

RESOLUTION NO. 13128

A RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SAN RAFAEL AND THE COUNTY OF MARIN CONCERNING FORMATION OF THE PT. SAN PEDRO ROAD MEDIAN LANDSCAPING ASSESSMENT DISTRICT.

WHEREAS, the City Council of the City of San Rafael adopted a Resolution Initiating Formation of the Pt. San Pedro Road Median Landscaping Assessment District on this same date; and

WHEREAS, the proposed Assessment District encompasses properties located both within the incorporated City of San Rafael and the unincorporated County of Marin; and

WHEREAS, both the City of San Rafael and County of Marin desire to comply with the Streets and Highways Code as part of the District formation process.

NOW THEREFORE BE IT RESOLVED, that the San Rafael City Council does hereby approve the Memorandum of Understanding between the City of San Rafael and the County of Marin concerning the formation of the Pt. San Pedro Road Median Landscaping Assessment District, and authorizes the City Manager to execute said Memorandum of Understanding in the form attached hereto as Exhibit "A".

I, ESTHER C. BEIRNE, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on the 4th day of April, 2011, by the following vote to wit:

AYES:	Councilmembers:	Brockbank, Connolly, Heller, Levine & Mayor Boro
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None



ESTHER C. BEIRNE, City Clerk

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SAN RAFAEL AND THE COUNTY OF MARIN CONCERNING THE FORMATION OF THE PT. SAN PEDRO ROAD MEDIAN LANDSCAPING ASSESSMENT DISTRICT.

This Memorandum of Understanding (hereinafter "Agreement") is made and entered into this _____ day of _____, 2011, by and between the CITY OF SAN RAFAEL (hereinafter "CITY"), and the COUNTY OF MARIN (hereinafter "COUNTY").

RECITALS

WHEREAS, numerous homeowners residing along, adjacent to, or in close proximity to Pt. San Pedro Road, both within the City limits of the City of San Rafael and in the immediately contiguous unincorporated area of the County of Marin, have expressed a strong desire to form an assessment district for the purpose of improving and maintaining landscaping and medians along Pt. San Pedro Road; and

WHEREAS, pursuant to the wishes of these citizens, CITY wants to form and to operate such an assessment district under the management, control and direction of CITY according to the provisions of the Streets and Highways Code; and

WHEREAS, COUNTY understands, agrees and desires to allow CITY to form such a district including some areas contiguous to the CITY but within the COUNTY's jurisdiction; and

WHEREAS, the Streets and Highways Code section 22500 et seq. ("Landscape and Lighting Act of 1972") permits a public agency to form assessment districts for the purpose of improving and maintaining landscaping and median strips along roadways, and sections 22506 and 5115 permit one public agency to include in such a district, contiguous land areas within another agency's jurisdiction upon the approval of the legislative body of that other agency.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. PURPOSE OF AGREEMENT.

The purpose of this Agreement is not to establish a Joint Powers Authority, but to clearly express the intent, agreement and understanding of the parties with regard to the formation, management and operation of an assessment district for the purpose of the improvement and maintenance of landscaping and median strips on Pt. San Pedro Road both inside the CITY limits and inside the contiguous unincorporated areas of the COUNTY.

2. DEFINITIONS.

A. "DISTRICT" shall mean the Pt. San Pedro Road Median Landscaping Assessment District, as is more particularly described in the Resolution Initiating Formation of the Pt. San Pedro Road Median Landscaping Assessment District, adopted by the City Council of CITY on April 4, 2011 and attached hereto as Exhibit "I", and in the proposed Resolution of Intention to Form the Pt. San Pedro Road Median Landscaping Assessment District, to Levy and Collect Assessments and to Issue Bonds, which will be presented to the City Council of CITY for adoption after approval of this Agreement by the COUNTY and attached hereto as Exhibit "II".

B. "CITY" shall mean the City of San Rafael.

C. "COUNTY" shall mean the County of Marin.

3. MOU COORDINATION.

A. CITY. The City Manager shall be the representative of the CITY for all purposes under this Agreement and shall supervise all aspects of the execution of this Agreement.

B. COUNTY. The County Administrator shall be the representative of the COUNTY for all purposes under this Agreement and shall supervise all aspects of the execution of this Agreement.

4. COUNTY'S CONSENT.

Pursuant to Streets and Highways Code Sections 5117 , 5118 and 22506, COUNTY consents to the inclusion of the unincorporated areas of the County of Marin within the boundaries of the assessment district as described in the aforementioned Resolutions attached hereto as Exhibits "I" and "II" attached hereto, and further consents to the CITY's construction and maintenance of the improvements described therein, including CITY's access to the Pt. San Pedro Road right of way within the COUNTY's jurisdiction for such purposes. The

COUNTY's approval of this Agreement shall constitute the approvals and consent required by Streets and Highways Code Sections 5117, 5118 and 22506, including the COUNTY's approval and consent to the aforementioned Resolutions.

5. DUTIES OF THE COUNTY.

A. COUNTY shall cooperate fully with CITY in CITY's efforts to effectuate the desire of both CITY and COUNTY citizens to form DISTRICT, including, but not limited to, taking all necessary actions under the Streets and Highways Code required by COUNTY for the formation and operation of DISTRICT by CITY.

B. COUNTY shall pay the lesser amount of \$25,000 or 37% of the total general benefit derived from the DISTRICT, as determined by the initial Engineer's Report prepared by Willdan Financial Services. In no event shall the COUNTY's share of the initial payment exceed \$25,000.

C. In each subsequent year, COUNTY shall pay annually the lesser amount of \$15,000 (subject to adjustment as provided hereafter) or 37% of the total general benefit derived from the DISTRICT, as determined by that subsequent year benefit assessment Engineer's Report. In no event shall COUNTY's share of each subsequent payment exceed \$15,000, provided that the \$15,000 amount shall be adjusted annually by the change over the previous one year period in the Consumer Price Index, All Items, for All Urban Consumers, for the San Francisco-Oakland-San Jose area.

6. DUTIES OF CITY.

A. CITY shall initiate to conclusion the legal requirements of the Streets and Highways Code as modified by Proposition 218 (Articles XIIC and XIID of the California Constitution), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 et seq.), for the formation of DISTRICT. CITY shall pay 100% of the costs incurred to establish DISTRICT out of funds that have been donated to the CITY for this purpose by persons with property located within the DISTRICT.

B. Upon formation of DISTRICT, CITY shall be solely responsible for the implementation, management and operation of DISTRICT and its activities as permitted by, and pursuant to, the provisions of

the Streets and Highways Code as modified by Proposition 218 (Articles XIII C and XIII D of the California Constitution), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 et seq.).

C. CITY shall pay 63% of the total general benefit derived from the DISTRICT, as determined in the initial and annual Engineer's Reports prepared by Willdan Financial Services, or in subsequent year benefit assessment Engineer's Reports.

D. CITY shall provide COUNTY with copies of the initial and annual Engineer's Report for the DISTRICT prepared by Willdan Financial Services, and subsequent year benefit assessment Engineer's Reports for the DISTRICT.

7. TERM OF AGREEMENT.

This Agreement shall remain in full force and effect for as long as DISTRICT remains in existence, unless terminated earlier by mutual agreement of the parties. In the event that DISTRICT is not formed because of a negative vote, or decision of CITY to terminate proceedings, this Agreement shall terminate on the earlier of either a City Council Resolution Repealing Notice of Intention to Establish District, or December 31, 2011.

8. ACCOUNTING AND AUDIT.

Upon request and with reasonable notice, CITY shall permit COUNTY, or its agent, at COUNTY's sole expense, to audit DISTRICT's activities in connection with the performance of its duties under this Agreement. CITY shall fully cooperate with COUNTY or its agent in any such audit.

9. INDEMNIFICATION.

A. COUNTY shall indemnify, release, defend and hold harmless CITY, its officers, agents, employees, and volunteers, against any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorney's fees and administrative costs, arising out of or resulting in any way, in whole or in part, from any acts or omissions of COUNTY or COUNTY's officers, agents and employees in the performance of their duties and obligations under this Agreement.

B. CITY shall indemnify, release, defend and hold harmless COUNTY, its officers, agents, employees and volunteers, against any claim, demand, suit, judgment, loss liability or expense of any kind,

including attorney's fees and administrative costs, arising out of or resulting in any way, in whole or in part, from any acts or omissions of CITY or CITY's officers, agents and employees in the performance of their duties and obligations under this Agreement.

10. NOTICES.

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

TO CITY: City Manager
 City of San Rafael
 1400 Fifth Avenue
 P.O. Box 151560
 San Rafael, CA 94915-1560

TO COUNTY: County Administrator
 County of Marin, Room 325
 P.O. Box 4186
 San Rafael, CA 94913-4186

11. ENTIRE AGREEMENT – AMENDMENTS.

The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the COUNTY and the CITY. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

12. APPLICABLE LAW.

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

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

CITY OF SAN RAFAEL

COUNTY OF MARIN

AL BORO, Mayor

SUSAN L. ADAMS, President, Marin
County Board of Supervisors

ATTEST:

ATTEST:

ESTHER C. BEIRNE, City Clerk

MATTHEW H. HYMEL, Clerk of the Board

APPROVED AS TO FORM:

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney

PATRICK K. FAULKNER, County Counsel