

## **MEMORANDUM OF UNDERSTANDING**

### **SAN RAFAEL CITY SCHOOLS AND CITY OF SAN RAFAEL**

This Memorandum of Understanding ("Agreement") is entered into as of this 28<sup>th</sup> day of July, 2020, by and between the San Rafael City Schools (SRCS) Board of Education, a school district duly established under the laws of California ("SRCS") and the City of San Rafael, a California Charter City ("City"), (collectively referred to as the ("Parties")).

### **RECITALS**

A. The voters of Marin County approved the authorization of Measure AA at General Elections held on November 6, 2018 thereby authorizing that Transportation Authority of Marin (TAM) be given the responsibility to administer the proceeds from a one-half cent transaction and use tax.

B. Measure AA financially supports TAM's Safe Pathways to School projects aimed at making capital improvements to enhance the safety of school trips.

C. The Parties have determined that certain infrastructure located within City right of way is desirable. The Parties desire to create a new pedestrian crossing between San Rafael High School and Montecito Plaza shopping center, as more particularly described below (hereafter, the "Third Street Pedestrian Crosswalk Project" or "Project").

D. In 2019, SRCS responded to a call for applications under Cycle 4 of the Safe Pathways to School program, and on October 24, 2019, the TAM Board of Commissioners approved funding of SRCS's application in the amount of \$400,000 to fund the Project, \$80,000 of which is specifically designated for design of the Project.

E. SRCS has prepared the design of the Project and both Parties desire the City to administer the construction contract and to participate in the funding of the Project.

F. The Parties wish to cooperate to allow the Project to be expeditiously completed in a manner consistent with TAM Funding Agreement A-FY 20-33 requirements attached hereto as Exhibit C, and to enter into this Memorandum of Understanding to memorialize their respective rights and obligations with respect to construction of the Project.

## **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, SRCS and City agree as follows:

### **1. RECITALS**

A. The above recitals are true and correct and are hereby incorporated in and expressly form a part of this Agreement.

### **2. COORDINATION**

A. City shall coordinate all work on the Project with SRCS's Dan Zaich, Senior Director of Capital Facilities, or his designee ("SRCS Representative"). SRCS shall coordinate all work on the Project with Bill Guerin, City's Public Works Director, or his designee ("City Representative"). The City Representative and SRCS Representative will participate in decision making regarding the Project and resolve issues in a timely manner. Contact information for the Parties' respective representatives are as follows:

<b>SRCS Representative</b>	<b>City Representative</b>
Dan Zaich, or designee	Bill Guerin, or designee
Director of Capital Facilities San Rafael City Schools (SRCS) 310 Nova Albion Way San Rafael, CA 94903	Public Works Director City of San Rafael 111 Morpew Street San Rafael, CA 94901
Phone: 415.492.3200	Phone: 415.485.3110
Email: <a href="mailto:dzaich@srcs.org">dzaich@srcs.org</a>	Email: <a href="mailto:bill.guerin@cityofsanrafael.org">bill.guerin@cityofsanrafael.org</a>

B. The City Representative shall have, on behalf of City, the authority to make decisions, commit to financial obligations, and authorize major road and lane closures. The SRCS Representative shall not have authority to direct City or

City's Contractor, except with respect to any portion of the Project installed or constructed on or otherwise involving District property.

**3. THIRD STREET PEDESTRIAN CROSSWALK PROJECT DESCRIPTION**

The City and SRCS desire to install a pedestrian crosswalk with safety elements on Third Street between San Rafael High School and Montecito Plaza shopping center within City right of way. The Project consists of obtaining all applicable permits for and construction of the crosswalk, including but not limited to road work, drainage improvements, sidewalks, traffic striping, HAWK electrical system/signals, and any other appurtenances thereto.

**4. SAN RAFAEL CITY SCHOOLS' RESPONSIBILITIES**

SRCS shall be responsible for the following with respect to the Project:

- A. Payment: SRCS shall be responsible to expend the full value of the TAM Measure AA Safe Routes to School grant, in the amount of \$400,000, towards the Project, which is inclusive of the \$80,000 specifically earmarked for the Project design. SRCS shall advance payment of such sums when required for the Project and then will seek reimbursement of the Measure AA grant from TAM. In addition to the payment of grant funds, SRCS shall pay for one-half (i.e., 50 percent) of all Project costs in excess of the \$400,000 TAM grant, including but not limited to environmental and design fees, construction costs, and other consultant construction management fees. SRCS shall reimburse City for the costs of the Project in accordance with Section 6, below.
- B. Final Plans, Specifications and Estimate of Costs: SRCS has prepared final and complete construction documents including plans, specifications, and an engineer's estimate for the work. The construction documents prepared by Parisi Transportation Consulting and dated 5/28/2020, are included and incorporated hereto as Exhibit A (the "Project Plans").
- C. Inspection: SRCS may inspect, at their expense, the Project during construction and at the conclusion of the construction work. SRCS may not direct the City's contractor.

**5. CITY'S RESPONSIBILITIES**

City shall be responsible for the following with respect to the Project:

- A. Payment: City shall be responsible to pay one-half (i.e., 50 percent) of all Project costs in excess of the \$400,000 TAM grant, including but not limited to environmental and design fees, construction costs and other consultant construction management fees.
- B. Contract Administration: City shall administer the construction contract for the Project, including advertising for and receiving bids, choosing the lowest responsible bidder, and awarding the construction contract.
- C. Procedures: City shall prepare and submit to SRCS change orders that would be required to complete the Project for review and approval before said work occurs. SRCS shall review and approve change orders within 5 working days. SRCS and City will mutually develop a procedure for processing change orders prior to the start of construction.
- D. Environmental Documentation and Regulatory Permits: City has or shall obtain all required environmental clearances and regulatory permits for the Project. City shall provide SRCS with all required documentation prior to the start of construction. City understands that failure to provide these documents could delay construction. Any additional construction-related costs resulting from delay in obtaining such clearances and regulatory permits will be the sole financial responsibility of City.
- E. Utilities: City shall be responsible for conducting all utility investigation and conflict resolution and/or utility relocations according to the planned work and consistent with the Project schedule.
- F. Maintenance and Repair: Upon completion of the Project, City shall be solely responsible for the maintenance and repair of the Project, including the cost thereof.

**6. PAYMENT AND REIMBURSEMENT PROCEDURES**

- A. Upon City providing SRCS with notification of the actual cost of construction in accordance with the Project Plans, in the form of bid

results, SRCS shall provide written approval of cost within 10 working days in order to authorize construction.

- B. City will provide SRCS with detailed invoices for costs incurred in connection with construction of the Project, and SRCS shall remit payment within 30 days of receipt thereof. Except as provided in subsection 6.D., SRCS shall reimburse City for all (100%) of Project costs incurred until SRCS has exhausted the \$400,000 value of the TAM grant; thereafter, SRCS shall reimburse City for one-half (i.e., 50 percent) of all Project costs incurred above \$400,000, until the Project is completed.
- C. The Parties agree that the Project is estimated to cost approximately six hundred thirty thousand dollars (\$630,000), inclusive of design fees, construction expenses, and a twelve percent (12%) construction contingency. The costs are shown in Exhibit B1.
- D. The Parties agree that the City will not bill SRCS for City's staff time managing the Project.

## **7. ADDITIONAL REQUIREMENTS**

### **A. Amendments to Agreement**

This Agreement may be amended only by the mutual written consent of both Parties.

### **B. Indemnification**

To the fullest extent permitted by California law, each Party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, the performance of the obligations under this Agreement, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the indemnitees, and/or to any extent that would render these provisions void or unenforceable.

### **C. Insurance**

1. Commercial General Liability. City shall require its contractor and all subcontractors to procure and maintain, during the life of this Agreement, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect and name as an additional insured the contractor, City, SRCS, state, construction manager(s), and architect(s)/engineer(s) from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from the design and construction of the Project or as otherwise contemplated under this Agreement. City's contractor's and subcontractor's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed \$25,000 unless approved in writing by City and SRCS. All such policies shall be written on an occurrence form.
2. Excess Liability Insurance. City shall require its contractor and all subcontractors to procure and maintain, during the life of this Agreement, an Excess Liability Insurance Policy to meet the policy limit requirements of the required policies if the contractor's underlying policy limits are less than required. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Excess Liability Insurance Policy. Any Excess Liability Insurance Policy shall be written on a following form and shall protect and name as an additional insured the contractor, City, SRCS, state, construction manager(s), and architect(s)/engineer(s) in amounts that comply with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.
3. Workers' Compensation and Employers' Liability Insurance. City shall require its contractor and all subcontractors to procure and maintain, during the life of this Agreement, in accordance with provisions of section 3700 of the California Labor Code, the payment of compensation to its employees. City shall require its contractor and subcontractors to procure and maintain, during the life of this Agreement, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work contemplated under this Agreement, on/or at the site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits.

4. Proof of Carriage of Insurance and Other Requirements:

Endorsements and Certificates. City shall not allow any contractor or subcontractor to commence work on the Project until contractor and its subcontractor(s) have procured all required insurance and delivered in duplicate to the City and SRCS complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the City and SRCS have approved these documents.

5. Endorsements, certificates, and insurance policies shall include the following:

- a. A clause stating: "This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to the City of San Rafael and San Rafael City School District stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice."
- b. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- c. All endorsements, certificates and insurance policies shall state that City of San Rafael, San Rafael City School District, its trustees, employees and agents, the State of California, construction manager(s), project manager(s), and architect(s)/engineer(s) are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance.
- d. Contractor's and subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by the City, SRCS, its trustees, employees and/or agents, the State of California, , construction manager(s), project manager(s), and/or architect(s)/engineer(s).



- e. All endorsements shall waive any right to subrogation against any of the named additional insureds.

D. Notice

Unless otherwise requested by a Party, all notices, demands, requests, consents or other communications which may be or are required to be given by either Party to the other shall be in writing and shall be deemed effective upon service. Notices shall be deemed to have been properly given when served on the Party to whom the same is to be given by hand delivery, or by generally recognized overnight courier service, or by deposit in the United States mail, addressed to the Party as follows:

SRSC: Dan Zaich  
Director of Capital Facilities  
San Rafael City Schools (SRCS)  
310 Nova Albion Way  
San Rafael, CA 94903

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

When a notice is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a notice or payment is sent via United States Mail, it shall be deemed received seventy-two (72) hours after deposit in the United States Mail, registered or certified, return receipt requested, with the postage thereon fully prepaid. In all other instances, notices, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

E. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in the County of Marin. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of the provisions shall remain in full force and effect.

F. Entire Agreement

This instrument contains the entire agreement between the Parties, and no statement, promise, or inducement made by either Party or agents of the Parties that is not contained in this written contract shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing signed by the Parties.

G. Authority of SRCS and City

The undersigned hereby represent and warrant that he or she has authority to execute and deliver this Agreement on behalf of SRCS and City, respectively.

H. No Waiver of Breach

The waiver by any of the Parties of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

I. Time of Essence

Time is and shall be of the essence of this Agreement and every provision hereof.

J. Parties to Cooperate

Each Party will, whenever and as often as it shall be reasonably requested by the other Party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents as may be reasonably necessary in order to carry out the intent and purpose of this Agreement.

10. Drafting.

Both Parties contributed to the drafting of this agreement and in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

11. No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

12. Disputes

Disputes will be handled initially through mutually agreed upon mediation, and if not resolved, will be adjudicated in Marin County Court.

IN WITNESS WHEREOF, SRCS and the City have executed this Agreement as of the date first above written.

CITY OF SAN RAFAEL

SAN RAFAEL CITY SCHOOLS

By: \_\_\_\_\_  
Jim Schutz, City Manager

By: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM  
FOR CITY:

APPROVED AS TO FORM FOR SRCS

By: \_\_\_\_\_  
Robert Epstein, City Attorney

By: \_\_\_\_\_  
Legal Counsel