parties' entire understanding regarding the subjects covered. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those subjects (whether written, oral, express, or implied) and may be modified only by another written agreement signed by both parties.
- h. *Counterparts.* The parties may execute this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
- i. *Precedence of Documents.* In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment.
- j. *Amendment.* This Agreement may be modified only by written instrument duly authorized and executed by all the parties.
- k. *Successors and Assigns.* Subject to limitations on assignment provided herein, this Agreement shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives. The BID Corporation may not assign its rights or obligations under this Agreement without the prior written consent of City, which consent may be withheld at City's sole and absolute discretion. Any attempted assignment by the BID Corporation, its successors or assigns, shall be null and void unless approved in writing by the City.
- l. *Authority to Sign.* Each individual executing this Agreement, or its counterpart, warrants that they are authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which they represent.

[Signatures are on the following page.]

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

CITY OF SAN RAFAEL:

**SAN RAFAEL BUSINESS
IMPROVEMENT DISTRICT:**

JIM SCHUTZ, City Manager

Terrance Thornton, President

APPROVED AS TO FORM:
Office of the City Attorney

By: GENEVIEVE COYLE,
Assistant City Attorney

Jed Greene, Acting Treasurer

ATTEST:
City Clerk

LINDSAY LARA, City Clerk

DRAFT

DRAFT

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ADOPTING THE DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT ADMINISTRATIVE GUIDELINES

WHEREAS, the Parking and Business Improvement Area Law of 1989, Cal. Strs. & Hwys. Code § 36500 *et seq.* (“1989 Act”), authorizes cities to establish parking and business improvement areas for the purpose of promoting economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses and prevent erosion of business districts; and

WHEREAS, pursuant to the 1989 Act, in June 2013 the City Council of San Rafael adopted Ordinance No. 1912 (“Ordinance”), codified in the San Rafael Municipal Code (“SRMC”) Chapter 10.09, establishing the Downtown San Rafael Business Improvement District (“District”) to replace a former Parking and Business Improvements Area Business Improvement District established in 1979; and

WHEREAS, the Ordinance provides for the City’s collection of assessments on approximately 700 businesses that operate within the District’s boundaries; and

WHEREAS, the revenues derived from the assessments are used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses; and the acquisition, construction, installation and maintenance of tangible property that provide a specific benefit to the assessed businesses; and

WHEREAS, pursuant to section 36530 of the 1989 Act and SRMC Section 10.09.080, the Council appoints a District Advisory Board consisting of members that own or represent a business in the District or voluntary members; and

WHEREAS, the District Advisory Board administers the affairs of the District and prepares an annual report each year describing which assessments are to be levied and files the report with the City Clerk; and

WHEREAS, the District Advisory Board is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code) at all times when matters within the subject matter of the District are heard, and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), for all records relating to activities of the District; and

WHEREAS, administrative guidelines provide the rules and procedures for the District Advisory Board and District management entity to administer and operate the affairs of the District, including how the City Council appoints members of the District Advisory Board, how meetings of the District Advisory Board are conducted in conformance with

the Brown Act, and requirements for the District Advisory Board to submit an annual report and spend District funds in conformance with law; and

NOW, THEREFORE BE IT RESOLVED, that the City Council hereby adopts the Downtown San Rafael Business Improvement District Administrative Guidelines attached hereto as Exhibit 1.

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 1st day of May 2023, by the following vote, to wit:

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

Lindsay Lara, City Clerk

Exhibit 1
Downtown San Rafael Business Improvement District
Administrative Guidelines
(May 2023)

1. **District.** The Downtown San Rafael Business Improvement District (“District”) is a parking and business improvement district established pursuant to the provisions of Streets and Highways Code Section 36501 et seq., and codified in Chapter 10.09 of the San Rafael Municipal Code.
2. **Appointment of District Advisory Board.** The City Council, in its sole and absolute discretion, will appoint the District Advisory Board, pursuant to the Streets and Highways Code Section 36501 et seq. and San Rafael Municipal Code section 10.09.080, to administer the affairs of the District. The City Council will review and update the District Advisory Board appointments as it deems appropriate. The City Council may, but is not required to, appoint any members of the Board of Directors of the San Rafael Chamber of Commerce (“Chamber”) to the District Advisory Board, provided that such members meet the eligibility requirements under San Rafael Municipal Code section 10.09.080.
 - a. **District Advisory Board Nominations.** The District Advisory Board will conduct an annual meeting to select the nominations for District Advisory Board. The District Advisory Board nominations will be provided to the City Clerk at the time of the submittal of the District Annual Report. The Advisory Board nominations should reflect a balance of downtown business representation including retail businesses, non-retail businesses, and at least one district eligible Chamber business recommended by the Chamber.
3. **Management and Enhancement Services of the Chamber of Commerce.** The City has contracted with the Chamber to provide District management and enhancement services to the District, and act as the fiscal agent of District Funds. The Advisory Board will conduct all of its affairs consistent with the City’s agreement with the Chamber.
4. **Governance; meetings.** The District Advisory Board is a separate, standalone advisory board appointed by the City Council to administer the affairs of the District. To the extent determined necessary by the District Advisory Board, it will develop its own bylaws or operating rules, separate from the Chamber Board of Director’s bylaws. The District Advisory Board will conduct its meetings, and meet separately and at a different time than the Chamber Board of Directors. If these meeting are to occur on the same date, before or after each other, the meeting agendas will be clearly delineated to specify which organization is meeting at which time. In noticing and conducting its meetings as the District Advisory Board, the District Advisory Board will, in all respects, comply with the Brown Act, as specified below.
5. **Compliance with Brown Act and Public Records Act.** The District Advisory Board must comply with all federal, state, and local laws, including The Ralph M. Brown Act (Government Code § 54950 et seq.) (“Brown Act”) whenever matters within the subject matter of the District are heard, discussed, or deliberated, and the

California Public Records Act (Government Code § 6250 et seq.) for all documents relating to activities of the District.

6. **Conflicts of interest.** Members of the District Advisory Board will serve without compensation and may not have any interest in any agreement for compensation entered into by or on behalf of the District.
7. **District Funds.** District Funds (revenues derived from the assessments and transferred from the City to the Chamber) shall be used solely for the purposes as stated in Streets and Highways Code section 36501 et seq. and San Rafael Municipal Code section 10.09.060.
8. **Annual Reports.** The District Advisory Board will submit annual reports to the City, no later than October 15 of each year. The annual report contents and filing will conform with the 1989 Act, Streets and Highways Code section 36533, as follows:

§ 36533. Annual report; contents; filing

(a) The advisory board shall cause to be prepared a report for each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The report may propose changes, including, but not limited to, the boundaries of the parking and business improvement area or any benefit zones within the area, the basis and method of levying the assessments, and any changes in the classification of businesses, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the parking and business improvement area by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following:

(1) Any proposed changes in the boundaries of the parking and business improvement area or in any benefit zones within the area.

(2) The improvements and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements and the activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.

(5) The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the advisory board or may modify any particular contained in the report and approve it as modified. The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments.



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Prepared by: Alicia Giudice, Director
Chris Hess, Assistant Director
Alexis Captanian, Housing Analyst

City Manager Approval: _____

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

SUBJECT **RESOLUTION RECOMMENDING COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROJECT FUNDING FOR THE FISCAL YEAR 2023-24 TO THE MARIN COUNTY BOARD OF SUPERVISORS**

RECOMMENDATION

Adopt a resolution recommending CDBG project funding for Fiscal Year 2023-24 to the Marin County Board of Supervisors.

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. Examples of CDBG-funded projects in San Rafael include the soon to be completed Vivalon Healthy Aging Center at 999 Third Street, which will provide 66 low- and very low-rent apartments to income-qualifying individuals and couples age 62 or older. Other examples include the recent Pickleweed Park play structure replacement as well as a wide range of public services, including free or low-cost legal services for renters.

In 2020, the City entered into a cooperation agreement with the County of Marin to manage the CDBG funding allocations. Under this agreement, Marin County is divided into three local planning areas (Countywide, City of San Rafael, and City of Novato). Funding recommendations for the three areas are overseen by a Countywide Priority Setting Committee (PSC) made up of City and Town Council members, a County Supervisor, and community residents representing members of the protected classes (race, color, national origin, religion, sex, familial status, or disability) under fair housing laws.

Under the cooperative agreement, the City is responsible for allocating CDBG funding for projects serving the San Rafael planning area. The City Council provides its recommendations to the PSC, which in turn provides the San Rafael recommendation along with recommendations for the two other planning areas to the Board of Supervisors (BOS).

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

In June 2023, the BOS will hold a public hearing and act on the funding recommendations from the City and the PSC. Following BOS action, the recommendations will be submitted to HUD.

ANALYSIS

The CDBG program uses a two-year application cycle, with the option to open a limited mid-cycle application as needed. There is a minimum grant size of \$15,000 per project per year, and Countywide projects may receive funding from each planning area to bring their grant amount up to \$15,000. While organizations only submit applications every two years, funding must be awarded annually based on the project's past performance and expected funding allocation from HUD.

Evaluation Guidelines

All applications received by the County were evaluated based on the criteria listed below:

HUD National Objective Thresholds:

- Benefit low- and moderate-income persons.
- Prevent or eliminate blight or meet other community development needs for low- and moderate-income persons.

PSC Enhanced Thresholds:

- Support projects that affirmatively further fair housing and have the commitment and capacity to engage in affirmative marketing.¹
- Prioritize projects that serve members of the protected classes as defined by HUD.
- Prioritize projects that serve low-income persons.

Project Evaluation Criteria:

- Readiness—can awarded funds be completely expended during the grant year?
- Sustainability—does the organization have the capacity to sustain a project or program beyond this federal funding period?
- Effectiveness and Accountability—does the organization have the capacity and track record to effectively execute the project and administer federal funds?
- Prioritize projects with the greatest impact.

In addition to the criteria set forth by HUD, the PSC approved establishing two additional priorities for funding CDBG and HOME housing projects:

- Family Housing²
- Land trust model in eastern Marin that provides home ownership opportunities (In this context, Eastern Marin is defined as all areas in Marin except West Marin).

The PSC also established the following priorities for public services projects:

¹ Affirmative Marketing is targeted outreach about program opportunities to groups of people otherwise least likely to apply for or receive those opportunities. Given Marin's history of segregation, the protected class populations typically included in Affirmative Marketing are Black/African American, Asian/Pacific Islander, and Latinx. Programs that do not conduct broad Affirmative Marketing are less competitive in the allocation process.

² Family Housing is identified as a need in both the County's Consolidated Plan and Analysis of Impediments. In addition, HUD requires that Marin's CDBG and HOME grants contribute to the creation of new family housing units.

- **Basic Health Services** – includes services that prevent or treat medical conditions for individuals who are un-insured, under-insured, or people with low incomes who cannot afford their deductible. Programs and services include but are not limited to preventative health such as immunizations, well-child from birth, periodic health evaluations for adults, voluntary family planning services, children’s eye and ear examinations to determine the need for vision and hearing correction, and hygiene services. Services may also include medically necessary emergency health care, inpatient and outpatient treatment, diagnostic laboratory and diagnostic and therapeutic radiologic services, and provision of prescription drugs.
- **Children, Youth, and Parent Support Services** – includes services that target low-income families and address disparities in access to early childhood education, high costs of childcare county-wide, and family self-sufficiency. Programs and services include but are not limited to supporting childcare scholarships, student extracurricular activities, parent engagement and training, case management, therapeutic services, transportation, home visitations, and family legal supports.
- **Food Security** – includes services that provide physical and/or economic access to food to meet dietary needs for a productive and healthy life. Programs and services include but are not limited to free meal sites, food banks, grocery subsidies, home-delivered meals, and other programs that provide food to people in need.
- **Housing Support Services** – includes services that assist individuals in accessing stable housing, prevent discrimination in housing choice, and aid renters in maintaining stable housing. Programs and services include but are not limited to fair housing counseling, legal support, housing locators, and down payment and rental assistance.

CDBG Funding – City of San Rafael Planning Area

The charts beginning on the following page provide funding recommendations based on the evaluation criteria above. The San Rafael Planning Area allocations are in bold. Following each chart is a brief description of the project(s) recommended for funding.

The overall 2023-24 CDBG program allocation has been reduced from the prior year’s funding levels by 2.5% to \$1,589,600. The CDBG funding available for the San Rafael planning area, as determined by the HUD formula included in the cooperative agreement, is \$475,673. The County has identified additional one-time sources to fill this year’s funding cut and maintain the San Rafael allocation at the previous year’s level of \$485,000 (sum of “San Rafael Recommended Funds” in Attachment 2). Per HUD regulation, a maximum of \$70,000 can be used for public services, a minimum of \$205,000 must be spent on housing, and the remaining \$210,000 can be spent on either housing or community infrastructure/capital projects.

A list of the applications received for the San Rafael Planning Area and for Countywide projects serving the San Rafael Planning Area is provided as Attachment 2. The recommendations for allocating the San Rafael planning area CDBG funds and total expected allocations, including funding from the other planning areas, are also included. The list of all applications received by the County for funding in the current round can be accessed online via the links below. The links include applications for all planning areas: [Community Infrastructure/Capital Projects](#), [Housing Projects](#), and [Public Services Projects](#).

Housing Projects

Six (6) housing projects submitted applications for funding from the San Rafael Planning Area. The six (6) projects have a funding request of \$2,167,357.

- Five (5) of those projects are countywide, which will result in units or services available to current San Rafael residents.
- One (1) project is based in San Rafael with a total funding request of \$200,000 (153 Novato St. Rehab Project, Canal Alliance).

In accordance with CDBG guidelines, a minimum of \$205,000 must be spent on housing projects. The funding recommendation totaling \$265,000 is as follows:

Housing Project Funding Applications	CDBG Request	San Rafael Recommendation	Expected Total CDBG Allocation
Canal Alliance * <i>153 Novato Street Rehabilitation</i>	\$ 200,000	\$ 180,000	\$ 180,000
Eden Housing, Inc. (CHDO) <i>Point Reyes Coast Guard</i>	\$ 600,000	\$ -	\$ -
Episcopal Community Services <i>1251 S. Eliseo</i>	\$ 500,000	\$ -	\$ -
Habitat for Humanity Greater San Francisco <i>Residential Rehab Loan Program</i>	\$ 259,357	\$ 85,000	\$ 210,000
Homeward Bound of Marin <i>Novato Veterans and Workforce Housing</i>	\$ 600,000	\$ -	\$ -
Marin Center for Independent Living <i>Residential Access Modification Program</i>	\$ 18,000	\$ -	\$ -
* San Rafael-only request	\$ 1,967,357	\$ 265,000	\$ 390,000

153 Novato Street Rehabilitation (Canal Alliance) consists of 12 affordable units, owned by Canal Alliance, in a 64-unit condominium complex in the Canal Neighborhood of San Rafael. As proposed, the project will renovate two units with considerable capital improvement needs and enhance the health and safety of residents.

Point Reyes Coast Guard (Eden Housing, Inc.) is a decommissioned Coast Guard housing site that will be renovated and developed to provide 54 affordable homes for seniors and families. The housing units will be available to the regional population throughout Marin County, including San Rafael.

1251 S. Eliseo (Episcopal Community Services) is a former skilled nursing facility that will be renovated into 43 units of supportive housing for chronically homeless adults, plus one manager’s unit. When completed, the project will provide housing for the regional homeless population throughout Marin County, including San Rafael.

Residential Rehabilitation Loan Program (Habitat for Humanity Greater San Francisco) offers affordable low-interest, deferred loans to low-income qualifying homeowners to complete needed home repairs.

Novato Veterans and Workforce Housing (Homeward Bound of Marin) is a future housing community providing 24 affordable 1-bedroom apartments of supportive housing for formerly homeless veterans and 26 1-bedroom apartments for formerly homeless adults and small families who are re-entering the workforce. When completed, the project will provide housing for the regional homeless population throughout Marin County, including San Rafael.

Residential Access Modification Program (Marin Center for Independent Living) offers home access modifications including ramps, grab bars, and other improvements to increase housing accessibility for people with disabilities, allowing them to remain in their homes.

Capital Projects

Two (2) community infrastructure and capital projects submitted applications from the San Rafael Planning Area. County staff recommends funding the following capital allocations totaling the \$150,000:

Capital Project Funding Applications	CDBG Request	San Rafael Recommendation	Expected Total CDBG Allocation
City of San Rafael Department of Public Works* <i>Canal Area Pathway Projects</i>	\$ 350,000	\$ 120,000	\$ 120,000
Community Action Marin* <i>Renovation of the De Colores Children's Center & Safety Net Services Hub to Increase Childcare for Families of Low Income</i>	\$ 50,000	\$ 30,000	\$ 30,000
* San Rafael-only request	\$ 400,000	\$ 150,000	\$ 150,000

Canal Area Pathway Projects (City of San Rafael) The City of San Rafael's Public Works Department requests CDBG funding to support three walkway improvement projects, including ADA accessibility, in the Canal neighborhood of San Rafael. Two of the pathways are critical thoroughfares for families to access school and the local market.

De Colores Children's Center and Safety Net Services Hub (Community Action Marin) currently provides childcare and healthy meals to 33 children Monday through Friday. As proposed, the renovations will increase the capacity of the center to provide services and healthy meals for 17 additional children in San Rafael.

Public Services

The chart on the following page provides funding recommendations for public services. The County expects an allocation of approximately \$70,000 for public services in 2023-24 for the San Rafael Planning Area. This allocation is based on 15% of the total entitlement available through CDBG for public services and additional one-time resources that the County has identified to keep project funding whole in Year 2 of the 2-year application cycle. The overall allocation to each planning area is a percentage of the total, less the allowed administration costs and required fair housing service funds. No more than the amount indicated in this staff report may be spent on public services, which is capped countywide at 15% of funds. The City Council has the option to reduce its public services percentage on an annual basis. However, it cannot increase it.

There are a total of five (5) projects applying for public services funding—four (4) Countywide projects with a portion of services going to San Rafael residents, and one (1) serving San

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 6

Rafael only. Staff recommends funding for all five (5) public services projects totaling \$70,000 in CDBG monies, the maximum allowed by HUD.

Public Service Funding Applications	CDBG Request	San Rafael Recommendation	Expected Total CDBG Allocation
City of San Rafael/Pickleweed Preschool * <i>Preschool/Pickleweed Preschool</i>	\$ 23,000	\$ 23,000	\$ 23,000
Covia Foundation <i>Home Match Marin</i>	\$ 15,000	\$ 7,500	\$ 15,000
ExtraFood.org <i>Building an Equitable and Sustainable Food Safety Net in Marin County</i>	\$ 15,335	\$ 7,750	\$ 15,335
Fair Housing Advocates of Northern California ** <i>Fair Housing Counseling and Education (HUD required funding)</i>	\$ 65,000	\$ -	\$ 65,000
Family & Children's Law Center <i>Domestic Violence Legal Services for Low Income Families</i>	\$ 15,346	\$ 9,750	\$ 15,346
Legal Aid of Marin <i>Keeping Marin Residents in their Homes</i>	\$ 34,500	\$ 22,000	\$ 34,500
*San Rafael-only request **Required Fair Housing Services	\$ 168,181	\$ 70,000	\$ 168,181

Preschool/Pickleweed Preschool (City of San Rafael, Pickleweed Preschool) provides preschool programming for 68 children in the Canal Neighborhood.

Home Match Marin (Covia Foundation) provides a roommate matching service. The program is mainly used by older adults. Benefits of the program include providing a means for older residents to remain in their homes and supplement incomes while avoiding isolation.

Building an Equitable and Sustainable Food Safety Net in Marin County (ExtraFood.org) distributes unused fresh foods from local participating businesses to lower income families. The program supports access to healthy foods while reducing food waste.

Domestic Violence Legal Services for Low Income Families (Family and Children’s Law Center) supports victims of domestic violence. The requested funding will assist an anticipated 70 lower income individuals and their children.

Keeping Marin Residents in their Homes (Legal Aid Marin) provides free legal assistance to extremely low-income renters experiencing eviction or threat of eviction. The requested funding will assist an anticipated 75 renters.

FISCAL IMPACT:

There is no direct cost or revenue impact from the recommended action.

The City is directing HUD funds to specific projects. Allocating federal funds to potential City projects may allow City general and capital funds to be allocated to other priorities.

Funds for the County of Marin’s 2023-24 CDBG program funding cycle come from the Fiscal Year 2023 federal budget, which runs from October 1, 2022, to September 30, 2023. The

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 7

funding is allocated formulaically to entitled cities and counties. Three factors are included in the San Rafael Planning Area allocation formula: population, overcrowding, and poverty. The planning area percentages are consistent with previous years because the 2020 Census data that is required to update the calculation has not yet been released. The recommendations shall be adjusted proportionately as necessary, subject to program guidelines, if the 2023-24 allocation differs.

OPTIONS:

1. Approve the CDBG funding allocations as recommended.
2. Make different allocations of CDBG funding. (Funds may be shifted within categories, but the Public Services category cannot exceed \$70,000.)
3. Let the Countywide Priority Setting Committee provide a recommendation for the San Rafael Planning Area funding requests.
4. Provide direction to staff.

ACTION REQUIRED:

Adopt a resolution recommending CDBG funding for Fiscal Year 2023-24 to the Marin County Board of Supervisors.

ATTACHMENTS

Attachment 1 Resolution

Attachment 2 Exhibit A to Resolution: 2023-24 CDBG Project Allocations

Attachment 3 2023-24 PSC Roster

Attachment 4 2022-24 CDBG Application Guidelines

RESOLUTION NO.

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL RECOMMENDING
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROJECT FUNDING FOR
THE FISCAL YEAR 2023-24 TO THE MARIN COUNTY BOARD OF SUPERVISORS**

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

WHEREAS in June 1999, the City Council revised the Cooperation Agreement with the County of Marin for Community Development Block Grant (CDBG) funds whereby the City remained in the County system; and

WHEREAS in December 1999, the City devised a project selection process for CDBG projects; and

WHEREAS on May 1, 2023, in accordance with the adopted project selection process the City Council reviewed the submitted applications;

NOW, THEREFORE IT IS HEREBY RESOLVED that the City Council recommends to the Marin County Board of Supervisors that the \$485,000 in CDBG funds available for allocation by the City of San Rafael be distributed to the projects and in the amounts shown on the included Attachment 2, subject to adjustments necessary to accommodate any changes in the final allocation given to the County of Marin by the federal Department of Housing and Urban Development (HUD).

I, LINDSAY LARA, City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City held on the 1st day of May 2023, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

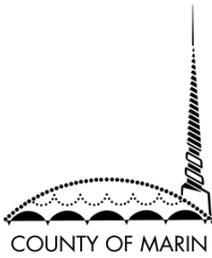
Lindsay Lara, City Clerk

Attachment 2: Exhibit A - 2023-24 CDBG Project

SAN RAFAEL PLANNING AREA 2023-24					
Type	Project Sponsor	Project Name	Applicants Request	San Rafael Recommendation	Total CDBG Allocation
Housing	Canal Alliance *	153 Novato St. Rehab	\$ 200,000.00	\$ 180,000.00	\$ 180,000.00
	Eden Housing, Inc (CHDO)	Point Reyes Coast Guard	\$ 600,000.00	\$ -	\$ -
	Episcopal Community Services	1251 S. Eliseo	\$ 500,000.00	\$ -	\$ -
	Habitat for Humanity Greater San Francisco	Residential Rehab Loan Program	\$ 249,357.00	\$ 85,000.00	\$ 210,000.00
	Homeward Bound of Marin	Novato Veterans and Workforce Housing	\$ 600,000.00	\$ -	\$ 100,000.00
	Marin Center for Independent Living	Residential Access Modification Program	\$ 18,000.00	\$ -	\$ -
	Housing subtotal		\$ 2,167,357.00	\$ 265,000.00	\$ 490,000.00
Capital	City of San Rafael Department of Public Works *	Canal Area Pathway Projects	\$ 350,000.00	\$ 120,000.00	\$ 120,000.00
	Community Action Marin *	Renovation of the De Colores Children's Center & Safety Net Services Hub to Increase Childcare for Families of Low Income	\$ 50,000.00	\$ 30,000.00	\$ 30,000.00
	Capital subtotal		\$ 400,000.00	\$ 150,000.00	\$ 150,000.00
Public Services	City of San Rafael/Pickleweed Preschool *	Preschool/Pickleweed Preschool	\$ 23,000.00	\$ 23,000.00	\$ 23,000.00
	Covia Foundation	Home Match Marin	\$ 15,000.00	\$ 7,500.00	\$ 15,000.00
	ExtraFood.org	Building an Equitable and Sustainable Food Safety Net in Marin County	\$ 15,335.00	\$ 7,750.00	\$ 15,335.00
	Fair Housing Advocates of Northern California **	Fair Housing Counseling and Education	\$ 65,000.00		\$ 65,000.00
	Family & Children's Law Center	Domestic Violence Legal Services for Low Income Families	\$ 15,346.00	\$ 9,750.00	\$ 15,346.00
	Legal Aid of Marin	Keeping Marin Residents in their Homes	\$ 34,500.00	\$ 22,000.00	\$ 34,500.00
	Public Services subtotal		\$ 168,181.00	\$ 70,000.00	\$ 168,181.00
Total funding recommendation				\$ 485,000.00	

*San Rafael only project

**Required Fair Housing Services allocated off the top



COMMUNITY DEVELOPMENT AGENCY
HOUSING AND FEDERAL GRANTS DIVISION

2023 Countywide Priority Setting Committee

Name	Affiliation
Cathy Cortez	At-Large Community Representative
Valeria Sasser	Lower Ross Community Representative
Jaime Yan Faurot	Novato Community Representative
Darlene Goins	San Rafael Community Representative
Ida Green	Southern Marin Community Representative
PJ Feffer	Upper Ross Community Representative
Jennifer Kerrigan	West Marin Community Representative
Peter Mark	City of Belvedere Councilmember
Kevin Carrol	City of Larkspur Councilmember
Stephen Burke	City of Mill Valley Councilmember
Mark Milberg	City of Novato Councilmember
Eli Hill	City of San Rafael Councilmember
Melissa Blaustein	City of Sausalito Councilmember
Eric Lucan	County of Marin Supervisor
Rosa Thomas	Town of Corte Madera Councilmember
Barbara Coler	Town of Fairfax Councilmember
Eileen Burke	Town of San Anselmo Councilmember
Holli Their	Town of Tiburon Councilmember

2022-24 COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIPS PROGRAM APPLICATION GUIDELINES

Application logistics:

Application Process and Timing

- Applications will be open on **Monday, January 3, 2022.**
- Bidders Conference: Tuesday, January 11th, 2022 via Zoom. **Registration is required.**
 - 11:00 am to 12:00 pm - Public Service Projects:
<https://us06web.zoom.us/meeting/register/tZ0qd-yqrTgtHdPnC7alxakdQGoDnJg47-6A>
 - 1:00 to 2:00 pm - Community Infrastructure/Capital and Housing Projects:
<https://us06web.zoom.us/meeting/register/tZUofu6pqDkqE9LDPyuqfuEw8p6jPr8n5wJr>
- Application Office Hours via Zoom - January 4 through January 24. **Registration is required.**
 - Tuesday – January 4, 11, and 18 from 3-4 pm:
<https://us06web.zoom.us/meeting/register/tZcrodGqzrgjGd32GYslxMGQ2gDENckO4fgs>
 - Wednesday – January 5, 12, and 19 from 1-2 pm:
<https://us06web.zoom.us/meeting/register/tZlqcO2qrT8tE9HudS8R6UDKIVJ-Cnlw3klV>
 - Thursday – January 6, 13, and 20 from 12-1 pm:
https://us06web.zoom.us/meeting/register/tZAoceGppzosEtK-C2PRY_crFv-Y3zuqQtis
 - Friday – January 7, 14, and 21 from 10-11 am:
https://us06web.zoom.us/meeting/register/tZ0lf-GhqjMjH9HvKMKr_yOuWV2LyKJdj9h9
 - Monday – January 24 from 3-5pm, **LAST DAY to Submit.**
https://us06web.zoom.us/meeting/register/tZlkcO6qrD0uGNXDSaFGG1Cb77Y--_gBYfEi
- Applications will be due on **Monday, January 24, 2022, no later than 5:00 PM.** Authorized hardcopy submissions must be in hand - **POSTMARKS WILL NOT BE ACCEPTED.**
- Federal Grants staff will review applications between January and March.
- Public hearings to determine recommendations will be held March-April 2022.
- The Board of Supervisors will hold the final public hearing to approve final recommendations in May.
- County of Marin will submit approved recommendations to HUD on May 15.

Application submittal

Submissions should be made through the online application form available on the Federal Grants webpage at www.marincounty.org/federalgrants.

It is recommended that applicants complete the application questions in a document saved to a local computer prior to completing the online form for submission.

Under certain circumstances emailed and mailed hard copy applications will be accepted. Please contact staff at federalgrants@marincounty.org for a reasonable accommodation if you are unable to submit the application using the online form.

Applications submitted in Spanish or Vietnamese will be accepted via email or hardcopy.

Average Annual Grant Size

- Public service grants are typically awarded between \$15,000 and \$65,000.
- Community Infrastructure/Capital improvement grants range from \$30,000 to \$200,000, depending on the project scope.
- Housing grants vary from \$30,000 to \$500,000, depending on the project scope.

Eligible Applicants and Projects

- Applicants must either be a nonprofit, government entity, or have a fiscal sponsor that is a nonprofit or government entity. Individuals are not eligible for funding.
- To ensure affordable housing is dispersed throughout the county, CDBG and HOME funds cannot be used for housing projects in the Canal Neighborhood of San Rafael or Marin City.
- To learn more about eligible and ineligible activities, review these guides to [eligible CDBG activities](#) and [eligible HOME activities](#).
- Projects **cannot be located in a Floodway** and projects in a **Special Flood Hazard Zone must have flood insurance**. Use this to verify if your project is in a floodway/zone: <https://msc.fema.gov/portal/home>.

Important Points to Keep in Mind for Applications and Project Planning

- Applications are for a 2-year cycle. This application will be used to fund projects in program years 2022-23 and 2023-24¹.
- Minimum grant size is \$15,000 per year.
- Organizations may only apply for **one project** in each category of funding. (Eg. an organization may apply for funding under the Public Service category and the Community Infrastructure/Capital category.)
- **Only complete applications submitted on-time will be considered for funding.**
- Complete applications include the **application document, project budget, and organization budget.**
- Housing funding will first prioritize projects that provide **Family Housing and/or a Land trust model** in eastern Marin that provides home ownership opportunities, with specific inclusion for African Americans.
- CDBG public service funds will first prioritize projects that provide **Basic Health Services; Children, Youth, and Parent Support Services; Food Security; and Housing Support Services**. Detailed descriptions are available on page 4.
- Housing projects built before 1978 will require lead testing or proof of past testing/treatment in accordance with the [Lead Safe Housing Rule](#). **Project scopes should consider this and include these costs.**
- Staff will pursue reprogramming of funds for projects that do not make substantial progress in the initial funding year.

Notice of Funding Availability: Community Development Block Grant (“CDBG”) and Home Investment Partnership Program (“HOME”) For 2022-24 application cycle

The Marin County Community Development Agency’s Housing and Federal Grants Division is pleased to announce the opening of the application period for the CDBG and HOME programs.

¹ Staff reserve the right to open the application in 2023-24, if deemed necessary.

Overview

Federal funding through the Community Development Block Grant (CDBG) program provides communities with resources to address a wide range of unique community development needs. The CDBG entitlement program allocates annual grants to larger cities and urban counties to develop thriving communities by providing funding to assist in the creation of affordable housing, a suitable living environment, and expanded economic opportunities for low and moderate-income persons. The Home Investment Partnerships Program (HOME) funds the creation, preservation, and rehabilitation of affordable housing for low income households. The programs are managed by the Federal Department of Housing and Urban Development (HUD).

National objectives for funding

Each activity funded by CDBG must meet one of the following national objectives for the program. Each application must clearly state which objective the proposed project addresses.

- Benefit low and moderate-income persons.
- Prevention or elimination of slums or blight.
- Address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which no other funding is available.

Priority Setting Committee local thresholds for funding

All applications are assessed using the following as thresholds for funding:

- Support projects that Affirmatively Further Fair Housing and have the commitment and capacity to engage in Affirmative Marketing.
- Prioritize projects that serve members of the protected classes as defined by HUD (race, color, religion, national origin, sex, disability, and familial status).
- Prioritize projects that serve low-income persons.

Evaluation Criteria:

All applications are assessed on the following baseline criteria:

- Readiness—can awarded funds be completely expended during the grant year.
- Sustainability—does the organization have capacity to sustain a project or program beyond this federal funding period?
- Effectiveness and Accountability—does the organization have the capacity and track record to effectively conduct the project and administer federal funds? Are there current or upcoming organizational leadership transitions?
- Prioritize greatest impact.

The Countywide Priority Setting Committee has approved funding priorities for Housing and Public Services dollars that consider projects in the following categories first:

Funding priorities for Housing funds:

- Family Housing
- Land trust model in eastern Marin² that provides home ownership opportunities, with specific inclusion for African Americans.

² Eastern Marin in this case is defined as all of the areas of Marin, except for West Marin

Funding priorities for Public Service funds:

- **Basic Health Services** – includes services that prevent or treat medical conditions for individuals who are un-insured, under-insured, or people with low incomes who cannot afford their deductible. Programs and services include but are not limited to preventative health such as immunizations, well-child care from birth, periodic health evaluations for adults, voluntary family planning services, children’s eye and ear examinations conducted to determine the need for vision and hearing correction, and hygiene services. Services may also include medically necessary emergency health care, inpatient and outpatient treatment, diagnostic laboratory and diagnostic and therapeutic radiologic services, and provision of prescription drugs.
- **Children, Youth, and Parent Support Services** – includes services that target low-income families and address disparities in access to early childhood education, high costs of childcare county wide, and family self-sufficiency. Programs and services include but are not limited to supporting childcare scholarships, student extracurricular activities, parent engagement and training, case management, therapeutic services, transportation, home visitations, and family legal supports.
- **Food Security** – includes services that provide physical and/or economic access to food to meet dietary needs for a productive and healthy life. Programs and services include but are not limited to free meal sites, food banks, grocery subsidies, home delivered meals, and other programs that provide food to people in need.
- **Housing Support Services** – includes services that assist individuals in accessing stable housing, prevent discrimination in housing choice, and aid renters in maintaining stable housing. Programs and services include but are not limited to fair housing counseling, legal support, housing locators, and down payment and rental assistance.

While this priority list does not preclude the funding of other types of projects, it provides staff with further direction when evaluating applications that meet both the national and local baseline thresholds.

Project budgets:

Detailed project budgets including sources and uses of funds to complete the project are required.

Public Services:

Project budgets for all public service project applications should cover a 1-year time period only. Year two funding allocations will be based on the 1-year budget in relation to outcomes achieved and HUD funding levels.

Community Infrastructure/Capital and Housing:

Project budgets for community infrastructure/capital and housing project applications should be developed spanning a two-year time period, with specific outcomes and line items associated with each year. If your project has received planning approvals, has an environmental review on file, and is ready to move forward in a 1-year time frame please indicate so.

Income verifying clients:

All applicants are required to income qualify beneficiaries of services provided with CDBG and HOME funds. Under CDBG regulations HUD presumes the following groups to be low-income and **income verification is not required:** abused children, battered spouses, the elderly, adult persons with serious disabilities, individuals who are homeless, illiterate persons, and migrant farm workers. Removal of architectural barriers to assist seniors and adults with severe disabilities would fall under this category of Presumed Benefit.

Marin County Federal Grants Program Overview

All of the eleven cities and towns in Marin County and the County of Marin participate in the Federal Grants program through a cooperation agreement. The cooperation agreement establishes a Countywide Priority Setting Committee to oversee the Federal Grants program and is renewed every three years. The cooperation agreement allows Marin County to be defined as an “urban county” for CDBG and enables it to receive a direct CDBG funding allocation. Novato and San Rafael are eligible to receive CDBG funding as entitlement cities because their populations exceed 50,000 persons. However, both cities have chosen to continue with the cooperation agreement to assure that Marin meets the population standard for urban counties and to streamline funding processes for applicants.

The County is divided into three (3) planning areas: Novato, San Rafael, and County Other. Each planning area receives a portion of the overall allocation based on an analysis of the most recent Census Data looking at population, the extent of poverty, and the extent of housing overcrowding, with the provision that the extent of poverty be counted twice.

The total CDBG allocation for Marin County has been about \$1.5 Million dollars annually and HOME is about \$800,000 annually. Staff will make funding recommendations based on these previous allocations.

Marin County Allocation Formula:

The Federal Grants program is administered by staff in the Marin County Community Development Agency. Federal regulations for CDBG limit the amount of administrative costs to 20% of the available grant funds. In addition, public services are limited to 15% of available grant funds. 40% of funds are allocated to housing and the remaining 25% of funding is available for community infrastructure/capital improvement projects and/or housing.

HOME funds are used exclusively for affordable housing serving low and very low-income. Federal regulations limit the amount of administrative costs to 10% of the available grant funds.

Selection Process:

The Novato City Council and San Rafael City Council hold public hearings on all CDBG applications for their respective planning areas and make a funding recommendation to the Board of Supervisors.

The Countywide Priority Setting Committee makes funding recommendations for the County Other planning area and HOME Program funding to the Board of Supervisors.

Requirements for Grant Disbursement:

All recipients will be required to enter into a contract with the County of Marin. This contract will include:

- Scope of service and use of funds.
- Expected outcomes.
- Compliance with certain administrative requirements and accounting records.
- Agreement to affirmatively further fair housing and conduct affirmative marketing.
- Non-discrimination.

All projects will require Federal **environmental review** clearance (NEPA). This is required even for projects that are not subject to CEQA. The Housing and Federal Grants Division is responsible to conduct the environmental review. Awardees should note that project funds may not be spent until the environmental review has been completed.

All community infrastructure/capital projects and some housing projects will be subject to the Federal Davis-Bacon Act regarding prevailing wages for construction workers. Davis Bacon often has standards that differ from California prevailing wage standards.

A lien is placed on all community infrastructure/capital and housing improvement projects. This lien must be repaid if the property is ever sold. The lien amount is not fixed and will be calculated as the amount of funding to the current value. The lien will increase as the value of the property rises. This lien has no time limit. The lien can be assumed by another nonprofit.

HOME will establish regulatory agreements dictating the affordability of the property and/or HOME units.

Commonly Used Terms

Affirmatively Furthering Fair Housing: Taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. Public service projects can affirmatively further fair housing by providing access to opportunities and by transforming racially and ethnically concentrated areas of poverty into areas of opportunity.

Affirmative Marketing: Through an affirmative marketing plan, a housing and service provider indicates what special efforts they will make to reach out to potential tenants or applicants who might not normally seek housing or services in their project and identify those least likely to apply and market to them.

Community Housing Development Organization (CHDO), is a private nonprofit, community-based organization that has staff with the capacity to develop affordable housing for the community it serves. To qualify for designation as a CHDO, the organization must meet certain requirements pertaining to their legal status, organizational structure, and capacity and experience. At least 15% of HOME funds must be allocated to CHDOs. A minimum requirement to be a CHDO is that at least one-third of the board membership are either low-income, residents of low-income neighborhoods, or are elected as representatives of low-income neighborhood organizations.

Community Development Block Grant (CDBG): funds local [community development](#) activities such as [affordable housing](#), [anti-poverty programs](#), and infrastructure development.

Construction of Housing: Under this category, CDBG funds may be used in certain specified circumstances to finance the construction of new permanent residential structures. Eligible uses include acquisition of sites, site improvements to publicly-owned land to enable the property to be used for the new construction of housing (provided the improvements are undertaken while the property is still in public ownership) and the cost of disposing of real property acquired with CDBG funds, which will be used for new construction of housing.

Countywide Priority Setting Committee (PSC): oversees the distribution of federal funds through the Community Development Block Grant program (CDBG) and HOME Investment Partnerships Program (HOME)

to support a variety of community-based projects, including affordable housing, community facilities, and public services such as childcare scholarships and services for individuals with disabilities. The PSC establishes funding priorities and reviews applications from local nonprofit and public agencies. The PSC includes a member of the Board of Supervisors, 10 city/town council members, as well as seven (7) community members representing six (6) regions spanning Marin and an at-large member representing the County.

Davis-Bacon: The Davis–Bacon Act of 1931 is a United States federal law that establishes the requirement for paying the federally established prevailing wages on construction projects for laborers and mechanics.

Demographics: HUD changed the data collection requirements regarding race/ethnicity categories during program year 2002-2003. These changes reflect Office of Management and Budget 1997 standards establishing that “Hispanic” is not a race category, but an ethnic category that cuts across all races. Those who are White, Black, Asian, Pacific Islander, American Indian, or a multi-race may also be counted as being of Hispanic ethnicity. As such, when asking the individual/household to select a race category, the individual/household must also state whether they are of Hispanic ethnicity. For example, an individual/household of Mexican descent would likely state their race as either American Indian or White, and would also fall under the category of “also Hispanic.”

Housing and Federal Grants Division: Staffed by the Marin County Community Development Agency, Housing and Federal Grants provides Marin communities with resources to address a wide range of unique community development needs and Housing Policy.

HOME Investment Partnerships Program (HOME): funds a wide range of activities including building, buying, and/or rehabilitating affordable housing for low-income people. HOME projects must match every dollar of HOME funds used with 25 cents from nonfederal sources, which may include donated materials or labor, the value of donated property, proceeds from bond financing, and other resources.

HUD: US Department of Housing and Urban Development

Protected classes: Under federal anti-discrimination law, a protected class is a group of people with a common characteristic who are legally protected from discrimination on the basis of that characteristic. The following characteristics are protected by the Federal Fair Housing Act: race, color, religion, national origin, sex, disability, and familial status (this last term refers to the presence of at least one child under 18 years old, and also protects prospects and tenants who are pregnant or in the process of adopting a child).

Public Services: CDBG funds can be used for activities that benefit low- and moderate-income people, such as childcare, health care, job training, recreation programs, education programs, public safety services, fair housing activities, services for senior citizens, services for homeless persons, drug abuse counseling and treatment, energy conservation counseling and testing, and homebuyer down payment assistance. To be eligible for funding, public services must be either a new service or provide a quantifiable increase in the level of a service. No more than 15% of CDBG funds can be used for public services.

Rehabilitation: CDBG funds may be used to finance the costs of rehabilitation as shown below.

Residential—Residential property, whether privately or publicly owned. This includes manufactured housing when such housing constitutes part of the community’s housing stock.

Commercial/industrial—Commercial or industrial property, but where such property is owned by a for-profit, rehabilitation under this category is limited to exterior improvements of the building and the correction of code violations.

Other—Nonprofit-owned, nonresidential buildings and improvements that are not considered to be public facilities or improvements under §570.201(c) of the CDBG program regulations.

NEPA: The National Environmental Policy Act (NEPA) is a United States environmental law that promotes the enhancement of the environment and established the President's Council on Environmental Quality (CEQ). Staff must complete an environmental review for all CDBG and HOME funded projects.

Income Limits - 2021 HUD INCOME LIMITS

Household Size	Extremely Low (0-30%)	Very-Low (30+-50%)	Low (50+-80%)	Moderate (80+-120%)	Median
1	\$38,400	\$63,950	\$102,450	\$125,650	\$104,700
2	\$43,850	\$73,100	\$117,100	\$143,650	\$119,700
3	\$49,350	\$82,250	\$131,750	\$161,600	\$134,650
4	\$54,800	\$91,350	\$146,350	\$179,500	\$149,600
5	\$59,200	\$98,700	\$158,100	\$193,850	\$161,550
6	\$63,600	\$106,000	\$169,800	\$208,250	\$173,550
7	\$68,000	\$113,300	\$181,500	\$222,600	\$185,500
8	\$72,350	\$120,600	\$193,200	\$236,950	\$197,450

SOURCE: U.S. Department of Housing and Urban Development