

**CORONAVIRUS ADVISORY  
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**CITY COUNCIL**

Norma Martinez-Rubin, Mayor  
Vincent Salimi, Mayor Pro Tem  
Devin Murphy, Council Member  
Anthony Tave, Council Member  
Maureen Toms, Council Member

**PINOLE CITY COUNCIL  
MEETING AGENDA**

**TUESDAY  
DECEMBER 15, 2020  
VIA ZOOM TELECONFERENCE**

**6:00 P.M.**

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**DUE TO THE STATE OF CALIFORNIA'S DECLARATION OF EMERGENCY – THIS  
MEETING IS BEING HELD PURSUANT TO AUTHORIZATION FROM GOVERNOR  
NEWSOM'S EXECUTIVE ORDERS – CITY COUNCIL AND COMMISSION MEETINGS ARE  
NO LONGER OPEN TO IN-PERSON ATTENDANCE.**

**SUBMIT PUBLIC COMMENTS TO CITY CLERK BEFORE OR DURING THE MEETING VIA EMAIL**

[hiopu@ci.pinole.ca.us](mailto:hiopu@ci.pinole.ca.us)

**Comments received before the close of the public comment period for that item will be read into the record and limited to 3 minutes. Please include your full name, city of residence and agenda item you are commenting on. Any comments received after the close of the public comment period will be distributed to Council and relevant staff after the meeting and filed with the agenda packet.**

**WAYS TO WATCH THE MEETING**

**LIVE ON CHANNEL 26.** They are retelecast the following Thursday at 6:00 p.m. The Community TV Channel 26 schedule is published on the city's website at [www.ci.pinole.ca.us](http://www.ci.pinole.ca.us).

**VIDEO-STREAMED LIVE ON THE CITY'S WEBSITE,** [www.ci.pinole.ca.us](http://www.ci.pinole.ca.us). and remain archived on the site for five (5) years.

**If none of these options are available to you, or you need assistance with public comment, please contact the City Clerk, Heather Iopu at (510) 724-8928 or [hiopu@ci.pinole.ca.us](mailto:hiopu@ci.pinole.ca.us).**

**Americans With Disabilities Act:** In compliance with the Americans With Disabilities Act of 1990, if you need special assistance to participate in a City Meeting or you need a copy of the agenda, or the agenda packet in an appropriate alternative format, please contact the City Clerk's Office at (510) 724-8928. Notification at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

**Note:** Staff reports are available for inspection on the City Website at [www.ci.pinole.ca.us](http://www.ci.pinole.ca.us). You may also contact the City Clerk via e-mail at [hiopu@ci.pinole.ca.us](mailto:hiopu@ci.pinole.ca.us).

**Ralph M. Brown Act. Gov. Code § 54950.** *In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies, which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.*

**1. CALL TO ORDER & PLEDGE OF ALLEGIANCE IN HONOR OF THE US MILITARY TROOPS**

**2. ROLL CALL, CITY CLERK'S REPORT & STATEMENT OF CONFLICT**

*An official who has a conflict must, prior to consideration of the decision: (1) publicly identify in detail the financial interest that causes the conflict; (2) recuse himself /herself from discussing and voting on the matter; and (3) leave the room until after the decision has been made, Cal. Gov't Code § 87105.*

**3. CONVENE TO A CLOSED SESSION**

**Citizens may address the Council regarding a Closed Session** item prior to the Council adjourning into the Closed Session, by first providing a speaker card to the City Clerk.

**NO CLOSED SESSION SCHEDULED**

**4. RECONVENE IN OPEN SESSION TO ANNOUNCE RESULTS OF CLOSED SESSION**

**5. CITIZENS TO BE HEARD (Public Comments)**

*Citizens may speak under any item not listed on the Agenda. The time limit is 3 minutes, and is subject to modification by the Mayor. Pursuant to provisions of the Brown Act, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The City Council may direct staff to investigate and/or schedule certain matters for consideration at a future Council meeting.*

**6. RECOGNITIONS / PRESENTATIONS / COMMUNITY EVENTS**

**A. Proclamations**

1. Proclamation Honoring Pinole Resident Ora Webber on her 100<sup>th</sup> Birthday

**B. Presentations / Recognitions**

1. Pinole Holiday Tree Lighting Viewing

**7. CONSENT CALENDAR**

*All matters under the Consent Calendar are considered to be routine and noncontroversial. These items will be enacted by one motion and without discussion. If, however, any interested party or Council member(s) wishes to comment on an item, they may do so before action is taken on the Consent Calendar. Following comments, if a Council member wishes to discuss an item, it will be removed from the Consent Calendar and taken up in order after adoption of the Consent Calendar.*

**A. Approve the Minutes of the Meeting of October 6, 2020**

**B. Receive the December 5, 2020 – December 11, 2020 List of Warrants in the Amount of \$186,447.00 and the December 11, 2020 Payroll in the Amount of \$576,728.60**

**C. Resolution Confirming Continued Existence Of Local Emergency [Action: Adopt Resolution per Staff Recommendation (Casher)]**

**D. Approve the Council Committee Assignment List [Action: Adopt Resolution per Staff Recommendation (Iopu)]**

**E. Receive An Update On 2021 Garbage Collection Rates [Action: Receive Update (Miller)]**

- F. Hazel Street Subdevelopment Agreement [Action: Adopt Ordinance on Second Reading (Hanham)]
- G. Receive The Development Impact Fee Report For The Fiscal Year Ended June 30, 2020 [Action: Receive Report and Adopt Resolution per Staff Recommendation (Murray)]

## 8. PUBLIC HEARINGS

*Citizens wishing to speak regarding a Public Hearing item should fill out a speaker card prior to the completion of the presentation, by first providing a speaker card to the City Clerk. An official who engaged in an ex parte communication that is the subject of a Public Hearing must disclose the communication on the record prior to the start of the Public Hearing.*

NONE

## 9. OLD BUSINESS

- A. Approve A Second Amendment To The Operating Agreement For Aquatic Program Coordination And Facility Use With The Pinole Seals For Use Of The Swimming Pool From June 27 – July 31, 2020 [Action: Adopt Resolution per Staff Recommendation (De La Rosa)]

## 10. NEW BUSINESS

- A. Receive A Report On Types Of Financial Assistance That Cities Are Providing To Small Businesses Regarding Covid-19 [Action: Discuss & Provide Direction (Murray)]

## 11. REPORTS & COMMUNICATIONS

- A. Mayor Report
  - 1. Announcements
- B. Mayoral & Council Appointments
- C. City Council Committee Reports & Communications
- D. Council Requests For Future Agenda Items
- E. City Manager Report / Department Staff
- F. City Attorney Report

## 12. ADJOURNMENT to the Regular City Council Meeting of January 19, 2021 In Remembrance of Amber Swartz.

**Note: The Regular Meeting of January 5, 2021 is canceled.**

I hereby certify under the laws of the State of California that the foregoing Agenda was posted on the bulletin board at the main entrance of Pinole City Hall, 2131 Pear Street Pinole, CA, and on the City's website, not less than 72 hours prior to the meeting date set forth on this agenda.

**POSTED: December 10, 2020 at 4:00 P.M.**

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**Heather Iopu, CMC**  
**City Clerk**

**CITY COUNCIL MEETING  
MINUTES  
October 6, 2020**

**1. CALL TO ORDER & PLEDGE OF ALLEGIANCE IN HONOR OF THE US MILITARY TROOPS**

The City Council Meeting was held via Zoom videoconference and broadcast from the Pinole Council Chambers, 2131 Pear Street, Pinole, California. Mayor Swearingen called the Regular Meeting of the City Council to order **6:03** p.m. and led the Pledge of Allegiance.

**2. ROLL CALL, CITY CLERK'S REPORT & STATEMENT OF CONFLICT**

**A. COUNCILMEMBERS PRESENT**

Roy Swearingen, Mayor  
Norma Martinez-Rubin, Mayor Pro Tem  
Peter Murray, Councilmember  
Vincent Salimi, Councilmember  
Anthony Tave, Councilmember

**B. STAFF PRESENT**

Andrew Murray, City Manager  
Hector De La Rosa, Assistant City Manager  
Heather Iopu, City Clerk  
Eric Casher, City Attorney  
Tamara Miller, Development Services Director/City Engineer  
Neil Gang, Police Chief  
Chris Wynkoop, Fire Chief

City Clerk Iopu announced the agenda was posted on October 1, 2020 at 4:00 p.m. All legally required notice was provided.

Following an inquiry to the Council, the Council reported there were no conflicts with any items on the agenda.

**3. CONVENE TO A CLOSED SESSION**

**Citizens may address the Council regarding a Closed Session** item prior to the Council adjourning into the Closed Session, by first providing a speaker card to the City Clerk.

**A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Gov. Code § 54957

Title: City Manager

**4. RECONVENE IN OPEN SESSION TO ANNOUNCE RESULTS OF CLOSED SESSION**

At 7:02 p.m. Mayor Swearingen reconvened the meeting to open session. There was no reportable action.

Mayor Swearingen made a report providing information regarding local health order updates relating to the COVID-19 pandemic.

## 5. CITIZENS TO BE HEARD (Public Comments)

*Citizens may speak under any item not listed on the Agenda. The time limit is 3 minutes, and is subject to modification by the Mayor. Pursuant to provisions of the Brown Act, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The City Council may direct staff to investigate and/or schedule certain matters for consideration at a future Council meeting.*

The following speakers submitted written comments that were read aloud and will be filed with the agenda packet for this meeting: **David Ruport, Debbie Long, Irma Ruport, Ivette Ricco, Jeff Rubin, Mary Horton, Rafael Menis, Sarah Flashman, Tim Banuelos**

## 6. RECOGNITIONS / PRESENTATIONS / COMMUNITY EVENTS

### A. Proclamations

1. Recognizing October 4 - 10, 2020 as Fire Prevention Week

Mayor Swearingen presented the Proclamation to Fire Chief Chris Wynkoop. Chief Wynkoop thanked the Mayor and the Council.

### B. Presentations / Recognitions

1. November 3, 2020 General Election Information by Scott Konopasek, Contra Costa County Assistant Registrar of Voters

Contra Costa County Assistant Registrar of Voters Scott Konopasek made a presentation highlighting updates to the election process for the 2020 General Municipal Election.

Council members asked questions. Mr. Konopasek responded to the questions.

## 7. CONSENT CALENDAR

*All matters under the Consent Calendar are considered to be routine and noncontroversial. These items will be enacted by one motion and without discussion. If, however, any interested party or Council member(s) wishes to comment on an item, they may do so before action is taken on the Consent Calendar. Following comments, if a Council member wishes to discuss an item, it will be removed from the Consent Calendar and taken up in order after adoption of the Consent Calendar.*

- A. Approve the Minutes of the Meeting of July 21, 2020
- B. Receive the September 12, 2020 – October 2, 2020 List of Warrants in the Amount of \$761,589.82 and the October 2, 2020 Payroll in the Amount of \$425,363.10
- C. Resolution Confirming Continued Local Emergency **[Action: Adopt Resolution per Staff Recommendation (Casher)]**
- F. Adopt A Resolution Approving A Third Amendment To The Exclusive Negotiating Agreement Between The City Of Pinole And General Realty CE, LLC For The Sale And Purchase Of The Pinole Shores II Properties **[Action: Adopt Resolution per Staff Recommendation (De La Rosa)]**

- G. Amendment To Chapter 15.54 Water Efficient Landscape Ordinance (WELO) Of The Pinole Municipal Code **[Action: Adopt Ordinance on Second Reading (Hanham)]**
- H. Adopt A Resolution Approving The Submittal Of Application(s) For The State Of California Department Of Parks And Recreation Per Capita Grant Funds **[Action: Adopt Resolution per Staff Recommendation (Miller)]**
- I. Approving The Pinole Salary Schedule For All Represented And Unrepresented Employee Classifications In Conformance With California Code Of Regulations, Title 2, Section 570.5 **[Action: Adopt Resolution per Staff Recommendation (De La Rosa)]**
- J. Receive The 2019 Annual General Plan Housing Element Progress Report As Required By The State Of California **[Action: Receive and file report (Hanham)]**
- K. Adopt A Resolution Approving Side Letter Agreements To The Memorandums Of Understanding (MOUs) Between The City And Local 1, And The City And AFSCME Local 512 To Amend Article II – Recognition Of Each Agreement **[Action: Adopt Resolution per Staff Recommendation (De La Rosa)]**

**ACTION: Motion by Councilmembers Martinez-Rubin/Tave to Approve Consent Calendar Items A, B, C, F, G, H, I, J, K.**

**Vote:            Passed            5-0**  
**Ayes:            Swearingen, Murray, Martinez-Rubin, Salimi, Tave**  
**Noes:            None**  
**Abstain:        None**  
**Absent:        None**

Agenda Item 7D was pulled from the Consent Calendar for further discussion by Council member Murray.

- D. Adopt A Resolution Approving Fiscal Year (FY) 2019-20 Budget Adjustments **[Action: Adopt Resolution per Staff Recommendation (Murray)]**

Council member Murray asked that staff address the differences in revenue collection for the two Measure S Funds detailed in the report.

**ACTION: Motion by Councilmembers Murray/Tave to Adopt A Resolution Approving Fiscal Year (FY) 2019-20 Budget Adjustments and Directing Staff to Report to the Finance Subcommittee and City Council Regarding the Differences in Revenue Collection of Both of the Measure S Funds**

**Vote:            Passed            5-0**  
**Ayes:            Swearingen, Murray, Martinez-Rubin, Salimi, Tave**  
**Noes:            None**  
**Abstain:        None**  
**Absent:        None**

Agenda Item 7E was pulled from the Consent Calendar for further discussion by Council member Tave.

- E. Approving The Transfer of \$684,252 from the Pension Section 115 Trust Fund for Fiscal Year (FY) 2019/20 **[Action: Adopt Resolution per Staff Recommendation (Murray)]**

Council member Tave asked questions regarding the timing of the transfer and other details for the report. Staff addressed the questions.

**ACTION: Motion by Councilmembers Tave/Murray to Adopt Resolution Approving The Transfer of \$684,252 from the Pension Section 115 Trust Fund for Fiscal Year (FY) 2019/20**

<b>Vote:</b>	<b>Passed</b>	<b>5-0</b>
	<b>Ayes:</b>	<b>Swearingen, Murray, Martinez-Rubin, Salimi, Tave</b>
	<b>Noes:</b>	<b>None</b>
	<b>Abstain:</b>	<b>None</b>
	<b>Absent:</b>	<b>None</b>

## **8. PUBLIC HEARINGS**

*Citizens wishing to speak regarding a Public Hearing item should fill out a speaker card prior to the completion of the presentation, by first providing a speaker card to the City Clerk. An official who engaged in an ex parte communication that is the subject of a Public Hearing must disclose the communication on the record prior to the start of the Public Hearing.*

## **9. OLD BUSINESS**

- A. Updated Financial and Investment Policies **[Action: Adopt Resolution per Staff Recommendation (Murray)]**

City Manager Murray presented a report to the Council highlighting the changes to the Financial and Investment Policies.

The following speaker submitted written comments that were read aloud and will be filed with the agenda packet for this meeting: **Rafael Menis**

City Manager Murray and City Attorney Casher responded to the public comment.

The City Council held discussion and asked questions of staff. Staff responded to questions.

**ACTION: Motion by Councilmembers Martinez-Rubin/Tave to Adopt a Resolution Approving the Updated Financial and Investment Policies**

<b>Vote:</b>	<b>Passed</b>	<b>5-0</b>
	<b>Ayes:</b>	<b>Swearingen, Murray, Martinez-Rubin, Salimi, Tave</b>
	<b>Noes:</b>	<b>None</b>
	<b>Abstain:</b>	<b>None</b>
	<b>Absent:</b>	<b>None</b>



## 10. NEW BUSINESS

- A. Receive The Five-Year Forecast For The General Fund And Measure S Funds Fiscal Year (FY) 2020/21 Through FY 2024/25 [**Action: Receive and File Report (Murray)**]

Finance consultant Genie Rocha presented a report to the Council highlighting details of the report.

The City Council made comments and asked questions of staff. Staff provided clarification to the Council in response to their questions.

## 11. REPORTS & COMMUNICATIONS

- A. Mayor Report
  - 1. Announcements

Mayor Swearingen announced an update regarding the San Pablo Avenue Bridge project and dedication of the David Patrick Underwood Basketball Court at Fernandez Park in Pinole,

- B. Mayoral & Council Appointments
- C. City Council Committee Reports & Communications

Mayor Por Tem Martinez-Rubin provided the latest Census response rate for Pinole and announced the last few weeks of the 2020 Census effort. Announced COVID-19 resource websites for statistics on current case and testing information.

Council member Tave recognized the Council, especially Council member Pete Murray, staff and other organizers of the David Patrick Underwood event.

Council member Tave announced a community event coming up to discuss public safety and encouraged the Council and public to attend. Announced that he is interested in visiting the County Elections Department to view the ballot counting process. Provided a brief update on the Faria House Ad Hoc Committee progress.

City Manager Murray provided some additional details on the work being done and stated there will be an agenda item come back in November for Council's review and consideration based on the Ad Hoc's recommendations.

- D. Council Requests For Future Agenda Items

Council member Tave requested a future agenda item to discuss and prioritize the City's project lists. Consensus given.

Council member Salimi requested a future agenda item to discuss grant opportunities to local business owners/organizations for COVID-19 impact relief. Consensus given.

- E. City Manager Report / Department Staff

City Manager Murray announced an upcoming online monetary donation drive in collaboration with Food Bank of Contra Costa and Solano County, Tiny Tots drive-through contact-less food

distribution event, and pilot Senior Center food distribution event. Announced that more information is on the website and City's Facebook page.

F. City Attorney Report

City Attorney Casher thanked the Finance Subcommittee and department heads for their work in reviewing the procurement policy that will be on the next meeting agenda for approval.

**12. ADJOURNMENT** to the Regular City Council Meeting of October 20, 2020 In Remembrance of Amber Swartz.

At 10:20 p.m., Mayor Swearingen adjourned the meeting to the Regular City Council Meeting of October 20, 2020 In Remembrance of Amber Swartz.

**Submitted by:**

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Heather Iopu, CMC  
City Clerk

**Approved by City Council:**



City of Pinole, CA

# 7B WARRANT LISTING By Vendor Name

Payment Dates 12/5/2020 - 12/11/2020

Payable Number	Payment Number	Payment Date	Account Number	Description (Payable)	Amount
<b>Vendor: 2018 - ABRAHAM URBINA</b>					
08212020	95289	12/11/2020	209-554-36402	INSTRUCTOR WINTER 2020 CLASS REFUND	405.00
<b>Vendor 2018 - ABRAHAM URBINA Total:</b>					<b>405.00</b>
<b>Vendor: ALH01 - ALHAMBRA &amp; SIERRA SPRINGS</b>					
19593757 112620	95290	12/11/2020	100-222-42201	DRINKING WATER SERVICE 880 TENNENT 11/26/20	246.97
5025519 110620	95290	12/11/2020	500-641-42201	DRINKING WATER WASTE WATER DEPT 11/6/20	207.21
5025531 110620	95290	12/11/2020	100-343-42108	DRINKING WATER CORP YARD 11/6/20	144.17
<b>Vendor ALH01 - ALHAMBRA &amp; SIERRA SPRINGS Total:</b>					<b>598.35</b>
<b>Vendor: AME52 - AMERICAN MESSAGING SERVICE, LLC</b>					
W4102378UL	95291	12/11/2020	525-118-43101	FD SERVICE 12/1-12/31/20	43.55
<b>Vendor AME52 - AMERICAN MESSAGING SERVICE, LLC Total:</b>					<b>43.55</b>
<b>Vendor: BAY34 - BAY AREA NEWS GROUP- EAST BAY</b>					
113020 STATEMENT	95292	12/11/2020	212-461-42514	LEGAL CLASSIFIEDS 11/30/20 STATEMENT FULL PAYMENT	296.10
<b>Vendor BAY34 - BAY AREA NEWS GROUP- EAST BAY Total:</b>					<b>296.10</b>
<b>Vendor: CAL20 - CALIFORNIA ASSOCIATION OF PROFESSIONAL FIREFIGHTERS</b>					
DEC 2020	95293	12/11/2020	100-231-41008	FIREFIGHTERS LONG TERM DISABILITY DEC 2020 BILLING	324.50
<b>Vendor CAL20 - CALIFORNIA ASSOCIATION OF PROFESSIONAL FIREFIGHTERS Total:</b>					<b>324.50</b>
<b>Vendor: COM20 - COMCAST</b>					
111420FD	95294	12/11/2020	100-231-43105	CABLE FOR FIRE DEPARTMENT 11/19-12/18/20	54.42
<b>Vendor COM20 - COMCAST Total:</b>					<b>54.42</b>
<b>Vendor: EBM01 - EBMUD</b>					
20575-111920	95295	12/11/2020	100-345-43102	2690 BOX CANYON RD- IRRIGATION USE ONLY	155.36
32841-111820	95295	12/11/2020	100-345-43102	3790 PINOLE VALLEY RD- IRRIGATION USE ONLY	4,486.50
56324-112320	95295	12/11/2020	100-345-43102	3790 PINOLE VALLEY ROAD IRRIGATION USE ONLY	2,100.48
<b>Vendor EBM01 - EBMUD Total:</b>					<b>6,742.34</b>
<b>Vendor: FIL07 - FILEONQ, INC</b>					
8768	95296	12/11/2020	525-118-42106	SOFTWARE MAINTENANCE JAN- DEC 2021	3,294.20
<b>Vendor FIL07 - FILEONQ, INC Total:</b>					<b>3,294.20</b>
<b>Vendor: 1612 - FIRST VANGUARD RENTALS &amp; SALES</b>					
1-501337-2	95297	12/11/2020	100-345-42108	500 GAL WATER TRAILER	111.13
<b>Vendor 1612 - FIRST VANGUARD RENTALS &amp; SALES Total:</b>					<b>111.13</b>
<b>Vendor: GLO08 - GLOBALSTAR</b>					
000000008202725	95298	12/11/2020	525-118-43101	ORBIT 150 11/16-12/15/2020	110.48
<b>Vendor GLO08 - GLOBALSTAR Total:</b>					<b>110.48</b>
<b>Vendor: 1112 - GRAY-BOWEN-SCOTT</b>					
9541	95299	12/11/2020	325-342-47205	SAN PABLO BRIDGE SVCS 3/1- 5/31/20	10,570.10
9711	95299	12/11/2020	325-342-47205	SAN PABLO BRIDGE SVCS SEPT 2020	10,549.91

## WARRANT LISTING

Payment Dates: 12/5/2020 - 12/11/2020

Payable Number	Payment Number	Payment Date	Account Number	Description (Payable)	Amount
9781	95299	12/11/2020	325-342-47205	SAN PABLO BRIDGE SVCS OCT 2020	4,199.88
Vendor 1112 - GRAY-BOWEN-SCOTT Total:					25,319.89
Vendor: HEA01 - HEALTH CARE DENTAL TRUST					
112320 STATEMENT	95300	12/11/2020	100-110-41002	DENTAL TRUST DEC 2020 PREMIUMS	552.64
112320 STATEMENT	95300	12/11/2020	100-111-41002	DENTAL TRUST DEC 2020 PREMIUMS	574.70
112320 STATEMENT	95300	12/11/2020	100-112-41002	DENTAL TRUST DEC 2020 PREMIUMS	149.19
112320 STATEMENT	95300	12/11/2020	100-113-41002	DENTAL TRUST DEC 2020 PREMIUMS	127.13
112320 STATEMENT	95300	12/11/2020	100-115-41002	DENTAL TRUST DEC 2020 PREMIUMS	298.38
112320 STATEMENT	95300	12/11/2020	100-116-41002	DENTAL TRUST DEC 2020 PREMIUMS	59.17
112320 STATEMENT	95300	12/11/2020	100-221-41002	DENTAL TRUST DEC 2020 PREMIUMS	1,563.59
112320 STATEMENT	95300	12/11/2020	100-221-41002	DENTAL TRUST DEC 2020 PREMIUMS	208.36
112320 STATEMENT	95300	12/11/2020	100-222-41002	DENTAL TRUST DEC 2020 PREMIUMS	59.17
112320 STATEMENT	95300	12/11/2020	100-222-41002	DENTAL TRUST DEC 2020 PREMIUMS	335.49
112320 STATEMENT	95300	12/11/2020	100-223-41002	DENTAL TRUST DEC 2020 PREMIUMS	1,589.96
112320 STATEMENT	95300	12/11/2020	100-231-41002	DENTAL TRUST DEC 2020 PREMIUMS	1,395.93
112320 STATEMENT	95300	12/11/2020	100-341-41002	DENTAL TRUST DEC 2020 PREMIUMS	335.49
112320 STATEMENT	95300	12/11/2020	100-343-41002	DENTAL TRUST DEC 2020 PREMIUMS	1,022.27
112320 STATEMENT	95300	12/11/2020	100-465-41002	DENTAL TRUST DEC 2020 PREMIUMS	127.13
112320 STATEMENT	95300	12/11/2020	105-221-41002	DENTAL TRUST DEC 2020 PREMIUMS	761.00
112320 STATEMENT	95300	12/11/2020	105-231-41002	DENTAL TRUST DEC 2020 PREMIUMS	59.17
112320 STATEMENT	95300	12/11/2020	106-222-41002	DENTAL TRUST DEC 2020 PREMIUMS	149.19
112320 STATEMENT	95300	12/11/2020	106-231-41002	DENTAL TRUST DEC 2020 PREMIUMS	127.13
112320 STATEMENT	95300	12/11/2020	204-227-41002	DENTAL TRUST DEC 2020 PREMIUMS	149.19
112320 STATEMENT	95300	12/11/2020	209-551-41002	DENTAL TRUST DEC 2020 PREMIUMS	149.19
112320 STATEMENT	95300	12/11/2020	209-552-41002	DENTAL TRUST DEC 2020 PREMIUMS	118.34
112320 STATEMENT	95300	12/11/2020	209-554-41002	DENTAL TRUST DEC 2020 PREMIUMS	149.19
112320 STATEMENT	95300	12/11/2020	212-461-41002	DENTAL TRUST DEC 2020 PREMIUMS	149.19
112320 STATEMENT	95300	12/11/2020	212-462-41002	DENTAL TRUST DEC 2020 PREMIUMS	208.36
112320 STATEMENT	95300	12/11/2020	500-641-41002	DENTAL TRUST DEC 2020 PREMIUMS	1,015.26
112320 STATEMENT	95300	12/11/2020	500-642-41002	DENTAL TRUST DEC 2020 PREMIUMS	267.53
112320 STATEMENT	95300	12/11/2020	505-119-41002	DENTAL TRUST DEC 2020 PREMIUMS	298.38
112320 STATEMENT	95300	12/11/2020	998-20105	DENTAL TRUST DEC 2020 PREMIUMS	-447.57

## WARRANT LISTING

Payment Dates: 12/5/2020 - 12/11/2020

Payable Number	Payment Number	Payment Date	Account Number	Description (Payable)	Amount
112320 STATEMENT	95300	12/11/2020	998-20105	DENTAL TRUST DEC 2020 PREMIUMS	83.01
Vendor HEA01 - HEALTH CARE DENTAL TRUST Total:					11,635.16
Vendor: JWE01 - J. W. ENTERPRISES - NORTH					
227586	95301	12/11/2020	100-117-42511	PORTABLE TOILET RENTAL 11/19-12/16/2020	137.70
Vendor JWE01 - J. W. ENTERPRISES - NORTH Total:					137.70
Vendor: JAC02 - JACKFORMS					
3600	95302	12/11/2020	100-115-42201	A/P MAUVE LASER CHECKS	2,028.22
Vendor JAC02 - JACKFORMS Total:					2,028.22
Vendor: KEL09 - KELLER CANYON LANDFILL					
4212-000029649	95303	12/11/2020	500-641-44302	WPCP SLUDGE REMOVAL 11/2-11/15/2020	5,273.77
Vendor KEL09 - KELLER CANYON LANDFILL Total:					5,273.77
Vendor: 1311 - M-GROUP					
2002191	95304	12/11/2020	212-461-42101	ASSOCIATE PLANNER THROUGH 10/31/20	9,372.50
Vendor 1311 - M-GROUP Total:					9,372.50
Vendor: MUN07 - MUNICIPAL POOLING AUTH.					
INV001454	95305	12/11/2020	100-110-41005	EAP PROGRAM 7/20-9/20	58.35
INV001454	95305	12/11/2020	100-111-41005	EAP PROGRAM 7/20-9/20	46.68
INV001454	95305	12/11/2020	100-112-41005	EAP PROGRAM 7/20-9/20	11.67
INV001454	95305	12/11/2020	100-113-41005	EAP PROGRAM 7/20-9/20	11.67
INV001454	95305	12/11/2020	100-115-41005	EAP PROGRAM 7/20-9/20	23.34
INV001454	95305	12/11/2020	100-116-41005	EAP PROGRAM 7/20-9/20	11.67
INV001454	95305	12/11/2020	100-221-41005	EAP PROGRAM 7/20-9/20	198.39
INV001454	95305	12/11/2020	100-222-41005	EAP PROGRAM 7/20-9/20	35.01
INV001454	95305	12/11/2020	100-223-41005	EAP PROGRAM 7/20-9/20	151.71
INV001454	95305	12/11/2020	100-231-41005	EAP PROGRAM 7/20-9/20	128.37
INV001454	95305	12/11/2020	100-341-41005	EAP PROGRAM 7/20-9/20	35.01
INV001454	95305	12/11/2020	100-343-41005	EAP PROGRAM 7/20-9/20	81.69
INV001454	95305	12/11/2020	100-465-41005	EAP PROGRAM 7/20-9/20	11.67
INV001454	95305	12/11/2020	105-221-41005	EAP PROGRAM 7/20-9/20	70.02
INV001454	95305	12/11/2020	105-231-41005	EAP PROGRAM 7/20-9/20	11.67
INV001454	95305	12/11/2020	106-222-41005	EAP PROGRAM 7/20-9/20	11.67
INV001454	95305	12/11/2020	106-231-41005	EAP PROGRAM 7/20-9/20	11.67
INV001454	95305	12/11/2020	204-227-41005	EAP PROGRAM 7/20-9/20	11.67
INV001454	95305	12/11/2020	209-551-41005	EAP PROGRAM 7/20-9/20	11.67
INV001454	95305	12/11/2020	209-552-41005	EAP PROGRAM 7/20-9/20	23.34
INV001454	95305	12/11/2020	209-553-41005	EAP PROGRAM 7/20-9/20	11.67
INV001454	95305	12/11/2020	209-554-41005	EAP PROGRAM 7/20-9/20	11.67
INV001454	95305	12/11/2020	212-461-41005	EAP PROGRAM 7/20-9/20	11.67
INV001454	95305	12/11/2020	212-462-41005	EAP PROGRAM 7/20-9/20	23.34
INV001454	95305	12/11/2020	500-641-41005	EAP PROGRAM 7/20-9/20	93.36
INV001454	95305	12/11/2020	500-642-41005	EAP PROGRAM 7/20-9/20	35.01
INV001454	95305	12/11/2020	505-119-41005	EAP PROGRAM 7/20-9/20	23.34
Vendor MUN07 - MUNICIPAL POOLING AUTH. Total:					1,167.00
Vendor: 2047 - NICOLE LEWIS-BOLTON					
PAYMENT ID 51356	95306	12/11/2020	209-551-38112	REFUND FOR FERNANDEZ GAZEBO RENTAL ON DEC 5, 2020	313.00
Vendor 2047 - NICOLE LEWIS-BOLTON Total:					313.00
Vendor: OTI01 - OTIS ELEVATOR COMPANY					
100400174895	95307	12/11/2020	209-554-42108	PYC 635 TENNENT DEC 2020	191.76
100400175427	95307	12/11/2020	100-343-42108	CITY HALL 2131 PEAR ST DEC 2020	113.15
100400175460	95307	12/11/2020	100-222-42108	880 TENNENT DEC 2020	116.81
Vendor OTI01 - OTIS ELEVATOR COMPANY Total:					421.72

## WARRANT LISTING

Payment Dates: 12/5/2020 - 12/11/2020

Payable Number	Payment Number	Payment Date	Account Number	Description (Payable)	Amount
<b>Vendor: ATH02 - PATRICIA ATHENOUR</b>					
DEC 2020	95308	12/11/2020	100-117-41101	RETIREE MEDICARE REIMBURSEMENT DEC 2020	144.60
<b>Vendor ATH02 - PATRICIA ATHENOUR Total:</b>					<b>144.60</b>
<b>Vendor: PGE01 - PG&amp;E</b>					
111020-0498	95309	12/11/2020	100-231-43103	3790 PINOLE VALLEY RD FIRESTATION	438.76
111020-4157	95309	12/11/2020	100-222-43103	809 CITY HALL	16.38
111020-6043	95309	12/11/2020	100-231-43103	3790 PINOLE VALLEY RD	4.56
111220-0883	95309	12/11/2020	100-222-43103	800 TENNENT AVE PUBLI C SAFETY FACILITY	1,146.27
111220-0883	95309	12/11/2020	100-223-43103	800 TENNENT AVE PUBLI C SAFETY FACILITY	229.25
111220-0883	95309	12/11/2020	100-231-43103	800 TENNENT AVE PUBLI C SAFETY FACILITY	917.02
111220-1156	95309	12/11/2020	209-554-43103	635 TENNENT AVE YOUTH CTR/CATV	23.84
111220-1156	95309	12/11/2020	505-119-43103	635 TENNENT AVE YOUTH CTR/CATV	35.75
111220-1462	95309	12/11/2020	209-552-43103	2500 CHARLES ST SENIOR CENTER	99.62
111220-3029	95309	12/11/2020	100-345-43103	1270 ADOBE RD @ OUTSIDE BATHROOMS	91.40
111220-7186	95309	12/11/2020	209-558-43103	601 TENNENT AVE PUBLIC MEETING HALL	10.36
111220-8716	95309	12/11/2020	500-641-43103	SEWAGE PLNT-FT OF TENNENT	2,605.58
111620-5137	95309	12/11/2020	209-557-43103	2450 SIMAS AVE SWIM CTR	955.78
111720-0217	95309	12/11/2020	100-345-43103	TENNENT & PARK ST CLUB HOUSE	18.44
111720-0813	95309	12/11/2020	200-342-43103	2149 1/2 APPIAN WAY TRAFFIC SIGNAL	48.51
111720-0923	95309	12/11/2020	100-110-43103	2131 PEAR ST	90.14
111720-0923	95309	12/11/2020	100-111-43103	2131 PEAR ST	118.61
111720-0923	95309	12/11/2020	100-112-43103	2131 PEAR ST	130.46
111720-0923	95309	12/11/2020	100-115-43103	2131 PEAR ST	324.98
111720-0923	95309	12/11/2020	100-116-43103	2131 PEAR ST	94.88
111720-0923	95309	12/11/2020	100-117-43103	2131 PEAR ST	1,055.59
111720-0923	95309	12/11/2020	100-343-43103	2131 PEAR ST	1,966.48
111720-0923	95309	12/11/2020	200-342-43103	2131 PEAR ST	343.96
111720-0923	95309	12/11/2020	212-461-43103	2131 PEAR ST	142.33
111720-0923	95309	12/11/2020	212-462-43103	2131 PEAR ST	358.19
111720-0923	95309	12/11/2020	285-464-43103	2131 PEAR ST	118.61
111720-2506	95309	12/11/2020	215-341-43103	701 Pinon/2489 San Pablo- Electric CHGS	29.63
111720-2969	95309	12/11/2020	201-343-43103	600 Tennent Ave-Blackies Storage	19.11
111720-3537	95309	12/11/2020	100-343-43103	659 TENNENT AVE PARKING LOT LIGHTS	90.68
111720-3850	95309	12/11/2020	100-345-43103	601 TENNENT AVE CARETAKER'S SHED	197.20
111720-3914	95309	12/11/2020	100-345-43103	FERNANDEZ PARK BALLPARK LIGHTING	394.40
111720-4065	95309	12/11/2020	209-559-43103	2937 PINOLE VALLEY RD TENNIS CT LIGHTS	531.21
111720-4368	95309	12/11/2020	200-342-43103	APPIAN WAY & TARA HILLS TRAFFIC SIGNAL	128.77
111720-4612	95309	12/11/2020	201-343-43103	2100 SAN PABLO AVE FARIA HOUSE	36.52
111720-5274	95309	12/11/2020	201-343-43103	2361 SAN PABLO AVE OLD BANK BUILDING	46.03
111720-6969	95309	12/11/2020	201-343-43103	2361 SAN PABLO AVE PARKING LOT LIGHTS	105.99

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Payment Dates: 12/5/2020 - 12/11/2020

Payable Number	Payment Number	Payment Date	Account Number	Description (Payable)	Amount
111720-7509	95309	12/11/2020	200-342-43103	TARA HILLS DR 500 FT APPIAN WAY TRAFFIC SIGNAL	53.72
111720-7964	95309	12/11/2020	310-348-43103	2680 PINOLE VALLEY RD MEDIAN IRRIGATION SHOPPING C	10.30
111720-9985	95309	12/11/2020	201-343-43103	NEAR 795 FERNANDEZ PARKING LOT LIGHTS	135.16
111820-0081	95309	12/11/2020	200-342-43103	2501 SAN PABLO AVE TRAFFIC CONTROLLER	68.94
111820-0209	95309	12/11/2020	200-342-43103	S/E CORNER SAN PABLO AVE & TENNENT TRAFFIC SIGNAL	78.33
111820-0466	95309	12/11/2020	209-554-43103	635 TENNENT AVE YOUTH CTR/CATV	39.70
111820-0466	95309	12/11/2020	505-119-43103	635 TENNENT AVE YOUTH CTR/CATV	59.55
111820-2615	95309	12/11/2020	100-345-43103	S/E CORNER OF ROGERS & NOB HILL SPRINKLER SYSTEM	9.85
111820-2793	95309	12/11/2020	200-342-43103	1451 FITZGERALD DR TRAFFIC SIGNAL	74.32
111820-3311	95309	12/11/2020	200-342-43103	PINOLE VALLEY RD & HENRY TRAFFIC CONTROLLER	98.57
111820-4193	95309	12/11/2020	200-342-43103	HWY 80 PINOLE VALLEY RD TRAFFIC CONTROLLER	51.92
111820-4951	95309	12/11/2020	201-343-43103	2279 1/2 PARK ST	9.05
111820-5127	95309	12/11/2020	500-642-43103	893 1/2 SAN PABLO AVE PUMP STATION	118.20
111820-5374	95309	12/11/2020	200-342-43103	1220 PINOLE VALLEY RD TRAFFIC SIGNAL	82.56
111820-5387	95309	12/11/2020	100-345-43103	588 MARLESTA RD LOUIS FRANCIS PARK	44.91
111820-7114	95309	12/11/2020	200-342-43103	2429 SAN PABLO AVE	55.12
111820-8086	95309	12/11/2020	200-342-43103	N/S BORDER CITY OF PINOLE	105.54
111820-9824	95309	12/11/2020	310-347-43103	1303 PINOLE VALLEY RD TRAFFIC CONTROL SVC	102.34
111920-1121	95309	12/11/2020	200-342-43103	DEL MONTE & SAN PABLO TRAFFIC CONTROL LIGHT	65.43
111920-1233	95309	12/11/2020	200-342-43103	SAN PABLO AVE TRAFFIC SIGNAL	87.86
111920-2222	95309	12/11/2020	100-345-43103	STREET AND HIGHWAY LIGHTING	49.39
111920-2222	95309	12/11/2020	200-342-43103	STREET AND HIGHWAY LIGHTING	18,974.01
111920-2222	95309	12/11/2020	310-347-43103	STREET AND HIGHWAY LIGHTING	280.00
111920-2222	95309	12/11/2020	310-348-43103	STREET AND HIGHWAY LIGHTING	400.00
111920-2620	95309	12/11/2020	200-342-43103	N/W CORNER APPIAN WAY & FITZGERALD DR TRAFFIC SIG	94.24
111920-8687	95309	12/11/2020	200-342-43103	FITZGERALD DR IFO LONG JOHN SILVERS TRAFFIC SIGNAL	84.45
112420-8511	95309	12/11/2020	100-345-43103	W/S PINOLE SHORES DR-SPRINKLER CONTROLLER	11.23
112420-9929	95309	12/11/2020	201-343-43103	790 PINOLE SHORES DR-NEW METAL BUILDING	61.54
				<b>Vendor PGE01 - PG&amp;E Total:</b>	<b>34,271.52</b>
<b>Vendor: QUI11 - QUINCY ENGINEERING, INC.</b>					
20-2830.00-4	95313	12/11/2020	325-342-47205	SAN PABLO BRIDGE SVCS AUG 2020	22,056.46
20-2830.00-5	95313	12/11/2020	325-342-47205	SAN PABLO BRIDGE SVCS SEPT 2020	22,709.51
20-2830.00-6	95313	12/11/2020	325-342-47205	SAN PABLO BRIDGE SVCS OCT 2020	30,614.78
				<b>Vendor QUI11 - QUINCY ENGINEERING, INC. Total:</b>	<b>75,380.75</b>

## WARRANT LISTING

Payment Dates: 12/5/2020 - 12/11/2020

Payable Number	Payment Number	Payment Date	Account Number	Description (Payable)	Amount
<b>Vendor: 2025 - RAY MORGAN COMPANY, LLC.</b>					
3141377	95314	12/11/2020	525-118-42107	COPIER CONTRACT BASE/USAGE CHARGES 10/15-11/14/20	714.82
<b>Vendor 2025 - RAY MORGAN COMPANY, LLC. Total:</b>					<b>714.82</b>
<b>Vendor: SWE00 - ROY SWEARINGEN</b>					
120320	95315	12/11/2020	100-110-42514	HOME OFFICE EXPENSES REIMBURSEMENT	130.53
<b>Vendor SWE00 - ROY SWEARINGEN Total:</b>					<b>130.53</b>
<b>Vendor: J&amp;O01 - RUBBER DUST INC.</b>					
135800	95316	12/11/2020	500-641-42107	STERLING TRUCK #55 TIRES	1,543.17
<b>Vendor J&amp;O01 - RUBBER DUST INC. Total:</b>					<b>1,543.17</b>
<b>Vendor: 1714 - SHERRI D. LEWIS</b>					
PC05PINOLE	95317	12/11/2020	212-461-42514	PLANNING COMMISSION MEETING MINUTES 11/30/20	525.00
<b>Vendor 1714 - SHERRI D. LEWIS Total:</b>					<b>525.00</b>
<b>Vendor: 2048 - SONIC.NET, LLC</b>					
1001638763	95318	12/11/2020	525-118-43101	NOV 2020 SERVICES	1,404.94
1001761143	95318	12/11/2020	525-118-43101	DEC 2020 SERVICES	449.00
1001883624	95318	12/11/2020	525-118-43101	JAN 2021 SERVICE	491.14
<b>Vendor 2048 - SONIC.NET, LLC Total:</b>					<b>2,345.08</b>
<b>Vendor: 1253 - TARAH ORNELAS</b>					
507	95319	12/11/2020	209-551-42515	HOLIDAY YARD SIGNS	113.33
508	95319	12/11/2020	209-552-43809	NEWSLETTER PRINTING	313.95
<b>Vendor 1253 - TARAH ORNELAS Total:</b>					<b>427.28</b>
<b>Vendor: 1028 - TRI-CITY POWER, INC.</b>					
3249	95320	12/11/2020	100-223-42107	FULL SVC MAINTENANCE AGREEMENT 12/1/20-11/30/21	1,417.00
<b>Vendor 1028 - TRI-CITY POWER, INC. Total:</b>					<b>1,417.00</b>
<b>Vendor: VIS01 - VISION SERVICE PLAN</b>					
810926946	95321	12/11/2020	100-110-41003	VISION PREMIUMS DEC 2020	74.44
810926946	95321	12/11/2020	100-111-41003	VISION PREMIUMS DEC 2020	74.44
810926946	95321	12/11/2020	100-112-41003	VISION PREMIUMS DEC 2020	18.61
810926946	95321	12/11/2020	100-113-41003	VISION PREMIUMS DEC 2020	18.61
810926946	95321	12/11/2020	100-115-41003	VISION PREMIUMS DEC 2020	37.22
810926946	95321	12/11/2020	100-116-41003	VISION PREMIUMS DEC 2020	18.61
810926946	95321	12/11/2020	100-221-41003	VISION PREMIUMS DEC 2020	353.59
810926946	95321	12/11/2020	100-222-41003	VISION PREMIUMS DEC 2020	55.83
810926946	95321	12/11/2020	100-223-41003	VISION PREMIUMS DEC 2020	241.93
810926946	95321	12/11/2020	100-231-41003	VISION PREMIUMS DEC 2020	204.71
810926946	95321	12/11/2020	100-341-41003	VISION PREMIUMS DEC 2020	55.83
810926946	95321	12/11/2020	100-343-41003	VISION PREMIUMS DEC 2020	130.27
810926946	95321	12/11/2020	100-465-41003	VISION PREMIUMS DEC 2020	18.61
810926946	95321	12/11/2020	105-221-41003	VISION PREMIUMS DEC 2020	111.66
810926946	95321	12/11/2020	105-231-41003	VISION PREMIUMS DEC 2020	18.61
810926946	95321	12/11/2020	106-222-41003	VISION PREMIUMS DEC 2020	18.61
810926946	95321	12/11/2020	106-231-41003	VISION PREMIUMS DEC 2020	18.61
810926946	95321	12/11/2020	204-227-41003	VISION PREMIUMS DEC 2020	18.61
810926946	95321	12/11/2020	209-551-41003	VISION PREMIUMS DEC 2020	18.61
810926946	95321	12/11/2020	209-552-41003	VISION PREMIUMS DEC 2020	37.22
810926946	95321	12/11/2020	209-554-41003	VISION PREMIUMS DEC 2020	18.61
810926946	95321	12/11/2020	212-461-41003	VISION PREMIUMS DEC 2020	18.61
810926946	95321	12/11/2020	212-462-41003	VISION PREMIUMS DEC 2020	37.22
810926946	95321	12/11/2020	500-641-41003	VISION PREMIUMS DEC 2020	148.88
810926946	95321	12/11/2020	500-642-41003	VISION PREMIUMS DEC 2020	55.83
810926946	95321	12/11/2020	505-119-41003	VISION PREMIUMS DEC 2020	37.22



**WARRANT LISTING**

Payment Dates: 12/5/2020 - 12/11/2020

Payable Number	Payment Number	Payment Date	Account Number	Description (Payable)	Amount
810926946	95321	12/11/2020	998-20106	VISION PREMIUMS DEC 2020	37.22
				Vendor VIS01 - VISION SERVICE PLAN Total:	1,898.22
				Grand Total:	186,447.00

## Report Summary

## Fund Summary

Fund	Payment Amount
100 - General Fund	29,658.95
105 - Measure S -2006	1,032.13
106 - MEASURE S-2014	336.88
200 - Gas Tax Fund	20,496.25
201 - Restricted Real Estate Maintenance Fund	413.40
204 - Police Grants	179.47
209 - Recreation Fund	3,547.06
212 - Building & Planning	11,142.51
215 - Measure C and J Fund	29.63
285 - Housing Land Held for Resale	118.61
310 - Lighting & Landscape Districts	792.64
325 - City Street Improvements	100,700.64
500 - Sewer Enterprise Fund	11,363.80
505 - Cable Access TV	454.24
525 - Information Systems	6,508.13
998 - Payroll Clearing	-327.34
<b>Grand Total:</b>	<b>186,447.00</b>

## Account Summary

Account Number	Account Name	Payment Amount
100-110-41002	Emp Benefits/Dental	552.64
100-110-41003	Emp Benefits/Vision Care	74.44
100-110-41005	Emp Benefits/Employee A...	58.35
100-110-42514	Admin Exp/Special Depart	130.53
100-110-43103	Utilities/Electricity & Pow...	90.14
100-111-41002	Emp Benefits/Dental	574.70
100-111-41003	Emp Benefits/Vision Care	74.44
100-111-41005	Emp Benefits/Employee A...	46.68
100-111-43103	Utilities/Electricity & Pow...	118.61
100-112-41002	Emp Benefits/Dental	149.19
100-112-41003	Emp Benefits/Vision Care	18.61
100-112-41005	Emp Benefits/Employee A...	11.67
100-112-43103	Utilities/Electricity & Pow...	130.46
100-113-41002	Emp Benefits/Dental	127.13
100-113-41003	Emp Benefits/Vision Care	18.61
100-113-41005	Emp Benefits/Employee A...	11.67
100-115-41002	Emp Benefits/Dental	298.38
100-115-41003	Emp Benefits/Vision Care	37.22
100-115-41005	Emp Benefits/Employee A...	23.34
100-115-42201	Office Expense	2,028.22
100-115-43103	Utilities/Electricity & Pow...	324.98
100-116-41002	Emp Benefits/Dental	59.17
100-116-41003	Emp Benefits/Vision Care	18.61
100-116-41005	Emp Benefits/Employee A...	11.67
100-116-43103	Utilities/Electricity & Pow...	94.88
100-117-41101	Retiree Benefits/Medical-...	144.60
100-117-42511	Admin Exp/Equipment Re...	137.70
100-117-43103	Utilities/Electricity & Pow...	1,055.59
100-221-41002	Emp Benefits/Dental	1,771.95
100-221-41003	Emp Benefits/Vision Care	353.59
100-221-41005	Emp Benefits/Employee A...	198.39
100-222-41002	Emp Benefits/Dental	394.66
100-222-41003	Emp Benefits/Vision Care	55.83
100-222-41005	Emp Benefits/Employee A...	35.01
100-222-42108	Prof Svcs/Building-Structu...	116.81
100-222-42201	Office Expense	246.97
100-222-43103	Utilities/Electricity & Pow...	1,162.65

## Account Summary

Account Number	Account Name	Payment Amount
100-223-41002	Emp Benefits/Dental	1,589.96
100-223-41003	Emp Benefits/Vision Care	241.93
100-223-41005	Emp Benefits/Employee A...	151.71
100-223-42107	Prof Svcs/Equipment Mai...	1,417.00
100-223-43103	Utilities/Electricity & Pow...	229.25
100-231-41002	Emp Benefits/Dental	1,395.93
100-231-41003	Emp Benefits/Vision Care	204.71
100-231-41005	Emp Benefits/Employee A...	128.37
100-231-41008	Emp Benefits/Long Term ...	324.50
100-231-43103	Utilities/Electricity & Pow...	1,360.34
100-231-43105	Utilities/Cable	54.42
100-341-41002	Emp Benefits/Dental	335.49
100-341-41003	Emp Benefits/Vision Care	55.83
100-341-41005	Emp Benefits/Employee A...	35.01
100-343-41002	Emp Benefits/Dental	1,022.27
100-343-41003	Emp Benefits/Vision Care	130.27
100-343-41005	Emp Benefits/Employee A...	81.69
100-343-42108	Prof Svcs/Building-Structu...	257.32
100-343-43103	Utilities/Electricity & Pow...	2,057.16
100-345-42108	Prof Svcs/Building-Structu...	111.13
100-345-43102	Utilities/Water	6,742.34
100-345-43103	Utilities/Electricity & Pow...	816.82
100-465-41002	Emp Benefits/Dental	127.13
100-465-41003	Emp Benefits/Vision Care	18.61
100-465-41005	Emp Benefits/Employee A...	11.67
105-221-41002	Emp Benefits/Dental	761.00
105-221-41003	Emp Benefits/Vision Care	111.66
105-221-41005	Emp Benefits/Employee A...	70.02
105-231-41002	Emp Benefits/Dental	59.17
105-231-41003	Emp Benefits/Vision Care	18.61
105-231-41005	Emp Benefits/Employee A...	11.67
106-222-41002	Emp Benefits/Dental	149.19
106-222-41003	Emp Benefits/Vision Care	18.61
106-222-41005	Emp Benefits/Employee A...	11.67
106-231-41002	Emp Benefits/Dental	127.13
106-231-41003	Emp Benefits/Vision Care	18.61
106-231-41005	Emp Benefits/Employee A...	11.67
200-342-43103	Utilities/Electricity & Pow...	20,496.25
201-343-43103	Utilities/Electricity & Pow...	413.40
204-227-41002	Emp Benefits/Dental	149.19
204-227-41003	Emp Benefits/Vision Care	18.61
204-227-41005	Emp Benefits/Employee A...	11.67
209-551-38112	Rental Income/Facility Re...	313.00
209-551-41002	Emp Benefits/Dental	149.19
209-551-41003	Emp Benefits/Vision Care	18.61
209-551-41005	Emp Benefits/Employee A...	11.67
209-551-42515	Admin Exp/Special Events	113.33
209-552-41002	Emp Benefits/Dental	118.34
209-552-41003	Emp Benefits/Vision Care	37.22
209-552-41005	Emp Benefits/Employee A...	23.34
209-552-43103	Utilities/Electricity & Pow...	99.62
209-552-43809	Program Cost/Newsletter	313.95
209-553-41005	Emp Benefits/Employee A...	11.67
209-554-36402	Recreation Chg/Members...	405.00
209-554-41002	Emp Benefits/Dental	149.19
209-554-41003	Emp Benefits/Vision Care	18.61
209-554-41005	Emp Benefits/Employee A...	11.67
209-554-42108	Prof Svcs/Building-Structu...	191.76

**Account Summary**

Account Number	Account Name	Payment Amount
209-554-43103	Utilities/Electricity & Pow...	63.54
209-557-43103	Utilities/Electricity & Pow...	955.78
209-558-43103	Utilities/Electricity & Pow...	10.36
209-559-43103	Utilities/Electricity & Pow...	531.21
212-461-41002	Emp Benefits/Dental	149.19
212-461-41003	Emp Benefits/Vision Care	18.61
212-461-41005	Emp Benefits/Employee A...	11.67
212-461-42101	Prof Svcs/Professional Ser...	9,372.50
212-461-42514	Admin Exp/Special Depart	821.10
212-461-43103	Utilities/Electricity & Pow...	142.33
212-462-41002	Emp Benefits/Dental	208.36
212-462-41003	Emp Benefits/Vision Care	37.22
212-462-41005	Emp Benefits/Employee A...	23.34
212-462-43103	Utilities/Electricity & Pow...	358.19
215-341-43103	Utilities/Electricity & Pow...	29.63
285-464-43103	Utilities/Electricity & Pow...	118.61
310-347-43103	Utilities/Electricity & Pow...	382.34
310-348-43103	Utilities/Electricity & Pow...	410.30
325-342-47205	Improvements/Streets	100,700.64
500-641-41002	Emp Benefits/Dental	1,015.26
500-641-41003	Emp Benefits/Vision Care	148.88
500-641-41005	Emp Benefits/Employee A...	93.36
500-641-42107	Prof Svcs/Equipment Mai...	1,543.17
500-641-42201	Office Expense	207.21
500-641-43103	Utilities/Electricity & Pow...	2,605.58
500-641-44302	Other Materials Supp/Slu...	5,273.77
500-642-41002	Emp Benefits/Dental	267.53
500-642-41003	Emp Benefits/Vision Care	55.83
500-642-41005	Emp Benefits/Employee A...	35.01
500-642-43103	Utilities/Electricity & Pow...	118.20
505-119-41002	Emp Benefits/Dental	298.38
505-119-41003	Emp Benefits/Vision Care	37.22
505-119-41005	Emp Benefits/Employee A...	23.34
505-119-43103	Utilities/Electricity & Pow...	95.30
525-118-42106	Prof Svcs/Software Maint...	3,294.20
525-118-42107	Prof Svcs/Equipment Mai...	714.82
525-118-43101	Utilities/Telephone	2,499.11
998-20105	Sal & Ben Payable/Dental ...	-364.56
998-20106	Sal & Ben Payable/Vision ...	37.22
<b>Grand Total:</b>		<b>186,447.00</b>

**Project Account Summary**

Project Account Key	Payment Amount
**None**	186,447.00
<b>Grand Total:</b>	<b>186,447.00</b>

Approved By:  Date: 12/10/2020



## **CITY COUNCIL REPORT**

**7C**

**DATE: DECEMBER 15, 2020**

**TO: HONORABLE MAYOR AND COUNCIL MEMBERS**

**FROM: ERIC CASHER, CITY ATTORNEY**

**BY: ALEX MOG, ASSISTANT CITY ATTORNEY**

**SUBJECT: RESOLUTION CONFIRMING CONTINUED EXISTENCE OF LOCAL  
EMERGENCY**

---

### **RECOMMENDATION**

Staff recommends that the City Council adopt a resolution confirming the continued existence of a local emergency.

### **BACKGROUND & DISCUSSION**

On March 18, 2020, the City Manager, acting as Director of Emergency Services, proclaimed a local emergency pursuant to California Government Code Section 8630 and Pinole Municipal Code Chapter 2.32. The emergency declaration was based on public health and safety concerns for persons and property within the City as a consequence of the global spread of novel coronavirus 2019 ("COVID-19"), including confirmed cases in Contra Costa County, as well as, the Contra Costa County Department of Health's shelter in place order dated March 16, 2020. The City Council subsequently adopted a resolution affirming the City Manager's emergency declaration.

The California Emergency Services Act requires the City Council to review the need for continuing the local emergency at least once every 60 days. Although the local emergency does not end until terminated by the City Council, the Pinole Municipal Code requires the City Council to review the need for continuing the local emergency every 14 days. The City Council has confirmed the continued existence of the local emergency multiple times since the emergency was first declared, most recently on December 8, 2020.

The number of new cases of COVID-19 is rising at an alarming rate throughout California, including within Contra Costa County. There have now been over 29,000 cases of COVID-19 within the County and approximately 268 deaths. Not only is the raw number of positive cases increasing quickly, so is the rate of positive tests. The daily number of individuals testing positive for COVID-19 in Contra Costa County is greater than at any other time since the start of the pandemic. In Pinole, the rate of new cases over the last 14 days is approximately 320 new cases per 100,000

people. That rate is twice the rate that existed two weeks ago, which is consistent with the trend for Contra Costa County and the overall region. In response to the growing number of cases of COVID-19, the Contra Costa County Health Officer issued a new Shelter in Place Order that, among other things, bans gatherings of any type and prohibits indoor or outdoor dining. The new health order took effect December 7 and will remain in effect until at least January 4.

Public health and safety concerns for persons and property within the City as a consequence of the global spread of novel coronavirus 2019 continue to exist.

If the proposed resolution is adopted, the City Council will confirm the continued existence of the local emergency. In accordance with state law and the Municipal Code, the City Council will review the emergency declaration periodically until the conditions warrant a termination of the emergency declaration.

### **FISCAL IMPACT**

There is no direct fiscal impact from the adoption of the resolution ratifying a local emergency. However, the City will consider all options available to seek reimbursement for indirect expenses and fiscal impacts through the appropriate authorities.

### **ATTACHMENTS**

- A. Resolution Confirming Continued Existence of Local Emergency

**CITY OF PINOLE**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PINOLE  
CONFIRMING THE CONTINUED EXISTENCE OF A LOCAL EMERGENCY DUE  
TO COVID-19**

**WHEREAS**, Government Code Section 8630 and Pinole Municipal Code Section 2.32.060 authorize the Director of Emergency Service to proclaim a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a city exist if the City Council is not in session and provides that the City Council shall ratify the proclamation within seven days thereafter; and

**WHEREAS**, in accordance with Government Code Section 8630 and Pinole Code Section 2.32.060, the Director of Emergency Services proclaimed the existence of a local emergency caused by the Novel Coronavirus (COVID-19), a respiratory disease first identified in China that may result in serious illness or death that is easily transmissible from person to person, on March 18; and

**WHEREAS**, on March 24, the City Council ratified and confirmed the proclamation of the existence of a local emergency issued by the Director of Emergency Services; and

**WHEREAS**, pursuant to Government Code Section 8630 and Pinole Municipal Code Section 2.32.060, the City Council must periodically review the need for continuing the local emergency; and

**WHEREAS**, the conditions that prompted the original declaration of a local emergency continue to exist; and

**WHEREAS**, the recitals contained in Resolution No. 2020-13, adopted by the City Council on March 24, are incorporated into this Resolution as if stated herein; and

**WHEREAS**, the number of new cases of COVID-19 is rising at an alarming rate throughout California, including within Contra Costa County; and

**WHEREAS**, there have now been over 29,000 cases of COVID-19 and approximately 268 deaths within the County; and

**WHEREAS**, the rate of new cases in Pinole over the last 14 days is approximately 320 per 100,000 people, which is twice the rate that existed 2 weeks ago; and

**WHEREAS**, in response to the growing number of cases of COVID-19, the Contra Costa County Health Officer issued a new Shelter in Place Order that, among other things, bans gatherings of any type; and

## ATTACHMENT A

**WHEREAS**, the new health order took effect December 7 and will remain in effect until at least January 4; and

**WHEREAS**, the daily number of individuals testing positive for COVID-19 in Contra Costa County is greater than at any other time since the start of the pandemic; and

**WHEREAS**, the public health and safety concerns for persons and property within the City as a consequence of the global spread of COVID-19 continue to exist; and

**WHEREAS**, in order to prevent the spread of COVID-19, the City and its residents must continue to take serious precautions; and

**WHEREAS**, the health, safety, and welfare of Pinole residents, businesses, visitors, and staff is of utmost importance to the City and additional future measures may be needed to protect the community; and

**WHEREAS**, the City may require additional assistance in the future, and a formal declaration of emergency allows the City to access resources in a timely manner in a timely fashion; and

**WHEREAS**, the City Council finds that conditions of extreme peril to the safety of persons and property within the territorial limits of the City related to COVID-19 pandemic continue in existence; and

**WHEREAS**, the City Council finds that extraordinary measures are required to protect the public health, safety, and of persons and property within the City that are or are likely to be beyond the control or capability of the services, personnel, equipment, and facilities of the City; and

**WHEREAS**, the City Council have continued existence of a local emergency periodically since it was first declared on March 18, 2020; and

**WHEREAS**, the City Council desires to confirm the continued existence of a local emergency within Pinole due to COVID-19.

**NOW, THEREFORE, BE IT RESOLVED** that the Council of the City of Pinole hereby declares as follows:

1. The local emergency declared by Resolution No. 2020-13 due to the COVID-19 Pandemic continues to exist within the City of Pinole.
2. During the existence of the declared local emergency, the powers, functions, and duties of the City Manager, acting as Director of Emergency Services, and the emergency organization of this City shall be those prescribed by State law and by ordinances and resolutions of the City of Pinole.



## ATTACHMENT A

3. The declaration of local emergency shall remain in effect until such time that the Council determines that the emergency conditions have been abated.

**PASSED AND ADOPTED** at a regular meeting of the Pinole City Council held on the 15<sup>th</sup> day of December 2020, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

I hereby certify that the foregoing resolution was introduced, passed, and adopted on the 15<sup>th</sup> day of December 2020.

---

Heather Iopu, CMC  
City Clerk



# CITY COUNCIL REPORT

7D

**DATE:** DECEMBER 15, 2020

**TO:** MAYOR AND COUNCIL MEMBERS

**FROM:** HEATHER IOPU, CITY CLERK

**SUBJECT:** APPROVE THE 2021 COUNCIL COMMITTEE ASSIGNMENT LIST

---

## **RECOMMENDATION**

It is recommended that the City Council adopt a resolution approving the 2021 Council Committee Assignment List.

## **BACKGROUND**

At the December 8, 2020 Special Council meeting, Council reviewed and amended the Council Committee Assignment list.

## **REVIEW AND ANALYSIS**

Attached is the Council Assignments list, based on the discussion and action of the Council on December 8th.

All amendments to this list are subject to Council discretion, including appointments to Ad-hoc committees that are approved during the year. Staff will make any further changes as provided at the meeting and disseminate the 2021 list to the Council and to the respective Boards and outside agencies, regarding any changes affecting their Board composition. Council assignments are also uploaded on the City Council webpage.

## **FISCAL IMPACT**

There are no fiscal impacts associated with this action.

## **ATTACHMENTS:**

- A. Resolution
- B. 2021 Council Committee Assignment List

# ATTACHMENT A

## RESOLUTION 2020 - XX

### RESOLUTION OF THE CITY COUNCIL OF PINOLE, CALIFORNIA, APPROVING THE PINOLE CITY COUNCIL COMMITTEE APPOINTMENT LIST

**WHEREAS**, the City Council of the City of Pinole has established various Ad-Hoc Committees designed to aid the City Council in the conduct of the public's business; and

**WHEREAS**, in addition, the City of Pinole has representation on various county, local, regional Boards and Committees as a means of furthering the City's interests; and

**WHEREAS**, representation on various regional board and committees require attendance by the Mayor and Mayor Pro Tem; and

**WHEREAS**, designated City Council representatives appointed to the various boards, commissions and committees serve for one-year terms expiring in December of each year (except as otherwise noted in Exhibit A) following the reorganization of the new City Council; and

**WHEREAS**, on December 8, 2020, the City Council reviewed and recommended changes to the Committee Appointment list and directed staff to bring the item back on December 15, 2020 for approval.

**NOW THEREFORE BE IT RESOLVED**, that the City Council of the City of Pinole does hereby approve the 2020 Council Committee Appointment List, hereunto attached as Exhibit A.

**PASSED AND ADOPTED** this 15<sup>th</sup> day of **December 2020**, by the following vote:

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

I hereby certify that the foregoing resolution was introduced, passed and adopted on this 15<sup>th</sup> day of **December 2020**.

---

Heather Iopu, CMC  
City Clerk



## ATTACHMENT B

### 2021 COUNCIL ASSIGNMENTS

Revised & Approved:

#### JOINT POWERS AUTHORITIES AND OTHER INTERAGENCY REGULATORY BODIES OF WHICH THE CITY IS A MEMBER

1. **ASSOCIATION OF BAY AREA GOVERNMENTS (ABAG)**  
Meetings: Spring General Assembly, / Fall General Assembly Dates TBD  
Delegate Attendance Mandatory at the 2 Annual Assembly Meetings  
Ex. Board meets 3rd Thursdays @ 7 p.m. in Jan., Mar., July, Sept. & Nov.  
Contact: Clerk of the Board: Fred Castro (415) 820-7913  
Delegate: Toms Alternate: Murphy  
*NOTE: Membership Reinstated in FY 2015- Approved September 2015*
2. **MARIN CLEAN ENERGY (MCE)**  
Meetings: 3<sup>rd</sup> Thursday of every month at 7:00 p.m.  
Location: Rotational locations  
Contact: Darlene Jackson, Board Clerk and Executive Assistant (415) 464-6032  
Delegate: Murphy Alternate: Toms
3. **PINOLE / HERCULES WASTEWATER SUBCOMMITTEE**  
Meetings: Quarterly meetings required by the original agreement - currently conduct monthly meetings on 1<sup>st</sup> Thursday at 8:30 a.m.  
Location: Location alternates between cities  
Delegates: Salimi/Tave Alternate: Toms
4. **WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY (WCCIWMA, "RECYCLEMORE")**  
Meetings: Meets monthly – 2nd Thursday at 7:00 p.m.  
Location: San Pablo City Hall Council Chambers, One Alvarado Square, San Pablo  
Contact: 510-215-3125 Executive Director: Peter Holtzclaw  
Delegate: Tave Alternate: Murphy
5. **WEST CONTRA COSTA TRANSPORTATION ADVISORY COMMITTEE (WCCTAC)**  
Meetings: Meets monthly - Last Friday of every month from 8 a.m. to 10 a.m.  
Location: El Cerrito City Hall  
Contact: Staff Person: 510-210-5933, 510-210-5931  
Delegate: Salimi Alternate: Murphy
6. **WESTERN CONTRA COSTA TRANSIT AUTHORITY ("WESTCAT")**  
Meetings: 2nd Thursday monthly at 6:30 p.m. (*amended 5/6/09*)  
Location: Pinole Council Chambers, 2131 Pear Street  
Contact: Staff: Mica McFadden - 724-3331 ex. 113  
Delegate: Martinez-Rubin/Toms (Toms to take over at mid-year) Alternate: Murphy

**VOLUNTARY INTERAGENCY COLLABORATION BODIES OF WHICH THE CITY IS A MEMBER**

7. **CONTRA COSTA MAYORS CONFERENCE**  
Meetings: First Thursday of each month at 6:30 p.m.  
Location: Rotational locations  
Delegate: (Mayor) Martinez-Rubin Alternate: (Mayor Pro Tem) Salimi
8. **EAST BAY DIVISION, LEAGUE OF CALIFORNIA CITIES**  
Meetings: 4th Thursday of every other month, except August & December  
Board Meeting 6:30 p.m. / General Membership: 7:00 p.m.  
Location: Rotational locations  
Contact: Dawn Abrahamson, (925) 989-5674  
Delegate: (Mayor) Martinez-Rubin Alternate: (Mayor Pro Tem) Salimi
9. **WEST COUNTY MAYORS AND SUPERVISORS ASSOCIATION**  
Meetings: 4th Thursday, monthly at 8:30 a.m.  
Location: Rotational: Jan – June (Hercules) July – December (Richmond)  
Contact: Hercules – Lori Martin  
Delegate: (Mayor) Martinez-Rubin Alternate: (Mayor Pro Tem) Salimi

**SUBCOMMITTEES OF THE PINOLE CITY COUNCIL**

10. **FINANCE SUBCOMMITTEE:**  
Meetings: Meet Quarterly/As Needed  
Delegates: Mayor, Mayor Pro Tem & City Treasurer  
Contact: City Manager, Assistant City Manager, Finance Director, & City Clerk  
Created: (Res. 2005-15)
11. **HONORING/PLAQUES NAMING AD-HOC SUBCOMMITTEE**  
*(limited duration / specific focus)*  
Meetings: TBD  
Attendees: Toms/Murphy  
Created: November 1, 2016
12. **MUNICIPAL CODE AD-HOC SUBCOMMITTEE**  
*(limited duration / specific focus)*  
Meetings: TBD  
Attendees: Toms/Tave
13. **PLANNING COMMISSION INTERVIEW AD-HOC SUBCOMMITTEE**  
*(limited duration / specific focus)*  
Attendees: Toms/Murphy



## CITY COUNCIL REPORT

7E

**DATE: DECEMBER 15, 2020**

**TO: MAYOR AND COUNCIL MEMBERS**

**FROM: TAMARA MILLER, DEVELOPEMENT SERVICES DIRECTOR/ CITY  
ENGINEER**

**SUBJECT: RECEIVE AN UPDATE ON 2021 GARBAGE COLLECTION RATES**

---

### **RECOMMENDATION**

It is recommended that the City Council receive an update on the garbage collection rates effective January 1, 2021.

### **BACKGROUND**

Solid waste collection service in the City of Pinole is provided by Republic Services Inc. (Republic) under a collection franchise agreement with the City of Pinole.

The rates for services have four components:

1. Collection fee
2. Post collection fee
3. AB 939 fee
4. Solid Waste Project fee

The collection fee compensates Republic for curbside collection of waste and recyclables and hauling the waste to the post collection facilities. The post collection fee funds processing and disposal as well as the West Contra Costa Integrated Waste Management Authority (WCCIWMA), also known as Recyclemore, and its efforts to make sure the members to the joint powers authority are in compliance with the State's diversion goals to sort and recycle materials. The AB 939 fee funds City program activities related to participation in WCCIWMA and recycling programs (Fund 213). Finally, the Solid Waste Project fee, also known as the city waste program, funds City improvement projects related to waste, which in the past have included the purchase of trash capture devices and a street sweeper.

In accordance with the franchise agreement in place, Republic is allowed to increase its rates annually by the Consumer Price Index (CPI). Republic has informed the City in a letter dated November 20, 2020 that rates will be adjusted by the CPI for the

San Francisco-Oakland-San Jose Metropolitan Areas published for October 2020, an increase of 1.1%.

To achieve diversion goals, WCCIWMA has a Post Collection Agreement with Republic. As part of the core services to the member cities, WCCIWMA staff provides administration and oversight for the Post Collection Agreement including the annual process to review the post collection fee.

At the rate workshop conducted by WCCIWMA on October 8, 2020, the blended post collection rate projected for 2021 was shown to be \$110.14 per ton. The blended fee accounts for processing recyclables as well as disposal fees. The current rate is \$106.26 per ton. At the WCCIWMA Board meeting on November 14, 2020, WCCIWMA approved the use of reserves for a portion of its own budget needs. Thus WCCIWMA was able to lower the approved blended post collection fee to \$106.14. However, rates experienced by rate payers will be higher because of increases in the average weight of the containers. Residential customers had higher weight increases than commercial and industrial customers resulting in a larger percentage increase. Residential customer rates are shown in the following table:

Service Size	2020 rates Per month	2021 rates Per month	Increase \$	Increase %
20 gallon can	\$5.80	\$6.49	\$0.69	11.9%
35 gallon can	\$10.17	\$11.38	\$1.21	11.9%
60/65 gallon can	\$18.91	\$21.16	\$2.25	11.9%
95/100 gallon can	\$28.37	\$31.75	\$3.38	11.9%

The increase for commercial customers is 4.5% or \$0.56 per cubic yard, and for industrial or drop box customers, it is 6.8% or \$10.99 per ton.

The City fees for 2021 are as follows:

Service Size	AB 939 Fee (no change)	Solid Waste Project Fund (increased by CPI 1.1%)
20 gallon can	\$0.83	\$1.92
35 gallon can	\$0.83	\$2.76
60/65 gallon can	\$1.51	\$5.02
95/100 gallon can	\$2.19	\$7.43

## **REVIEW & ANALYSIS**

It is recommend, that the City acknowledge the allowable CPI rate increase by Republic and the increase approved by WCCIWMA for post collection services.

The impact to the overall garbage rate, including the (1) Collection fee, (2) Post collection fee, (3) AB 939 fee, and (4) Solid Waste Project fee, is shown in the following table:

Service	2020	2021	Monthly increase	% increase
20 gallon	\$ 31.11	\$ 32.07	\$ 0.96	3.09%
35 gallon	\$ 37.21	\$ 38.71	\$ 1.50	4.03%
65 gallon	\$ 66.28	\$ 69.03	\$ 2.75	4.15%
95 gallon	\$ 96.29	\$ 100.39	\$ 4.10	4.26%

### **FISCAL IMPACT**

There is a modest increase in the cost for services that is passed through to ratepayers for increases associated with inflation, changing markets, changing regulations, and changing waste tonnages.

As detailed in the franchise agreement, Republic Services pays the City a franchise fee in the amount of 10% of the gross revenue for collection fees.

### **ATTACHMENTS**

- A. November 18, 2020 Letter from Republic Services
- B. WCCIWMA PowerPoint presentation





## REPUBLIC SERVICES

ATTACHMENT A

3260 BLUME DRIVE • SUITE 115 • RICHMOND, CALIFORNIA 94806

November 18, 2020

Mr. Andrew Murray, City Manager  
City of Pinole  
2324 Pear Street  
Pinole, CA 94564

Re: BASE YEAR RATE ADJUSTMENT EFFECTIVE JANUARY 1, 2021

Dear Mr. Murray:

Pursuant to the Franchise Agreement between the City and Richmond Sanitary Service, the rates for Residential and Commercial waste collection services in Pinole are being adjusted by 1.10% effective January 1, 2021.

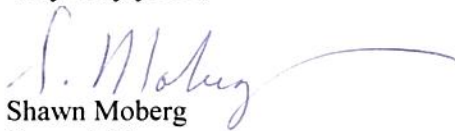
Service billings also include a surcharge set by the West Contra Costa Integrated Solid Waste Management Authority (WCCISWA) that covers post-collection processing of recyclable materials at the West County Integrated Processing Facility ("IRRF") and solid waste disposal at Golden Bear Transfer Facility of approximately 11.9% for residential service. The 2021 Residential service rates are as follows:

	2020 Collection Rate	CPI Rate Adj 1.10%	2021 Collection Rate	City Waste Program	2021 Post-Collec Charge	City AB 939 Fee	2021 Monthly TOTAL
35-gallon	23.48	0.26	23.74	2.76	11.38	0.83	38.71
65-gallon	40.89	0.45	41.34	5.02	21.16	1.51	69.03
95-gallon	58.38	0.64	59.02	7.43	31.75	2.19	100.39
20-gallon	22.58	0.25	22.83	1.92	6.49	0.83	32.07
Sr. 35-gal	20.82	0.23	21.05	2.66	11.38	0.83	35.92

As reflected in the attached rate charts, Commercial Collection Service rates will be adjusted similarly as provided for in the Franchise and Post-collection Materials Processing agreements.

If you have any questions or need additional information, please let us know. I can be reached by telephone at (510) 262-7143, or e-mail at [smoberg@republicservices.com](mailto:smoberg@republicservices.com). Janna Coverston can be reached by e-mail at [jcoverston@republicservices.com](mailto:jcoverston@republicservices.com), or by phone at (510) 262-7144.

Very truly yours,

  
Shawn Moberg  
General Manager

cc: T. Miller  
J. Coverston  
B. Moore  
W. Lau

Pinole

	2020 Collection Rate	CPI Rate Adj 1.10%	2021 Collection Rate	City Waste Program	2021 Post-Collec Charge	City AB 939 Fee	2021 Monthly TOTAL
35-gallon	23.48	0.26	23.74	2.76	11.38	0.83	38.71
65-gallon	40.89	0.45	41.34	5.02	21.16	1.51	69.03
95-gallon	58.38	0.64	59.02	7.43	31.75	2.19	100.39
20-gallon	22.58	0.25	22.83	1.92	6.49	0.83	32.07
Sr. 35-gal	20.82	0.23	21.05	2.66	11.38	0.83	35.92

2021 Commercial Service Rates *							
Bin Size	Times per Week						
	1	2	3	4	5	6	7
1 Yard	290.01	515.53	740.94	966.53	1,191.90		
2 Yard	490.73	907.02	1,323.49	1,739.70	2,156.18		
3 Yard	680.84	1,278.46	1,876.09	2,473.71	3,071.35		
4 Yard	865.52	1,639.66	2,413.92	3,188.24	3,962.35	4,736.46	5,510.58
5 Yard	1,046.82	1,995.68	2,944.37	3,893.29	4,842.00	5,790.69	
6 Yard	1,226.86	2,349.35	3,471.98	4,594.80	5,717.26		
7 Yard	1,405.76	2,702.17	3,998.96	5,295.32	6,591.77		

\*Includes \$55.94 per yard/per month/per pick-up per week (IRRF Surcharge)

# ***RecycleMore Board of Directors***

1

## **Agenda Item 8.0 - Public Hearing -**

### **RecycleMore 2021 HHW Budget & Post-Collection Rates**

**NOVEMBER 12, 2020**

# Presentation At-a-Glance

2

- October 8, 2020 Workshop - Board Direction
- Presentation of Options
- Public Hearing / Q&A
- Board Discussion
- Final Scenario Decision

# Board Direction

3

## From October 8, 2020 Workshop

- Approval of:
  - Draft 2021 HHW Budget/fee (\$6.86)
  - Draft Material Specific fee calculation (\$82.87)
  - Draft Gov. Fees calculation (\$10.10)
  - Draft Recycling Rebate (\$0.48)
- Regarding Authority Budget and CalRecycle Regulatory Compliance – directed to conduct further analysis

# 2021 Post-Collection Rates

4

## **Objective of Further Analysis / Post-Collection Rate Options:**

- Reduce the needed revenue for Authority Budget + CalRecycle Compliance Fee to reduce the needed increase in post-collection rates

# 2021 Post-Collection Rates, cont'd

5

## **Staff Recommendation Re: CalRecycle Regulatory Compliance Fee**

- Make the CalRecycle Regulatory Compliance Fee (the “Compliance Fund”) a Restricted Fund outside of the JPA Budget, to be used only for AB1826 and SB1383 compliance projects.
- Staff will return to the Board in early 2021 with draft procurement policies for the Board’s review.

# 2021 Post-Collection Rates, cont'd

6

## Compliance Fund Spending Breakdown

	<u>R Y 2 0 2 0</u>	<u>R Y 2 0 2 1</u>
Recyclist Software		80,000
Bin Labeling	25,000	25,000
Edible Food Recovery		50,000
1826 Outreach	35,000	75,000
1383 Planning & Execution	65,000	75,000
<b>Total</b>	<b>125,000</b>	<b>305,000</b>

	<u>F Y 2 0 2 0</u>	<u>F Y 2 0 2 1</u>
Recyclist Software	80,000	
Bin Labeling	25,000	25,000
Edible Food Recovery	50,000	
1826 Outreach		
1383 Planning & Execution	65,000	75,000
<b>Total</b>	<b>220,000</b>	<b>100,000</b>



# 2021 Post-Collection Rates, cont'd

7

## WCCIWMA Fund Balances

<u>Fund</u>	<u>Current Balance</u>	<u>Target Policy</u>
Operating	\$ 727,288	\$ 1,096,807 (67% of Operating Budget)
Reserve	\$ 1,851,921	\$ 662,000
<u>Retirement</u>	<u>\$ 350,000</u>	<u>\$ 350,000</u>
Total	\$ 2,929,209	\$ 2,108,807

# 2021 Post-Collection Rates, cont'd

8

## **Option 1 (No Use of Reserves)**

- Maintains funding of the Authority Budget without the need to use reserves
- Reduces the revenue for the Authority Budget by \$250,000 to \$1,387,026 (\$7.93 per ton)
  - Result of a correction to the revenue requirement that was presented in October, which inadvertently included the \$250,000 in CalRecycle Regulatory Compliance revenues in the Authority Budget (in addition to the separate \$1.43 per ton for CalRecycle Regulatory Compliance already held in the blended per ton rate)
  - Occurred because the Authority's adopted FY 20/21 budget included the CalRecycle Regulatory Compliance amounts, when in practice these amounts have been collected by Republic, not the Authority.

# 2021 Post-Collection Rates, cont'd

9

## **Option 2 (Use \$250,000 of Reserves)**

- Uses Option 1 as the baseline
- Uses \$250,000 in reserves bringing the needed 2021 post-collection rate revenues to **\$1,137,026 (\$6.50 per ton)**

# 2021 Post-Collection Rates, cont'd

10

## **Option 3 (Use \$450,000 of Reserves)**

- Uses Scenario 1 as the baseline
- Uses \$450,000 in reserves bringing the needed 2021 post-collection rate revenues to \$937,026 (\$5.36 per ton)

# Comparison of Options

11

## 2021 Post-Collection Rates by Customer Class

	Blended Per Ton Rate	Residential				Commercial	Industrial
		20- Gallon	35- Gallon	60/65- Gallon	95/100- Gallon	Per Cubic Yard	Per Ton
<b>Current 2020</b>	\$106.26	\$5.80	\$10.17	\$18.91	\$28.37	\$12.35	\$161.77
<b>October Workshop</b>	\$110.14	\$6.74	\$11.81	\$21.96	\$32.94	\$13.40	\$179.27
<b>Option 1</b>	\$108.71	\$6.64	\$11.65	\$21.66	\$32.50	\$13.23	\$176.94
<b>Option 2</b>	\$107.28	\$6.56	\$11.50	\$21.38	\$32.08	\$13.05	\$174.62
<b>Option 3</b>	\$106.14	\$6.49	\$11.38	\$21.16	\$31.75	\$12.91	\$172.76

# Comparison of Options, cont'd

12

## Comparison of Dollar Increases in Post-Collection Rate Compared to 2020

	Blended Per Ton Rate	Residential				Commercial	Industrial
		20- Gallon	35- Gallon	60/65- Gallon	95/100- Gallon	Per Cubic Yard	Per Ton
<b>October Workshop</b>	\$3.88	\$0.94	\$1.64	\$3.05	\$4.57	\$1.05	\$17.50
<b>Option 1</b>	\$2.45	\$0.84	\$1.48	\$2.75	\$4.13	\$0.88	\$15.17
<b>Option 2</b>	\$1.02	\$0.76	\$1.33	\$2.47	\$3.71	\$0.70	\$12.85
<b>Option 3</b>	\$(0.12)	\$0.69	\$1.21	\$2.25	\$3.38	\$0.56	\$10.99

# Comparison of Options, cont'd

13

## Comparison of Percentage Increases in Post-Collection Rate Compared to 2020

	Blended Per Ton Rate	Residential				Commercial	Industrial
		20- Gallon	35- Gallon	60/65- Gallon	95/100 -Gallon	Per Cubic Yard	Per Ton
October Workshop	3.7%	16.2%	16.1%	16.1%	16.1%	8.5%	10.8%
Option 1	2.3%	14.5%	14.6%	14.5%	14.6%	7.1%	9.4%
Option 2	1.0%	13.1%	13.1%	13.1%	13.1%	5.7%	7.9%
Option 3	-0.1%	11.9%	11.9%	11.9%	11.9%	4.5%	6.8%

# Board Action

14

- Public Hearing
- Board Discussion / Q&A
- Final Option Decision
  - Adopt Resolution 20-08 to Approve 2021 HHW Budget and Adopt 2021 RecycleMore Post-Collection Rates





## **CITY COUNCIL REPORT**

**7F**

**DATE: DECEMBER 15, 2020**

**TO: MAYOR AND COUNCIL MEMBERS**

**FROM: DAVID HANHAM, PLANNING MANAGER**

**SUBJECT: HAZEL STREET SUBDIVISION DEVELOPMENT AGREEMENT**

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### **RECOMMENDATION**

City staff recommends that the City Council waive the second reading and adopt an ordinance approving a development agreement.

### **BACKGROUND**

The proposed project would occur at the south side of the western terminus of Hazel Street. This project has had many iterations over the course of the last 10-12 years. At the Planning Commission meeting of July 9, 2007, the Planning Commission denied the project over concerns regarding the configuration of lots, infrastructure timing, tree protection, and the creation of a pedestrian pathway. The applicant filed an appeal that the City Council heard on August 21, 2007. The members of the City Council remanded the project back to the Planning Commission with three criteria for the applicant to meet:

Present a three-lot subdivision;

Ensure that the private road is at least 28 feet wide; and

Provide a development standard document for the parcel.

In July 2017, the applicant applied for a four-lot parcel map, design review of four houses, and a development agreement to accommodate infrastructure needs that are a part of this project.

The property owner wishes to subdivide two lots consisting of approximately 33,830 square feet into four lots. The proposed minor subdivision would occur at a property that is located on the south side of the western terminus of Hazel Street, Pinole, CA, 94564 (APNs 402-013-060 & 061). The proposed four parcels would each have single-family residences developed on them, all requiring design review approval and building permits. The area of the proposed parcels is as follows:

Parcel	Area
Parcel A	6001 sq. ft.
Parcel B	6001 sq. ft.
Parcel C	6001 sq. ft.
Parcel D	6569 sq. ft

The remaining area of 9,258 sq. ft. will be converted into road right-of-way, and the applicant will be responsible for constructing the roadway to connect the two existing sections of Hazel Street. Per Council direction, a gate or barrier will be installed on Hazel Street to prevent thru traffic. Also, as a part of this project, the City is contributing new storm drain infrastructure.

The subject property is currently undeveloped and is relatively flat along the northern portion of the project site. The southern portion of the site has a significant existing upslope. To address this issue, significant grading as well as the addition of a retaining wall is proposed along the bottom of this slope on parcels A and B. In addition, none of the proposed single-family structures would be constructed on this hillside area.

The project would also include dedication of an “L” shaped parcel to the City for the extension of Hazel Street, as well as curb, gutter and the sidewalk along the south side of the street. These improvements will be constructed by the applicant. This dedicated parcel is currently located on the eastern end of the existing northern parcel. If the subdivision is approved, the dedicated parcel would be located along the northern end of the east property line of Parcel “C”.

With the current proposal, both the existing Coast Live Oak and the Walnut trees on the property are preserved.

A sewer pump station currently exists near the northwest corner of the project site. This pump station would remain. However, if the subdivision is approved, the applicant would be required to make specific improvements related to this facility. A more detailed discussion of the required roadway and sewer improvements is provided under the Department and Agency Comments Section of this report.

Finally, the applicant has submitted Development Standards for the project. In the standards, the applicant has identified setbacks, future design information, and the maximum footprint of future dwellings. These criteria presented meet or surpass the Single-Family Residential Standards (R-1).

The Planning Commission at its October 26, 2020 regular meeting adopted a Resolution to recommend approval of a Design Review, Parcel Map, and Development Agreement.

On November 17, 2020, the City Council adopted a Resolution approving Comprehensive Design Review (DR17-10) and a Tentative Parcel Map (TSM17-01) for the Project, as well as introduced an Ordinance approving a Development Agreement. As part of that action, the City Council required that a gate be installed on the newly completed Hazel to prevent thru traffic from using the road.

## **REVIEW & ANALYSIS**

### **General Plan Goals and Policies**

#### **Policies**

The proposed project meets the following goals from the General Plan:

#### **LU1.1 Variety of Land Uses**

Maintain land use designations for a variety of residential, commercial, light industrial, recreational, open space and public purposes which: 1) protect environmental resources; 2) provides a mix of housing types, density, and tenure; 3) ensure that a variety of commercial and industrial goods, services and employment opportunities area available; and 4) offer a range of recreational and public facilities to meet the needs of residents.

#### **LU1.2 General Plan Land Uses and the Zoning Ordinance**

Require all proposed projects to be consistent with the General Plan and other applicable development standards established by the City's Zoning Ordinance.

#### **LU 3.1 Site Planning and Design**

Ensure high quality site planning, architecture, and landscaping for all new development, renovation or remodeling.

**LU3.4 Design Review of Residential Projects.** Require design review of residential projects to ensure compatibility with adjacent or nearby land uses, including architectural style, mass, bulk, color, materials, lot coverage and setbacks.

**LU4.1 Quality of Pinole's Residential Neighborhoods.** Assure all new development, renovation or remodeling preserves and strengthens Pinole's residential neighborhoods by requiring projects to be harmoniously designed and integrated with the existing neighborhood.

### **Inclusionary Housing Ordinance Compliance**

Chapter 17.32 of the City of Pinole Zoning Code establishes policies and incentives, design standards, and alternative methods of meeting the City's affordable housing needs. This chapter

determines the minimum standards and identifies the administrative procedures related to affordable housing.

The Project is proposing to construct four (4) single-family residential units. Section 17.32.020 (A) states that all residential development of 4 or more dwelling units located in the City at least 15% of the total units must be constructed as affordable housing units, rounded up to the nearest whole number. One (1) of the single-family residences constructed as part of the project will be restricted as affordable to meet this provision of the code.

Table 17.32.020-1 of the Pinole Zoning Code specifies the level of affordability based on whether the affordable unit is a rental or ownership unit. For units that will be owner-occupied, the unit must be sold to and affordable to moderate income households (defined as households with an income of 120% of the Area Median Income). Section 17.32.050 of the Pinole Zoning Code defines the affordable housing development requirements. Those requirements include, design, size, availability, affordable housing agreement, and the duration of the affordability requirement. Staff is working with the Dhaliwal Family to fulfill these requirements. All of the proposed houses meet the design, size, availability requirements. An affordable housing agreement will be signed by the City and applicant and recorded on the Property prior to the construction of the first house, to restrict occupancy of the affordable unit in accordance with the requirements of Chapter 17.32 for a term of 45 years.

Pursuant to Section 17.12.050 of the Pinole Zoning Ordinance requires that we make four (4) findings to approve the comprehensive design review. I have listed the findings below:

1. The proposed project is consistent with the objectives of the general plan and complies with applicable zoning regulations, planned development, master plan or specific plan provisions, improvement standards, and other applicable standards and regulations adopted by the city.

*As stated above, this project is consistent with the General Plan and all the applicable plans and zoning regulations.*

Staff deemed that this finding has been met.

2. The proposed project will not create conflicts with vehicular, bicycle, or pedestrian transportation modes of circulation:

*This project will connect Hazel Avenue into one roadway, which includes the construction of curb, gutter, and sidewalk. By connecting these two pieces, conflicts will be minimized.*

Staff deemed that this finding has been met.

3. The site layout (orientation and placement of buildings and parking areas), as well as the landscaping, lighting, and other development features, are compatible with and complement the existing surrounding environment and ultimate character of the area under the general plan and applicable specific plans; and

*The development of this project will be compatible and complement the existing surrounding single-family residential area.*

Staff deemed that this finding has been met.

4. Qualifying single-family residential, multi-family residential, and residential mixed-use projects shall comply with all relevant standards and guidelines in the city's currently adopted design guidelines for residential development.

*Staff reviewed the Residential Guidelines and found that the single-family residential units that are being proposed complies with all the relevant standards and guidelines base on what has been proposed.*

Staff deemed that this finding has been met.

### **FISCAL IMPACT**

There will not be any significant fiscal impact from the project. The City will receive building fees from the four houses, and there will be an incremental increase of property taxes with the reassessment of lots.

### **ATTACHMENT(S)**

- A. Draft City Council Ordinance for the Development Agreement, w/ Exhibit A Development Agreement

# ATTACHMENT A

## ORDINANCE NO. 2020-XX

### CITY COUNCIL, CITY OF PINOLE STATE OF CALIFORNIA

#### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PINOLE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PINOLE AND BALJIT & ANAND DHALIWAL, RELATIVE TO THE USE AND DEVELOPMENT OF PROPERTY LOCATED IN THE CITY OF PINOLE (APN 402-013-059 & 060)**

WHEREAS, Baljit Dhaliwal has filed an application for a Tentative Parcel Map (TSM 17-01), Comprehensive Design Review (DR17-10), and a Development Agreement (DA 17-01) for a four-lot residential development located on south side of the western terminus of Hazel Avenue (the "Project"); and

WHEREAS, the lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development, and discourage investment in and commitment to comprehensive planning that would make maximum efficient utilization of resources at the least economic cost to the public; and

WHEREAS, in order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 *et seq.* of the Government Code (the "**Development Agreement Legislation**"), which authorizes City to enter into a development agreement for real property with any person having a legal or equitable interest in such property in order to establish certain development rights in the property; and

WHEREAS, in compliance with California Environmental Quality Act ("**CEQA**"), the City retained Raney Planning and Management Inc. to prepare a categorical exemption memorandum regarding the Project. Based on this memorandum, the City of Pinole City Council has determined that approval of the Project is Categorical Exempt from CEQA pursuant to Sections 15315, Minor Land Subdivision and 15332 In-fill Developments, and that none of the exceptions specified in CEQA Guidelines section 15300.2 are applicable to the Project.

WHEREAS, as part of the Project, the City and Developer have negotiated a draft Development Agreement in accordance with Government Code section 65864 *et seq.* and Pinole Municipal Code section 17.12.160, which agreement is attached as Exhibit A and incorporated herein by reference; and

WHEREAS, Government Code section 65867 and Pinole Municipal Code Section 17.12.160.C require the Planning Commission to hold a public hearing on the proposed development agreement and make a recommendation to the City Council; and

WHEREAS, a staff report, dated October 26, 2020 and incorporated herein by reference, described and analyzed the Project, including the Development Agreement,

# ATTACHMENT A

for the Planning Commission. Pursuant to Government Code section 65867.5(b), the Development Agreement must be found consistent with the City's general plan and any applicable specific plan, which includes the Three Corridors Specific Plan; and

WHEREAS, the Planning Commission held a duly noticed public hearing related to the proposed Project, including the Development Agreement, on October 26, 2020, at which time all interested parties had the opportunity to be heard; and

WHEREAS, following the public hearing, the Planning Commission adopted Resolution 20-18 recommending approval of the Development Agreement, and

WHEREAS, on November 17, 2020, the City Council held a duly noticed public hearing to consider the Development Agreement, at which time all interested parties had the opportunity to be heard. The City Council considered the CEQA memorandum prepared by Raney Planning & Management, Inc., the staff report, the Planning Commission recommendation, the presentation by city staff, all public comments received, and all other pertinent documents regarding the Development Agreement, prior to taking action on the Development Agreement; and

WHEREAS, City has determined that by entering into the proposed Development Agreement: (1) City will ensure the productive use of property and foster orderly growth and quality development in City; (2) development will proceed in accordance with the goals and policies set forth in the City of Pinole General Plan (the "**General Plan**") and the Three Corridors Specific Plan (the "**Specific Plan**") will implement City's stated General Plan policies;

NOW, THEREFORE, the City Council of the City of Pinole does hereby ordain as follows:

## SECTION 1. Findings.

That based on the entirety of the record before it the City Council of the City of Pinole hereby finds as follows:

A. The foregoing Recitals are true and correct and made a part of this Ordinance.

B. Approval of the Project and Development Agreement is Categorical Exempt from CEQA pursuant to Sections 15315, Minor Land Subdivision and 15332 In-fill Developments, and that none of the exceptions specified in CEQA Guidelines section 15300.2 are applicable to the Project.

C. The proposed Development Agreement (attached as Exhibit A), is incorporated by reference and made a part of this Ordinance, as if set forth fully herein.

# ATTACHMENT A

D. The documents and other material constituting the record for these proceedings are located at the Planning Division for the City of Pinole, 2131 Pear Street, Pinole, CA 94564.

E. The proposed Project, including the Development Agreement, is consistent and compatible with all elements in the General Plan and the Specific Plan. The land uses, development standards, densities and intensities, buildings and structures proposed for the Project are compatible with the goals, policies, and land use designations established in the General Plan,

F. The City Council has independently reviewed the proposed Development Agreement, the General Plan, the Pinole Municipal Code, and applicable state and federal law, including Government Code section 65864, *et seq.*, and has determined that the proposed Development Agreement complies with all applicable zoning, subdivision, and building regulations and with the General Plan. This finding is based upon all evidence in the record as a whole, including, but not limited to: the City Council's independent review of these documents, oral and written evidence submitted at the public hearings on the Project, including advice and recommendations from City staff.

G. The Development Agreement is consistent with the objectives, policies, and general land uses specified in the general plan and any applicable specific plans; is compatible and in conformity with public convenience, general welfare, and good land use and zoning practice; will not be detrimental to health, safety, and general welfare of the city; and will not adversely affect the orderly development of property or the preservation of property values.

## SECTION 2. Approval of Development Agreement.

A. The City Council of the City of Pinole hereby approves the proposed Development Agreement with Baljit and Anand Dhaliwal, attached hereto as Exhibit A and incorporated herein by reference.

B. The City Council further authorizes the City Manager to execute the Development Agreement, on behalf of the City, in substantially the form attached as Exhibit A, and to make revisions to such Agreement, subject to the approval of the City Attorney, which do not materially or substantially increase the City's obligations thereunder.

## SECTION 3. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of this Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Pinole hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause,



# ATTACHMENT A

or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

## SECTION 4. Publication and Effective Date.

Pursuant to the provisions of Government Code Section 36933, a summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting. This Ordinance shall become effective no sooner than thirty (30) days from and after its adoption, and only after the LRPMP has been approved by the Department.

Introduced at a regular meeting of the City Council of the City of Pinole, held the 17<sup>th</sup> day of November, 2020.

Adopted as an Ordinance of the City of Pinole at a regular meeting of the City Council held the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

---

Heather Ipou  
City Clerk

# ATTACHMENT A

## Exhibit A

### Development Agreement

# EXHIBIT A

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Pinole  
2131 Pear Street  
Pinole, CA 94564  
Attn: City Manager

Exempt from Recording Fees  
Pursuant to Government  
Code Sections 6103 and 27383

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APN: 402-013-060

(Space Above This Line Reserved for Recorder's Use Only)

## **DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF PINOLE**

**AND**

**BALJIT DHALIWAL**

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Development Agreement**” or this “**Agreement**”) is entered into as of \_\_\_\_\_, 2020 (the “**Agreement Date**”) by and between the City of Pinole, a municipal corporation (“**City**”), and Bajit Dhaliwal, an individual (“**Developer**”). City and Developer are referred to individually as “**Party**,” and collectively as the “**Parties**.”

### RECITALS

This Agreement is entered upon the basis of the following facts, understandings and intentions of City and Developer.

A. The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development, and discourage investment in and commitment to comprehensive planning that would make maximum efficient utilization of resources at the least economic cost to the public.

B. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 *et seq.* of the Government Code (the “**Development Agreement Legislation**”), which authorizes City to enter into a development agreement for real property with any person having a legal or equitable interest in such property in order to establish certain development rights in the property.

C. The Developer is the owner of certain property located in the City, known as County Assessor’s Parcel Numbers 402-013-060 and 402-013-061\_(the “**Property**”), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

D. Developer intends to construct four (4) homes on the Property (the “**Project**”). Construction of the Project includes construction of a number of public improvements, including but not limited to design and construction of a new vault and pump station, the extension of Hazel Street, storm drain construction and curb and gutter improvements.

E. The complexity, magnitude and long-range nature of the Project would be difficult for Developer to undertake if City had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project. As a result of the execution of this Development Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project.

F. City has determined that by entering into this Development Agreement: (1) City will ensure the productive use of property and foster orderly growth and quality development in City; (2) development will proceed in accordance with the goals and policies set forth in the City of Pinole General Plan (the “**General Plan**”) and will implement City’s stated General Plan

policies; (3) City will receive increased property tax revenues; and (4) City will benefit from increased housing for residents of City that are created by the Project.

G. Developer has applied for, and City has granted, the Project Approvals (as defined in Section 1.6) in order to protect the interests of its citizens in the quality of their community and environment.

City has also undertaken, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*, hereinafter “**CEQA**”), the required analysis of the environmental effects that would be caused by the Project and has determined that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15332, and that none of the exceptions to this exemption specified in CEQA Guidelines section 15300.2 are applicable to the Project.

H. In addition to the Project Approvals, the Project may require various additional land use and construction approvals, termed Subsequent Approvals (as defined in Section 1.6.4), in connection with development of the Project.

I. City has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, City has found that the provisions of this Development Agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in City’s General Plan.

J. On \_\_\_\_\_, 2020, the City of Pinole’s Planning Commission (the “**Planning Commission**”), the initial hearing body for purposes of development agreement review, recommended approval of this Development Agreement pursuant to Resolution No. \_\_\_\_.

K. On \_\_\_\_\_, 2020, the City of Pinole City Council (the “**City Council**”) adopted its Ordinance No. \_\_\_\_ (the “**Approving Ordinance**”) approving this Development Agreement and authorizing its execution. The Approving Ordinance will take effect on \_\_\_\_\_, 2020 (the “**Effective Date**”).

L. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Development Agreement is appropriate. This Development Agreement will eliminate uncertainty regarding Project Approvals (including the Subsequent Approvals), thereby encouraging planning for, investment in and commitment to develop the Property in a manner beneficial to the City and surrounding properties. Continued use and development of the Property will in turn provide substantial employment and property tax benefits, and contribute to the provision of needed infrastructure enhancements and public benefits, thereby achieving the goals and purposes for which the Development Agreement Legislation was enacted and ensuring consistency with the City’s General Plan.

M. The terms and conditions of this Development Agreement have undergone extensive review by City staff, the Planning Commission and the City Council at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the City General Plan and the Development Agreement Legislation, and, further, the City

Council finds that the economic interests of City's residents and the public health, safety and welfare will be best served by entering into this Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, City and Developer agree as follows:

## ARTICLE 1. GENERAL PROVISIONS

### 1.1. Parties.

1.1.1. City. City is a California municipal corporation, with offices located at 2131 Pear Street, Pinole, CA 94564. "**City**," as used in this Development Agreement, includes the City of Pinole and any assignee of or successor to its rights, powers and responsibilities.

1.1.2. Developer. Developer is an individual located at 1068 Turquoise Drive, Hercules, CA 94547. "**Developer**," as used in this Development Agreement, includes any permitted assignee or successor-in-interest as herein provided.

### 1.2. Property Subject to this Development Agreement.

The Property known as APN 402-013-060 and 402-013-061, as more particularly described in Exhibit A, is subject to this Development Agreement.

### 1.3. Term of the Agreement.

The term ("**Term**") of this Development Agreement will commence upon the Effective Date and shall continue in full force and effect for a period of ten (10) years, unless earlier terminated as provided in this Agreement. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the benefits of the Project.

### 1.4. The Project.

1.4.1. General. Developer intends to subdivide the Property and construct four (4) homes on the Property (the "**Project**"). Construction of the Project includes construction of a number of public improvements, including but not limited to design and construction of a new vault and pump station, the extension of Hazel Street, storm drain construction and curb and gutter improvements and other ancillary improvements described in this Section 1.4.

#### 1.4.2. Improvements.

a. Homes. The Project consists of subdividing that portion of the Property known as Contra Costa APN 402-013-060 into four (4) parcels and constructing one (1) single family homes on each of the four (4) lots. The four single family homes will range in size from 2,000 square feet to 2,600 square feet. The homes will be constructed in accordance with the Project Approvals. In accordance with the City's inclusionary housing ordinance, Pinole Municipal Code Chapter 17.32, one (1) of the homes shall be deed restricted as an affordable

unit to be sold to a moderate-income household restricted to sale at a price affordable to households earning up to 120% of the Area Median Income. Prior to the issuance of a building permit for any of the homes, the Developer shall execute and record on the one of the newly created parcels a resale restriction agreement, in substantially the form contained in Exhibit C, attached hereto and incorporated herein, to ensure the affordability of the home built on that parcel. Developer agrees that the affordable home shall be no later than the third of the four homes built on the Property, and Developer agrees that City may refuse to issue building permits that would result in the affordable unit not being the third home built.

b. Underground Utilities. The utility service connections serving the four homes to be constructed on the Property shall be undergrounded in accordance with the requirements of the Pinole Municipal Code. The installation of the required underground connections shall be at Developer's sole cost and expense, including any costs charged by the relevant utility companies to underground related utility lines.

c. Vault and Pump Station. There is an existing sewer pump station vault located on the northwest corner of the Property. The Developer will, at its sole cost and expense, make such improvements to the vault as are necessary for the sewer laterals from the four homes to connect into the sewer vault. The sewer pump station currently receives electric service from an overhead electrical line. Upon the Developer's satisfaction of its obligation under subsection (b) above, the City shall request that Pacific Gas & Electric ("PG&E") underground the overhead electrical line currently serving the sewer pump station. Developer shall not be responsible for any costs related to this undergrounding..

d. Storm Drain. On the northwest corner of the property there is currently an open-air ditch that collects storm water and channels it into the City's storm water system. The City will replace these existing storm drain facilities with an underground storm drain pipe that is located underneath the future Hazel Street extension described below. In addition, the City will install a surface level storm drain inlet located on Hazel Street.

e. Hazel Street Extension. Hazel Street is a public road located near the Property. Hazel Street currently terminates just east of Woy Circle and just west of Hazel Lane, resulting in no direct access to the Property from Hazel Street, or any other public road. At its sole cost and expense, Developer will design and construct, in accordance with City standards, a road, with curb, gutter, and sidewalk, to connect the two existing sections of Hazel Street and provide direct access to the Property. No sidewalk will be constructed on the northern side of the street. Developer shall install a gate or barrier, approved by the City Engineer, on the western edge of the newly constructed segment of Hazel Street to prevent thru vehicular traffic. These improvements will be located on that portion of the Property commonly known as 402-013-061. Upon completion of these improvements, the Developer will dedicate the Improvements, and the property on which they are located, to the City. Developer's cost to construct the improvements described in this Section 1.4.2(d) shall be a credit against the traffic mitigation fees listed in Exhibit B. There are currently telephone poles located on the Property that will need to be relocated in order to accommodate the construction of the Hazel Street Extension. Developer shall request Pacific Gas & Electric ("PG&E") relocate such telephone poles, and Developer shall be responsible for any related costs charged by PG&E or any other relevant utility company.

f. Landscaping. There is no public landscaping associated with this Project. Developer will be required to install landscaping when constructing the new single family homes in accordance with the Project Approvals.

1.4.3. Nuisance. Developer shall not use or permit the use of any portion of the Project for any offensive, noisy or dangerous trade, business manufacturing activity or occupation; for any activity which constitutes a nuisance or violated public policy; in violation of any law, ordinance rule or regulation of any governmental authority with jurisdiction over any portion of the Project.

1.5. RESERVED.

1.6. Project Approvals.

Developer has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described below. For purposes of this Development Agreement, the term “**Project Approvals**” means all of the approvals, plans and agreements described in this Section 1.6 and shall include all Project Approvals to (i) subdivide that portion of the Property known as Contra Costa APN 402-013-060 into four (4) parcels (ii) construct four (4) new single-family homes on such newly created parcels, (iii) construct certain infrastructure improvements to serve the four (4) new single-family residences, and (iv) construct those other improvements as more fully set forth and described in that certain City of Pinole Development Application submitted by Developer to the City on July 17, 2017, together with those plans and other information approved by the City Council on \_\_\_\_\_, 2020 by Resolution No. \_\_\_\_\_. City and Developer agree to work diligently and in good faith toward appropriate planning entitlements and building permit approvals for each phase of construction.

1.6.1. CEQA Exemption. The City Council determined that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15332, and that none of the exceptions to this exemption specified in CEQA Guidelines section 15300.2 are applicable to the Project, on \_\_\_\_\_, 2020 by Resolution No. \_\_\_\_\_.

1.6.2. Development Agreement. On \_\_\_\_\_, 2020, following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. \_\_\_\_\_, approved this Development Agreement and authorized its execution.

1.6.3. Other Concurrent Project Approvals. In order to develop the Project as contemplated in this Development Agreement, the following land use approvals shall be required

a. Tentative Parcel Map. A tentative parcel map will be required for the creation of the new parcels. The tentative parcel map shall be approved by the City Council and the Final Parcel Map shall be reviewed and approved by the City Engineer and City Surveyor pursuant Sections 16.12.220 and 16.12.280 of the City of Pinole Municipal Code;



b. Comprehensive Design Review. Comprehensive Design Review is required for the construction of the four (4) single family residences pursuant to Section 17.12.150 of the City of Pinole Zoning Code; .

1.6.4. Subsequent Approvals. In order to develop the Project as contemplated in this Development Agreement, the Project may require land use approvals, entitlements, development permits, and use and/or construction approvals other than those listed in Section 1.6 above, which may include, without limitation: development plans, amendments to applicable conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, design review, lot line adjustments, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, lot splits, landscaping plans, master sign programs, transportation demand management programs, encroachment permits, and amendments thereto and to the Project Approvals (collectively, “**Subsequent Approvals**”). At such time as any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Development Agreement.

## ARTICLE 2. DEVELOPMENT OF THE PROPERTY

### 2.1. Project Development.

Developer shall have a vested right to develop the Project on the Property, in accordance with the Vested Elements (defined in Section 2.2).

### 2.2. Vested Elements.

The permitted uses of the Property, the minimum and maximum density, number of commercial and retail square footage, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development applicable to the Property are as set forth in:

- a. The City of Pinole General Plan as of the Effective Date, including any General Plan Amendments (“**Applicable General Plan**”);
- b. The Zoning Ordinance of City on the Effective Date (“**Applicable Zoning Ordinance**”);
- c. Other rules, regulations, ordinances and policies of City applicable to development of the Property on the Effective Date, except for any and all fees applicable to the development, which shall be vested as set forth in Section 2.6.3 of this Agreement, (collectively, together with the Applicable General Plan and the Applicable Zoning Ordinance, the “**Applicable Rules**”); and

d. The Project Approvals, as they may be amended from time to time with Developer's consent;

and are hereby vested in Developer, subject to, and as provided in, the provisions of this Development Agreement (the "**Vested Elements**"). City hereby agrees to be bound with respect to the Vested Elements, subject to Developer's compliance with the terms and conditions of this Development Agreement.

### 2.3. Development Construction Completion.

2.3.1. Timing of Development; Pardee Finding. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that, subject to any infrastructure phasing requirements that may be required by the Project Approvals, Developer shall have the right (without obligation) to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

2.3.2. Moratorium. No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Development Agreement; provided, however, the provisions of this Section 2.3.2 shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

2.3.3. No Other Requirements. Nothing in this Development Agreement is intended to create any affirmative development obligations to develop the Project at all, or liability in Developer under this Development Agreement if the development fails to occur.

### 2.4. Effect of Project Approvals and Applicable Rules; Future Rules.

2.4.1. Governing Rules. Except as otherwise explicitly provided in this Development Agreement, development of the Property shall be subject to (a) the Project Approvals and (b) the Applicable Rules.

#### 2.4.2. Changes in Applicable Rules; Future Rules.

a. To the extent any changes in the Applicable Rules, or any provisions of future General Plans, Specific Plans, Zoning Ordinances or other rules, regulations, ordinances or policies (whether adopted by means of ordinance, initiative, referendum, resolution, policy, order, moratorium, or other means, adopted by the City Council, Planning Commission,

or any other board, commission, agency, committee, or department of City, or any officer or employee thereof, or by the electorate) of City (collectively, “**Future Rules**”) are not in conflict with the Vested Elements, such Future Rules shall be applicable to the Project.

b. To the maximum extent permitted by law, City shall prevent any Future Rules from invalidating or prevailing over all or any part of this Development Agreement, and City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Development Agreement remains in full force and effect. City shall not support, adopt or enact any Future Rule, or take any other action which would violate the express provisions or spirit and intent of this Development Agreement or the Project Approvals. Developer reserves the right to challenge in court any Future Rule that would conflict with the Vested Elements or this Development Agreement or reduce the development rights provided by this Development Agreement.

c. A Future Rule that conflicts with the Vested Elements shall nonetheless apply to the Property if, and only if (i) consented to in writing by Developer; (ii) it is determined by City and evidenced through findings adopted by the City Council confirming that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety, that there are no feasible alternatives to the imposition of such change or provision and how such change or provision would alleviate the dangerous condition; (iii) it is required by changes in State or Federal law as set forth in Section 2.4.3 below; (iv) it consists of changes in, or new fees permitted by, Section 2.6; or (v) it is otherwise expressly permitted by this Development Agreement.

d. Prior to the Effective Date, the Parties shall have prepared two (2) sets of the Project Approvals and Applicable Rules, one (1) set for City and one (1) set for Developer. If it becomes necessary in the future to refer to any of the Project Approvals or Applicable Rules, the contents of these sets are presumed for all purposes of this Development Agreement, absent clear clerical error or similar mistake, to constitute the Project Approvals and Applicable Rules.

2.4.3. Changes in State or Federal Laws. In accordance with California Government Code Section 65869.5, in the event that state or federal laws or regulations enacted after the Effective Date (“**State or Federal Law**”) prevent or preclude compliance with one or more provisions of this Development Agreement, the Parties shall meet in good faith to determine the feasibility of any modification or suspension of this Development Agreement that may be necessary to comply with such State or Federal Law and to determine the effect such modification or suspension would have on the purposes and intent of this Development Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such State or Federal Law. In such an event, this Development Agreement, together with any required modifications, shall continue in full force and effect. In the event that the State or Federal Law operates to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement. In addition, Developer shall have the right to challenge (by any method, including litigation) the State or Federal Law preventing compliance with, or performance of, the terms of this

Development Agreement and, in the event that such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect, unless (i) Developer fails to commence construction under valid permits within two (2) years of the commencement of the Term of this Development Agreement, or (ii) Developer fails to submit a written request to City prior to the expiration date of any construction permits for an extension of time as allowed under the Zoning Ordinance.

2.4.4. Conflicts. In the event of an irreconcilable conflict between the provisions of the Project Approvals (on the one hand) and the Applicable Rules (on the other hand), the provisions of the Project Approvals shall apply. In the event of a conflict between the Project Approvals (on the one hand) and this Development Agreement, in particular, (on the other hand), the provisions of this Development Agreement shall control.

2.5. Processing Subsequent Approvals. City will accept, make completeness determinations, and process, promptly and diligently, to completion all applications for Subsequent Approvals for the Project, in accordance with the terms of this Development Agreement.

2.5.2. Scope of Review of Subsequent Approvals. By approving the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its authority in considering any application for a discretionary Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions. The scope of the review of applications for Subsequent Approvals shall be limited to a review of substantial conformity with the Vested Elements and the Applicable Rules (except as otherwise provided by Section 2.4), and compliance with CEQA. Where such substantial conformity/compliance exists, City shall not deny an application for a Subsequent Approval for the Project.

2.6. Development Fees, Exactions; and Conditions.General. All fees, exactions, dedications, reservations or other impositions to which the Project would be subject, but for this Development Agreement, are referred to in this Development Agreement either as “**Processing Fees**” (as defined in Section 2.6.2) or “**Impact Fees**” (as defined in Section 2.6.3).

2.6.2. Processing Fees. “**Processing Fees**” mean fees charged on a citywide basis to cover the cost of City review of applications for any permit or other review by City departments. Applications for Subsequent Approvals for the Project shall be charged Processing Fees to allow City to recover its actual and reasonable costs of processing Developer’s Subsequent Approvals with respect to the Project.

2.6.3. Impact Fees. “**Impact Fees**” means monetary fees, exactions or impositions, other than taxes or assessments, whether established for or imposed upon the Project individually or as part of a class of projects, that are imposed by City on the Project in connection with any Project Approval for the Project for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction,

improvement, or operation and maintenance attributable to the burden created by the Project. Any fee, exaction or imposition imposed on the Project which is not a Processing Fee is an Impact Fee. Subject to the Impact Fee credits provided to Developer in Section 1.4, the Developer agrees to pay the specific Impact Fees listed in Exhibit B, attached hereto and incorporated herein.

2.6.4. Conditions of Subsequent Approvals. In connection with any Subsequent Approvals, City shall have the right to impose reasonable conditions including, without limitation, normal and customary dedications for rights of way or easements for public access, utilities, water, sewers, and drainage necessary for the Project; provided, however, such conditions and dedications shall not be inconsistent with the Applicable Rules or Project Approvals, nor inconsistent with the development of the Project as contemplated by this Agreement.

b. No conditions imposed on Subsequent Approvals shall require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those already included in the Project Approvals. In addition, any and all conditions imposed on Subsequent Approvals for the Project must comply with Sections 2.6.2 and 2.6.3 herein.

2.7. Life of Project Approvals and Subdivision Maps.

2.7.1. Life of Tentative Map. The terms of any tentative map for the Property, any amendment or reconfiguration thereto, or any subsequent tentative map, shall be automatically extended such that such tentative maps remain in effect for a period of time coterminous with the Term of this Development Agreement.

2.7.2. Life of Other Project Approvals. The term of all other Project Approvals, shall be automatically extended such that these Project Approvals remain in effect for a period of time at least as long as the Term of this Development Agreement.

2.7.3. Termination of Agreement. In the event that this Development Agreement is terminated prior to the expiration of the Term of the Development Agreement, the term of any tentative map or any other Project Approval and the vesting period for any final subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval (including any extensions), which shall commence to run on the date that the termination of this Development Agreement takes effect.

2.8. Further CEQA Environmental Review.

2.8.1. Reliance on CEQA Exemption. The City has determined that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15332. It is agreed that, in acting on any discretionary Subsequent Approvals for the Project, City will rely on this exemption to satisfy the requirements of CEQA to the fullest extent permissible by CEQA and City will not require a new initial study, negative declaration, EIR or subsequent or supplemental EIR unless required by CEQA.

2.8.2. Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City shall conduct such CEQA review as expeditiously as possible.

- 2.9. Developer's Right to Rebuild. Developer may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, or should the buildings located within the Project become functionally outdated, within Developer's sole discretion, due to changes in technology. Any such renovation or rebuilding shall be subject to the Vested Elements, shall comply with the Project Approvals, the building regulations existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

### ARTICLE 3. ANNUAL REVIEW

- 3.1. Annual Review. The annual review required by California Government Code Section 65865.1 will be conducted for the purposes and in the manner stated in those laws as further provided herein. As part of that review, City and Developer shall have a reasonable opportunity to assert action(s) that either Party believes have not been undertaken in accordance with this Development Agreement, to explain the basis for such assertion, and to receive from the other Party a justification for the other Party's position with respect to such action(s), and to take such actions as permitted by law. The procedure set forth in this Article shall be used by Developer and City in complying with the annual review requirement. The City and Developer agree that the annual review process will review compliance by Developer and City with the obligations under this Development Agreement but will not review compliance with other Project Approvals or other agreements between City and Developer.
- 3.2. Intentionally omitted.
- 3.3. Commencement of Process; Developer Compliance Letter.

At least fifteen (15) days prior to the anniversary of the Effective Date each year, Developer shall submit a letter to the Director of City's Development Services Director/City Engineer demonstrating Developer's good faith compliance with the material terms and conditions of this Development Agreement and shall include in the letter a statement that the letter is being submitted to City pursuant to the requirements of Government Code Section 65865.1.

- 3.4. Development Services Director/City Engineer Review.

Within thirty (30) days after the receipt of Developer's letter, the Development Services Director/City Engineer shall review Developer's submission and determine whether Developer has, for the year under review, demonstrated good faith compliance with the material terms and

conditions of this Development Agreement. If Developer has demonstrated good faith compliance, then the Development Services Director/City Engineer shall make such a finding and send a letter back to Developer describing the Development Services Director/City Engineer's finding and any comments.

3.5. Development Services Director/City Engineer Noncompliance Finding.

If the Development Services Director/City Engineer finds and determines that there is substantial evidence that Developer has not complied in good faith with the material terms and conditions of this Development Agreement and that Developer is in material breach of this Development Agreement for the year under review, the Development Services Director/City Engineer shall issue and deliver to Developer a written "**Notice of Default**" specifying in detail the nature of the failures in performance that the Development Services Director/City Engineer claims constitutes material noncompliance, all facts demonstrating substantial evidence of material noncompliance, and the manner in which such noncompliance may be satisfactorily cured in accordance with the Development Agreement. In the event that the material noncompliance is an Event of Default pursuant to ARTICLE 5 herein, the Parties shall be entitled to their respective rights and obligations under both ARTICLE 3 and 5 herein, except that the particular entity allegedly in default shall be accorded only one of the 60-day cure periods referred to in Sections 3.6 and 5.1 herein.

3.6. Cure Period.

If the Development Services Director/City Engineer finds that Developer is not in compliance, the Development Services Director/City Engineer shall grant a reasonable period of time for Developer to cure the alleged noncompliance. The Development Services Director/City Engineer shall grant a cure period of at least sixty (60) days and shall extend the sixty (60) day period if Developer is proceeding in good faith to cure the noncompliance and additional time is reasonably needed. At the conclusion of the cure period, the Development Services Director/City Engineer shall either (i) find that Developer is in compliance; or (ii) find that Developer is not in compliance.

3.7. Referral of Noncompliance to City Council.

The Development Services Director/City Engineer shall refer the alleged default to the City Manager or her designee who then shall discuss the matter with the City Council. If Developer fails to cure the alleged noncompliance to the Development Services Director/City Engineer's reasonable satisfaction during the prescribed cure period and any extensions thereto. The Development Services Director/City Engineer shall refer the alleged noncompliance to the City Manager who shall forward to the City Council if Developer requests a hearing before the City Council. The Development Services Director/City Engineer shall prepare a staff report to the City Council which shall include, in addition to Developer's letter, (i) demonstration of City's good faith compliance with the terms and conditions of this Development Agreement; (ii) the Notice of Default; and (iii) a description of any cure undertaken by Developer during the cure period.

3.8. Delivery of Documents.

At least five (5) days prior to any City hearing regarding Developer's compliance with this Development Agreement, City shall deliver to Developer all staff reports and all other relevant documents pertaining to the hearing.

3.9. City Council Compliance Finding.

If the City Council, following a noticed public hearing pursuant to Section 3.7, determines that Developer is in compliance with the material terms and conditions of this Development Agreement, the annual review shall be deemed concluded. City shall, at Developer's request, issue and have recorded a Certificate of Compliance indicating Developer's compliance with the terms of this Development Agreement.

3.10. City Council Noncompliance Finding.

If the City Council, at a properly noticed public hearing pursuant to Section 3.7, finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms or conditions of this Development Agreement and that Developer is in material breach of this Development Agreement, Developer will have a reasonable time determined by the City Council to meet the reasonable terms of compliance approved by the City Council, which time shall be not less than fifteen (15) days. If Developer does not complete the terms of compliance within the time specified, the City Council shall hold a public hearing regarding termination or modification of this Development Agreement. Notification of intention to modify or terminate this Development Agreement shall be delivered to Developer by certified mail containing: (i) the time and place of the City Council hearing; (ii) a statement as to whether City proposes to terminate or modify this Development Agreement and the terms of any proposed modification; and (iii) any other information reasonably necessary to inform Developer of the nature of the proceedings. At the time of the hearing, Developer shall be given an opportunity to be heard. The City Council may impose conditions to the action it takes as necessary to protect the interests of City; provided that any modification or termination of this Development Agreement pursuant to this provision shall bear a reasonable nexus to, and be proportional in severity to the magnitude of, the alleged breach, and in no event shall termination be permitted except in accordance with ARTICLE 5 herein.

3.11. Relationship to Default Provisions.

The above procedures supplement and do not replace that provision of Section 5.1 of this Development Agreement whereby either City or Developer may, at any time, assert matters which either Party believes have not been undertaken in accordance with this Development Agreement by delivering a written Notice of Default and following the procedures set forth in Section 5.1.

3.12. Reimbursement of City's Costs Incurred in Bringing About Cure.

Developer shall be obligated to reimburse to City all costs, expenses, damages and attorneys' fees incurred as a result of any Developer default including all costs incurred in bringing about Developer's cure of any such default.



## ARTICLE 4. AMENDMENTS

### 4.1. Amendments to Development Agreement Legislation.

This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation as those provisions existed at the Effective Date. No amendment or addition to those provisions or any other federal or state law and regulation that would materially adversely affect the interpretation or enforceability of this Development Agreement or would prevent or preclude compliance with one or more provisions of this Development Agreement shall be applicable to this Development Agreement unless such amendment or addition is specifically required by the change in law, or is mandated by a court of competent jurisdiction. In the event of the application of such a change in law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Development Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such new law or regulation. If such amendment or change is permissive (as opposed to mandatory), this Development Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Development Agreement to permit such applicability. Developer and/or City shall have the right to challenge any new law or regulation preventing compliance with the terms of this Development Agreement, and in the event such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect. The Term of this Development Agreement may be extended for the duration of the period during which such new law or regulation precludes compliance with the provisions of this Development Agreement.

### 4.2. Amendments to or Cancellation of Development Agreement.

This Development Agreement may be amended from time to time or canceled in whole or in part by mutual consent of both Parties in writing in accordance with the provisions of the Development Agreement Legislation. Review and approval of an amendment to this Development Agreement shall be strictly limited to consideration of only those provisions to be added or modified. No amendment, modification, waiver or change to this Development Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing that expressly refers to this Development Agreement and signed by the duly authorized representatives of both Parties. All amendments to this Development Agreement shall be recommended for approval by the Planning Commission and approved by the City Council and, upon such approval, will become part of the Project Approvals.

### 4.3. Operating Memoranda.

The provisions of this Development Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the Term of this Development

Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Development Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 4.3 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 4.2 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

#### 4.4. Amendments to Project Approvals.

Notwithstanding any other provision of this Development Agreement, Developer may seek and City may review and grant amendments or modifications to the Project Approvals (including the Subsequent Approvals) subject to the following (except that the procedures for amendment of this Development Agreement are set forth in Section 4.2 herein).

4.4.1. Amendments to Project Approvals. Project Approvals (except for this Development Agreement the amendment process for which is set forth in Section 4.2) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer (at its sole discretion) and in accordance with Section 2.4. All amendments to the Project Approvals shall automatically become part of the Project Approvals, except to the extent such amendments are considered by the Development Services Director/City Engineer, in his or her sole discretion, to constitute a major amendment. In such case, Developer consents to any major amendment's review before the Planning Commission for approval or recommendation to the City Council, whose review and approval or denial shall be final. The permitted uses of the Property, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development as set forth in all such amendments, except those considered by the Development Services Director/City Engineer to be a major amendment, shall be automatically vested pursuant to this Development Agreement, without requiring an amendment to this Development Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Rules, subject to Section 2.4. City shall not request, process or consent to any amendment to the Project Approvals that would affect the Property or the Project without Developer's prior written consent unless a Project Approval has not been activated within two (2) years of commencement of the Term of this Development Agreement or a Project Approval has expired.

4.4.2. Administrative Amendments. Upon the request of Developer for an amendment or modification of any Project Approval, the Development Services Director/City Engineer or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this

Development Agreement and the Applicable Rules. If the Development Services Director/City Engineer or his/her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Development Agreement and the Applicable Rules, the amendment or modification shall be determined to be an “**Administrative Amendment**,” and the Development Services Director/City Engineer or his or her designee may approve the Administrative Amendment, without public notice or a public hearing. Without limiting the generality of the foregoing, lot line adjustments, minor alterations in vehicle circulation patterns or vehicle access points, variations in the location of structures that do not substantially alter the design concepts of the Project, substitution of comparable landscaping for any landscaping shown on any development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections and facilities that do not substantially alter design concepts of the Project, and minor adjustments to the Property legal description shall be deemed to be minor amendments or modifications. Any request of Developer for an amendment or modification to a Project Approval that is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Rules and this Agreement.

## ARTICLE 5. DEFAULT, REMEDIES AND TERMINATION

### 5.1. Events of Default.

Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 9.2 hereof regarding permitted delays and a Mortgagee’s right to cure pursuant to Section 8.3 hereof, any failure by either Party to perform any material term or provision of this Development Agreement (not including any failure by Developer to perform any term or provision of any other Project Approvals) shall constitute an “**Event of Default**,” (i) if such defaulting Party does not cure such failure within sixty (60) days (such sixty (60) day period is not in addition to any (60) day cure period under Section 3.7, if Section 3.7 is applicable) following written notice of default from the other Party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

Any notice of default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, all facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (a) termination of this Development Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of any default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

## 5.2. Meet and Confer.

During the time periods specified in Section 5.1 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the 60-day cure period referred to in Section 5.1 (even if the 60-day cure period itself is extended pursuant to Section 5.1) unless the Parties agree otherwise in writing.

## 5.3. Remedies and Termination.

If, after notice and expiration of the cure periods and procedures set forth in Sections 5.1 and 5.2, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 5.4 of this Development Agreement and/or terminate this Development Agreement pursuant to Section 5.5 herein. In the event that this Development Agreement is terminated pursuant to Section 5.5 herein and litigation is instituted that results in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

## 5.4. Legal Action by Parties.

5.4.1. Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Development Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Without limiting the foregoing, Developer reserves the right to challenge in court any Future Rules that would conflict with the Vested Elements or the Subsequent Approvals for the Project or reduce the development rights provided by the Project Approvals.

5.4.2. No Damages. In no event shall either Party, or its boards, commissions, officers, agents or employees, be liable in damages for any default under this Development Agreement, it being expressly understood and agreed that the sole legal remedy available to either Party for a breach or violation of this Development Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Development Agreement by the other Party, or to terminate this Development Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Development Agreement including, but not limited to obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full

knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Development Agreement by the other Party.

## 5.5. Termination.

5.5.1. Expiration of Term. Except as otherwise provided in this Development Agreement, this Development Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Development Agreement as set forth in Section 1.3.

5.5.2. Survival of Obligations. Upon the termination or expiration of this Development Agreement as provided herein, neither Party shall have any further right or obligation with respect to the Property under this Development Agreement except with respect to any obligation that is specifically set forth as surviving the termination or expiration of this Development Agreement. The termination or expiration of this Development Agreement shall not affect the validity of the Project Approvals (other than this Development Agreement) for the Project.

5.5.3. Termination by City. Notwithstanding any other provision of this Development Agreement, City shall not have the right to terminate this Development Agreement with respect to all or any portion of the Property before the expiration of its Term unless City complies with all termination procedures set forth in the Development Agreement Legislation and there is an alleged Event of Default by Developer and such Event of Default is not cured pursuant to ARTICLE 3 herein or this ARTICLE 5 and Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council and this Development Agreement is terminated only with respect to that portion of the Property to which the default applies.

## ARTICLE 6. COOPERATION AND IMPLEMENTATION

### 6.1. Further Actions and Instruments.

Each Party to this Development Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Development Agreement, subject to satisfaction of the conditions of this Development Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

### 6.2. Regulation by Other Public Agencies.

Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this

Development Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Development Agreement in all respects when dealing with any such agency regarding the Property. To the extent that City, the City Council, the Planning Commission or any other board, agency, committee, department or commission of City constitutes and sits as any other board, agency, commission, committee, or department, it shall not take any action that conflicts with City's obligations under this Agreement unless required to by any State or Federal law.

### 6.3. Other Governmental Permits and Approvals; Grants.

Developer shall apply in a timely manner in accordance with Developer's construction schedule for the permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. Developer shall comply with all such permits, requirements and approvals. City shall cooperate with Developer in its endeavors to obtain (a) such permits and approvals and (b) any grants for the Project for which Developer applies.

### 6.4. Cooperation in the Event of Legal Challenge.

6.4.1. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals or other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

6.4.2. In the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any provision of this Development Agreement, the procedures leading to its adoption, the Project Approvals for the Project or the portions of the LRPMP applicable to the Property and this Project ("**Initial Litigation Challenge**"), Developer and City each shall have the right, in its sole discretion, to elect whether or not to defend such action, to select its own counsel, and to control its participation and conduct in the litigation in all respects permitted by law. If an Initial Litigation Challenge is filed, upon receipt of the petition, the Parties will have 20 days to meet and confer regarding the merits of such Initial Litigation Challenge and to determine whether to defend against the Initial Litigation Challenge, which period may be extended by the Parties' mutual agreement so long as it does not impact any litigation deadlines.

If, after meeting and conferring, the Parties mutually agree to defend against the Initial Litigation Challenge, then the following shall apply: (i) the Parties hereby agree to affirmatively cooperate in defending said action and to execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under applicable law; (ii) for the purposes of cost-efficiency and coordination, the Parties shall first consider defending the Initial Litigation Challenge jointly, with counsel and under terms of joint representation mutually acceptable to the City and Developer (each in its sole discretion), at the Developer's sole cost and expense; and (iii) if the Parties cannot reach timely and mutual agreement on a joint counsel, and Developer continues to elect (in its sole discretion) to defend against the Initial Litigation Challenge, then Developer shall take the lead role defending such

Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice, in which case, City, at its expense, may elect to be separately represented by the outside legal counsel of its choice in any such action or proceeding. The City Manager is authorized to negotiate and enter into a joint defense agreement in a form acceptable to the City Attorney. Such joint defense agreement shall also provide that any proposed settlement of an Initial Litigation Challenge shall be subject to City's and Developer's approval, each in its reasonable discretion.

As part of the cooperation in defending an action, City and Developer shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. Developer and City shall each have sole discretion to terminate its defense at any time. If Developer elects, in its sole and absolute discretion, not to defend against the Initial Litigation Challenge, it shall deliver written notice to the City regarding such decision. If Developer elects not to defend, the City has the right, but not the obligation, to proceed to defend against the Initial Litigation Challenge and shall take the lead role defending such Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice, at its sole cost and expense. If Developer elects not to defend, the City has the right, but not the obligation, to terminate this Agreement and consider the Developer's application for any related Project Approvals withdrawn. The City shall not settle any third party litigation of Project Approvals without Developer's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

#### 6.5. Revision to Project.

In the event of a court order issued as a result of a successful legal challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Vested Elements, or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements.

#### 6.6. State, Federal or Case Law.

Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, (a) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Development Agreement and (b) take such other actions as may be necessary to carry out in good faith the terms of this Development Agreement.

#### 6.7. Defense of Agreement.

City shall take all actions that are necessary or advisable to uphold the validity and enforceability of this Development Agreement. If this Development Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Development Agreement to render it valid and enforceable to the extent permitted by applicable law. Developer shall pay all of City's costs, including attorneys' fees and experts' costs, incurred to modify or defend this Development Agreement.

ARTICLE 7.  
TRANSFERS AND ASSIGNMENTS

7.1. Right to Assign.

Developer may Transfer its rights, duties and obligations under this Development Agreement without the prior consent of City; provided, however, in no event shall the rights, duties and obligations conferred upon Developer pursuant to this Development Agreement be at any time so transferred except through a transfer of the Property. In the event of a transfer of a portion of the Property, Developer shall have the right to Transfer its rights, duties and obligations under this Development Agreement that are applicable to the transferred portion, and to retain all rights, duties and obligations applicable to the retained portions of the Property. Upon Developer's request, City shall cooperate with Developer and any proposed transferee to allocate rights, duties and obligations under this Development Agreement and the Project Approvals among the transferred Property and the retained Property.

7.2. Release upon Transfer.

Upon the Transfer of Developer's rights and interests under this Development Agreement pursuant to Section 7.1, Developer shall automatically be released from its obligations and liabilities under this Development Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Development Agreement, provided that (i) Developer has provided to City written notice of such Transfer, and (ii) the transferee executes and delivers to City a written agreement in which (a) the name and address of the transferee is set forth and (b) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Development Agreement with respect to that portion of the Property transferred. Upon any transfer of any portion of the Property and the express assumption of Developer's obligations under this Development Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Development Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferor/transferee, and any amendment to this Development Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 7.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement.

7.3. Covenants Run with the Land.

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the Parties and their



respective successors (by merger, reorganization, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder (i) is for the benefit of such Property and is a burden upon such Property, (ii) runs with such Property, (iii) is binding upon each Party and each successive owner during its ownership of such Property or any portion thereof, and (iv) each person or entity having any interest therein derived in any manner through any owner of such Property, or any portion thereof, and shall benefit the Property hereunder, and each other person or entity succeeding to an interest in such Property.

## ARTICLE 8. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

### 8.1. Mortgagee Protection.

This Development Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property ("**Mortgage**"). This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Development Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against and inure to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

### 8.2. Mortgagee Not Obligated.

Notwithstanding the provisions of Section 8.1 above, no Mortgagee shall have any obligation or duty under this Development Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Development Agreement, or by the Project Approvals and Applicable Rules.

### 8.3. Notice of Default to Mortgagee; Right of Mortgagee to Cure.

If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given to Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to

Developer with respect to any claim by City that Developer has committed a default, and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Each Mortgagee shall have the right (but not the obligation) during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice.

8.4. No Supersedure.

Nothing in this ARTICLE 8 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Project outside this Development Agreement, nor shall any provision of this ARTICLE 8 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 8.3.

8.5. Technical Amendments.

City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Developer's negotiations with lenders.

ARTICLE 9.  
MISCELLANEOUS PROVISIONS

9.1. Limitation on Liability.

Notwithstanding anything to the contrary contained in this Development Agreement, in no event shall any member, officer, agent or employee of City be personally liable for any breach of this Development Agreement by City or for any amount which may become due to Developer under the terms of this Development Agreement.

9.2. Force Majeure.

The Term of this Development Agreement and the Project Approvals and the time within which Developer shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services prevents, prohibits or delays construction of the Project, enemy action, civil disturbances, wars, terrorist acts, fire, unavoidable casualties, litigation involving this Agreement or the Project Approvals, or any other cause beyond the reasonable control of Developer which substantially interferes with carrying out the development of the Project. Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of any Party. In addition, the Term of this Development Agreement and any subdivision

map or any of the other Project Approvals shall not include any period of time during which (i) a development moratorium including, but not limited to, a water or sewer moratorium, is in effect; (ii) the actions of public agencies that regulate land use, development or the provision of services to the Property prevent, prohibit or delay either the construction, funding or development of the Project; or (iii) there is any mediation, arbitration, litigation or other administrative or judicial proceeding pending involving the Vested Elements, or Project Approvals. The Term of the Project Approvals shall therefore be extended by the length of any development moratorium or similar action; the amount of time any actions of public agencies prevent, prohibit or delay the construction, funding or development of the Project; or the amount of time to finally resolve any mediation, arbitration, litigation or other administrative or judicial proceeding involving the Vested Elements, or Project Approvals. Furthermore, in the event the issuance of a building permit for any part of the Project is delayed as a result of Developer's inability to obtain any other required permit or approval, then the Term of this Development Agreement shall be extended by the period of any such delay.

9.3. Notices, Demands and Communications Between the Parties.

Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a "hard" copy to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 9.3.

City:	City of Pinole 2131 Pear Street Pinole, CA 94564 Attn: City Manager
with copies to:	City of Pinole 2131 Pear Street Pinole, CA 94564 Attn: City Attorney
Developer:	Baljit Dhaliwal 1068 Turquoise Drive Hercules, CA 94547

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addresses designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail.

Notices delivered by overnight courier service as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit. Notices delivered by electronic facsimile transmission shall be deemed received upon receipt of sender of electronic confirmation of delivery, provided that a “hard” copy is delivered as provided above.

9.4. Project as a Private Undertaking; No Joint Venture or Partnership. The Project constitutes private development, neither City nor Developer is acting as the agent of the other in any respect hereunder, and City and Developer are independent entities with respect to the terms and conditions of this Agreement. Nothing contained in this Development Agreement or in any document executed in connection with this Development Agreement shall be construed as making City and Developer joint venturers or partners.

9.5. Severability.

If any terms or provision(s) of this Development Agreement or the application of any term(s) or provision(s) of this Development Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Development Agreement or the application of this Development Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Development Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, Developer (in its sole and absolute discretion) may terminate this Development Agreement by providing written notice of such termination to City.

9.6. Section Headings.

Article and Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Development Agreement.

9.7. Construction of Agreement.

This Development Agreement has been reviewed and revised by legal counsel for both Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Development Agreement.

9.8. Entire Agreement.

This Development Agreement, including the Recitals, and exhibits attached hereto and incorporated by reference herein, together with the Project Approvals, constitutes the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. The exhibits and appendices are as follows:

Exhibit A      Legal Description of the Property

Exhibit B      Impact Fees

9.9.    Estoppel Certificates.

Either Party may, at any time during the Term of this Development Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or if amended; identifying the amendments, (iii) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) any other information reasonably requested. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. Either the City Manager or her designee shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

9.10.   Recordation.

Pursuant to California Government Code Section 65868.5, within ten (10) days after the later of the Parties' execution of this Development Agreement or the Effective Date, the City Clerk shall record this Development Agreement with the Contra Costa County Recorder. Thereafter, if this Development Agreement is terminated, modified or amended, the City Clerk shall record notice of such action with the Contra Costa County Recorder.

9.11.   No Waiver.

No delay or omission by either Party in exercising any right or power accruing upon noncompliance or failure to perform by the other Party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

9.12.   Time Is of the Essence.

Time is of the essence for each provision of this Development Agreement for which time is an element.

9.13. Applicable Law.

This Development Agreement shall be construed and enforced in accordance with the laws of the State of California.

9.14. Attorneys' Fees.

Should any legal action be brought by either Party because of a breach of this Development Agreement or to enforce any provision of this Development Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and such other costs as may be found by the court.

9.15. Third Party Beneficiaries.

Except as otherwise provided herein, City and Developer hereby renounce the existence of any third party beneficiary to this Development Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

9.16. Constructive Notice and Acceptance.

Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Development Agreement is contained in the instrument by which such person acquired an interest in the Property.

9.17. Counterparts.

This Development Agreement may be executed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

9.18. Authority.

The persons signing below represent and warrant that they have the authority to bind their respective Party and that all necessary board of directors', shareholders', partners', city councils' or other approvals have been obtained.

IN WITNESS WHEREOF, City and Developer have executed this Development Agreement as of the date first set forth above.

**DEVELOPER:**

BAJIT DHALIWAL  
an individual

By: \_\_\_\_\_  
Name: Bajit Dhaliwal

Title: \_\_\_\_\_

**CITY:**

**CITY OF PINOLE**  
a municipal corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTESTATION:**

By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Eric S. Casher  
City Attorney

**SIGNATURES MUST BE NOTARIZED**

# EXHIBIT A

## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

## EXHIBIT B



## **IMPACT FEES**

**EXHIBIT C**  
**RESALE RESTRICTION**



## **CITY COUNCIL REPORT**

**7G**

**DATE: DECEMBER 15, 2020**

**TO: MAYOR AND COUNCIL MEMBERS**

**FROM: GENIE ROCHA, FINANCE CONSULTANT**

**SUBJECT: RECEIVE THE DEVELOPMENT IMPACT FEE REPORT FOR THE  
FISCAL YEAR ENDED JUNE 30, 2020**

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### **RECOMMENDATION**

City staff recommends that the City Council receive the Development Impact Fee Report for the fiscal year ended June 30, 2020, and adopt a resolution finding that all development impact fees collected are expended, committed, or will be committed.

### **BACKGROUND**

Recognizing that new construction of residential and commercial facilities may have adverse growth-related impacts on existing public streets, facilities, and services, Chapter 5 of the California Government Code authorizes the collection of development impact fees. Sections 66000-66009 of the State's Government Code prescribe a method for the equitable and consistent collection of fees for public improvements and facilities that are needed to mitigate the impacts of new development. These statutes require that public agencies provide periodic fiscal reconciliations of the amount of growth impact fees assessed and collected against new construction, and the use of those fees collected.

Effective January 1, 1989, AB 1600 imposed specific accounting procedures regarding the collection and use of development impact fees. Specifically, Government Code Section 66001 (d) provides for an annual review of fees collected, based on a five year "holding and use" period following the deposit of the fees. AB 1600 requires the City to make findings annually, subsequent to the deposit of these fees, with respect to any portion of the fee that may remain unexpended, whether committed or uncommitted. The findings must identify the purpose to which the fee will be put, demonstrate a nexus between the fee and the purpose, identify the sources and amounts of anticipated funding used to complete incomplete improvements, and identify approximate dates on which the anticipated funding is expected to be expended.

Additionally, the provisions of AB 1600 expanded Government Code 66002(b), the accountability standard to require annual reviews of the proposed use of these fees through the inclusion of eligible projects in public agency capital improvement plans.

The FY 2020-21 – 2024-25 Five-Year Capital Improvement Plan (CIP), which includes projects eligible for funding using development impact fees, was approved by the City Council on September 15, 2020.

## **REVIEW AND ANALYSIS**

In August of 1984, the City Council established a cumulative growth impact fee. Ordinance Number 462 provided fees to be collected from developers for both residential and business development impacts on public facilities and services and for residential impacts on parklands and recreation. The fees were updated to the following amounts effective April 3, 2018:

<b>Development Impact Fees</b> (Resolution No. 2018-29/April 3, 2018)						
Facility Category	Single Family	Multi-Family	Office	Commercial	Industrial	Institutional
Fee per Dwelling Unit			Fee per 1,000 Building Square			
Police	\$1,148.95	\$870.42	\$435.21	\$139.27	\$348.17	\$34.82
Fire Protection	\$1,468.25	\$1,112.31	\$556.16	\$177.97	\$444.92	\$44.49
Public Facilities & Equipment	\$1,981.29	\$1,500.98	\$750.49	\$240.16	\$600.39	\$60.04
Wastewater	\$4,943.00	\$3,707.00	\$2,296.00	\$2,296.00	\$1,879.00	\$1,252.00
Transportation	\$414.83	\$294.53	\$555.87	\$1389.68	\$365.05	\$1053.67
Drainage	\$1,104.82	\$66.29	\$162.32	\$162.32	\$321.27	\$380.45
<b>Growth Impact Total</b>	<b>\$11,061.14</b>	<b>\$7,551.53</b>	<b>\$4,756.05</b>	<b>\$4,405.40</b>	<b>\$3,958.80</b>	<b>\$2,825.47</b>
Parks and Recreation	\$8,013.78	\$6,071.05	N/A	N/A	N/A	N/A
<b>Subtotal</b>	<b>\$19,074.92</b>	<b>\$13,622.58</b>	<b>\$4,756.05</b>	<b>\$4,405.40</b>	<b>\$3,958.80</b>	<b>\$2,825.47</b>
Administration 3%	\$572.25	\$408.68	\$142.68	\$132.16	\$118.76	\$84.76
<b>Total</b>	<b>\$19,647.17</b>	<b>\$14,031.26</b>	<b>\$4,898.73</b>	<b>\$4,537.56</b>	<b>\$4,077.56</b>	<b>\$2,910.23</b>

Pinole Municipal Code (PMC) 3.20.096 (b) allows for an annual adjustment to the amount of the impact fees by a percentage equal to the percentage change in the Engineering News Record Construction Cost Index for San Francisco Bay Area. The fees were most recently updated effective April 3, 2018.

In addition, PMC 3.20.96 (c) requires a review of the basis of the impact fees at least once every five years to determine whether the fees are still reasonably related to the needs of new development. The last Development Impact Mitigation Fee Nexus Study was prepared by a consultant, PMC, on May 27, 2008. A new Mitigation Fee Nexus Study is currently underway.

The City maintains separate accounts for growth impact fees within the Growth Impact Fund - 276 and the Parkland Dedication Fund - 275. All interest earned on the fees held in these accounts is retained in the accounts.

### ***Growth Impact Fund - 276***

Since the development impact fees have been put in place, the City has collected the following fees for the mitigation of growth impacts in the Growth Impact Fund – 276:

<b>Fiscal Year</b>	<b>Fee Income &amp; Interest</b>	<b>Expenditures</b>	<b>Year End Residual Balance</b>
Prior to 2008-09	3,162,923	2,924,091	237,979
2008-09 to 2017-18	317,121	564,213	(9,113)
2018-19	82,480	-	73,367
2019-20	35,557	-	108,925
<b>Totals</b>	<b>3,598,082</b>	<b>3,488,304</b>	

As of June 30, 2020, a fund balance of \$108,924 is reported in the Growth Impact Fund.

Staff has reviewed the development impact fees collected from July 1, 2015 through June 30, 2020. No development impact fees, collected prior to July 1, 2015, the subject compliance year of this report, remain unexpended or uncommitted.

Two projects have been identified for funding from impact fees in the FY2020-21 through 2024-25 Five-Year CIP adopted by the City Council on September 15, 2020:

- Hazel Street Drainage Improvements – \$8,000
- Roble Road Drainage Improvements – \$200,000

These projects are also included in the Development Impact Fee Report included as Attachment A.

### ***Parkland Dedication Fund - 275***

Since the development impact fees have been put in place, the City has collected the following fees for park and recreation projects in the Parkland Dedication Fund – 275:

<b>Fiscal Year</b>	<b>Fee Income &amp; Interest</b>	<b>Expenditures</b>	<b>Year End Residual Balance</b>
Prior to 2008-09	\$ 2,424,729	\$ 2,311,672	\$ 113,057
2008-09 to 2017-18	72,918	161,381	24,608
2018-19	36,528	-	61,137
2019-20	27,732	799	88,070
<b>Totals</b>	<b>\$ 2,561,907</b>	<b>\$ 2,473,852</b>	

As of June 30, 2020, a fund balance of \$88,070 is reported. There is \$16,404 that remains unexpended for fees collected prior to July 1, 2015, the subject compliance

year of this report; however, all of the unexpended fees will be committed to eligible project expenditures, in the future FY 2021-22 through FY 2025-26 Five Year CIP.

### ***Findings***

In accordance with California Government Code Section 66001(d), the City is reporting the following findings as of June 30, 2020:

- Parkland Dedication Fund - 275 reports a balance of \$16,404 held past five years. These funds are committed to an eligible park project expenditure in the future FY 2021-22 – FY 2025-26 Five Year CIP budget.

### **FISCAL IMPACT**

Staff has reviewed the development impact fees collected from July 1, 2015 through June 30, 2020. For Growth Impact Fund – 276, no development impact fees collected prior to July 1, 2015, the subject compliance year of this report, remain unexpended or uncommitted. For Parkland Dedication Fund – 275, \$16,404 is held past five years unexpended, but will committed in the next CIP budget for an eligible park project.

### **ATTACHMENTS**

A. Resolution

B. Development Impact Fee Report for the year ended June 30, 2020

# ATTACHMENT A

## RESOLUTION NO. 2020-\_\_

### A RESOLUTION OF THE CITY OF PINOLE, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, FINDING THAT DEVELOPMENT IMPACT FUNDS THROUGH FISCAL YEAR END JUNE 30, 2020 ARE EXPENDED, COMMITTED OR WILL BE COMMITTED

**WHEREAS**, Government Code §66001(d), effective January 1, 1989, requires the City to make findings once each fiscal year with respect to any portion of a growth impact fee remaining unexpended or uncommitted in its development fee account(s) five or more years after deposit of the fee, and to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged, identify the sources and amounts of anticipated funding used to complete incomplete improvements and identify approximate dates on which the anticipated funding is expected to be deposited; and

**WHEREAS**, Government Code §66006(d), effective January 1, 1989, requires that a report documenting these findings must be made within 180 days following the conclusion of each fiscal year by the City; and

**WHEREAS**, City staff have reviewed and summarized the development impact fees collected and expended each fiscal year covering July 1, 2015 through June 30, 2020 to determine if any such development fees remain unexpended or uncommitted; and

**WHEREAS**, City staff have reviewed development impact fees collected prior to July 1, 2015, the subject compliance year of this report, to identify funds that remain unexpended or uncommitted.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Pinole as follows:

**Section 1.** There are no funds remaining unexpended or uncommitted in the Growth Impact Fund – 276.

**Section 2.** There is \$16,404 remaining unexpended in the Parkland Dedication Fund – 275 but these funds will be committed in the future FY 2021-22 – FY 2025-26 Capital Improvement Plan.

**PASSED AND ADOPTED** this 15<sup>th</sup> day **December 2020**, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

# ATTACHMENT A

ABSTAIN: COUNCILMEMBERS:

I hereby certify that the foregoing resolution was introduced, passed and adopted on this 15<sup>h</sup> day of **December 2020**.

---

Heather Iopu, CMC  
City Clerk



# Development Impact Fee Report

Fiscal Year Ended June 30, 2020



City of Pinole  
2131 Pear Street  
Pinole, CA 94564

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## **LEGAL REQUIREMENTS FOR DEVELOPMENT IMPACT FEE REPORTING**

### **A. CALIFORNIA GOVERNMENT CODE SECTION 66006 (b)**

California Government Code Section 66006 (b) defines the specific reporting requirements for local agencies that impose AB 1600 development impact fees on new development. Annually, for each development impact fee collected and expended, the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the information shown below for the most recent fiscal year.

- A brief description of the type of fee in the account or fund;
- The amount of the fee;
- The beginning and ending balance of the account or fund;
- The amount of the fees collected and interest earned;
- Identification of each public improvement on which fee revenue was expended and the amount of expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fee revenue;
- Identification of the approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement;
- A description of each inter-fund transfer or loan made from the account or fund, including interest rates, repayment dates, and a description of the improvements on which the transfer or loan will be expended;
- The amount of any refunds or allocations made pursuant to Section 66001, paragraphs (e) and (f).

### **B. CALIFORNIA GOVERNMENT CODE SECTION 66001 (d)**

For all funds established for the collection and expenditure of development impact fees, California Government Code Section 66001 (d) has additional requirements. For the fifth fiscal year following the first deposit into the fund and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the fund remaining unexpended, whether committed or uncommitted:

- Identify the purpose to which the fee is to be put;
- Demonstrate a reasonable relationship between the fee and purpose for which it is charged;
- Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements;
- Designate the approximate dates on which the funding is expected to be deposited into the appropriate account or fund.

As of June 30, 2020, the City is reporting the following findings:

- Parkland Dedication Fund reports a balance of \$16,404 held past five years. These funds will be committed to an eligible park project in the FY 2021-22 – FY 2025-26 Capital Improvement Plan (CIP).

**C. ADDITIONAL NOTES**

The State of California Government Code Section 66002 states that local agencies that have developed a fee program may adopt a CIP indicating the approximate location, size and timing of projects, plus an estimate for the cost of all facilities or improvements to be financed by fees. A formal CIP is recommended, at a minimum, as a five-year plan. The City annually produces a five- year CIP which helps to maintain and support the City's General Plan.

The City's current, Fiscal Year 2020-21– 2024-25 Capital Improvement Plan can be found on the City's website at <https://www.ci.pinole.ca.us>.

**D. ESTABLISHING A REASONABLE RELATIONSHIP BETWEEN THE FEE AND THE PURPOSE FOR WHICH IT IS CHARGED**

The City's Development Impact Fee Program has been in effect since September 19, 1984. The current Development Impact Fee was adopted on July 1, 2008. Adjustments to the fees may be made annually in accordance with the Engineering News Record Construction Cost Index-San Francisco Bay Area. The program sets forth the relationship between contemplated future development, facilities needed to serve future development and the estimated costs of those improvements based on the current General Plan for build-out. A comprehensive fee study is currently underway to ensure the program continues to reflect the appropriate fees in relation to updated costs.

The City's capital improvements provide infrastructure to the residents and businesses in Pinole in order to keep pace with ongoing development in, and adjacent to the community. Information on current CIP projects that are funded from Development Impact Fees can be found on page 10. Impact fees may also be used to pay the principal, interest and other cost of bonds, notes and other obligations issued or undertaken by or on behalf of the City to finance such facilities.

**E. FUNDING OF INFRASTRUCTURE**

The Fiscal Year 2020-21– 2024-25 CIP identifies all funding sources and amounts for individual projects through FY 2024-25. The CIP is updated annually to reflect the current infrastructure needs of the City. As a CIP project is identified, the project is evaluated to determine the portion of the project that will service existing residents and businesses versus new development.

Once the determination of use is made, the percentage of use attributable to new development is then funded by the appropriate development fee based on the type of project. The percentage of use associated with existing residents or businesses are funded from other appropriate sources as identified on each individual project sheet in the CIP. All future planned infrastructure needs are outlined in the Development Fee Program. Estimated construction start dates for projects are adjusted, as needed, to reflect the needs of the community.

## **F. CURRENT MAJOR CIP PROJECTS**

Currently, construction is in-progress on the Water Pollution Control Plant (WPCP) Upgrade Project funded in part by Wastewater Facility Fees and Development Impact Fees.

### **DESCRIPTION OF DEVELOPMENT IMPACT FEES**

Police Facility Fee – To provide for the expansion, design and construction of police facilities, or to upgrade existing police facilities. To purchase vehicles, enhance communication systems and/or perform refurbishment within the parameters allowed by Government Code 66000.

Fire Protection Facility Fee – To provide for the expansion, design and construction of fire facilities, or to upgrade existing fire facilities. To purchase equipment and vehicles, enhance communication systems and/or perform refurbishment within the parameters allowed by Government Code 66000.

Public Facility & Equipment Fee – To provide for the expansion, design and construction of municipal or community facilities, or to upgrade existing facilities; to purchase equipment and vehicles, enhance communication systems and/or perform refurbishment within the parameters allowed by Government Code 66000.

Wastewater Facility Fee – To provide for the upgrade and expansion of sewer collection and wastewater treatment capacities at the Water Pollution Control Plant.

Transportation Facility Fee – To provide for traffic improvements that include arterial roadway and intersection improvements to accommodate new development.

Drainage Facility Fee – To provide for the expansion of drainage facilities to accommodate new development.

Parks and Recreation Facility Fee – To provide for the acquisition and development of parks as specified in the City's Parkland Dedication Ordinance (PDO) (Municipal Code Sec. 16.28) which requires as a condition of approval for the subdivision of land, the dedication of park land or payment of a fee in-lieu of dedication, pursuant to California Government Code 66477 (the "Quimby Act"). The Quimby Act allows the City to require the dedication of land for park purposes up to the rate of the existing acreage per 1,000 population, which stands at 3.34 acres. The City may collect the full AB1600 park impact fees for park acquisition and development at the issuance of building permits, but may not impose the land dedication requirement at the subdivision stage. The City may collect on either the PDO or the impact fee, but not both.

**CURRENT FEE SCHEDULE**

The Development Impact Fees were adopted on April 3, 2018. Fees are reviewed annually and adjustments may be made in conjunction with the development of the Capital Improvement Plan to ensure the Development Impact Fee is accounting for all planned future development. The updated Development Impact Fee information is then used to determine the amount of fees available for the funding of the proposed CIP projects.

<b>Development Impact Fees</b> (Resolution No. 2018-29/April 3, 2018)						
Facility Category	Single Family	Multi-Family	Office	Commercial	Industrial	Institutional
Fee per Dwelling Unit			Fee per 1,000 Building Square Feet			
Police	\$1,148.95	\$870.42	\$435.21	\$139.27	\$348.17	\$34.82
Fire Protection	\$1,468.25	\$1,112.31	\$556.16	\$177.97	\$444.92	\$44.49
Public Facilities & Equipment	\$1,981.29	\$1,500.98	\$750.49	\$240.16	\$600.39	\$60.04
Wastewater	\$4,943.00	\$3,707.00	\$2,296.00	\$2,296.00	\$1,879.00	\$1,252.00
Transportation	\$414.83	\$294.53	\$555.87	\$1389.68	\$365.05	\$1053.67
Drainage	\$1,104.82	\$66.29	\$162.32	\$162.32	\$321.27	\$380.45
<b>Growth Impact Total</b>	<b>\$11,061.14</b>	<b>\$7,551.53</b>	<b>\$4,756.05</b>	<b>\$4,405.40</b>	<b>\$3,958.80</b>	<b>\$2,825.47</b>
Parks and Recreation	\$8,013.78	\$6,071.05	N/A	N/A	N/A	N/A
<b>Subtotal</b>	<b>\$19,074.92</b>	<b>\$13,622.58</b>	<b>\$4,756.05</b>	<b>\$4,405.40</b>	<b>\$3,958.80</b>	<b>\$2,825.47</b>
Administration 3%	\$572.25	\$408.68	\$142.68	\$132.16	\$118.76	\$84.76
<b>Total</b>	<b>\$19,647.17</b>	<b>\$14,031.26</b>	<b>\$4,898.73</b>	<b>\$4,537.56</b>	<b>\$4,077.56</b>	<b>\$2,910.23</b>

## Financial Summary Report

### Statement of Revenues, Expenditures and Changes in Fund Balance

For the Year Ended June 30, 2020

Development Impact Fees		
Description	Growth Impact	Parkland Dedication
<b>REVENUE</b>		
Fees-Police	3,760.21	-
Fees-Fire	4,805.18	-
Fees-Transportation	1,298.42	-
Fees-Storm Drainage	1,303.69	-
Fees-Public Facilities	6,484.23	-
Fees-Wastewater	16,064.00	-
Fees-Administrative OH	-	-
Fees-Parks & Recreation	-	26,226.93
Interest	1,840.97	1,505.18
Other Revenue	-	-
<b>Total Revenue</b>	<b>35,556.70</b>	<b>27,732.11</b>
<b>EXPENDITURES</b>		
Expenditures	-	798.91
<b>Total Expenditures</b>	<b>-</b>	<b>798.91</b>
<b>REVENUE OVER (UNDER)</b>	<b>35,556.70</b>	<b>26,933.20</b>
<b>EXPENDITURES</b>		
<b>Fund Balance, Beginning of Year</b>	<b>73,367.30</b>	<b>61,136.80</b>
<b>Fund Balance, End of Year</b>	<b>108,924.00</b>	<b>88,070.00</b>

## Growth Impact Fund - 276

### Statement of Revenues, Expenditures and Changes in Fund Balance

Last Five Fiscal Years

Description	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20
<b>REVENUE</b>					
Fees-Police	6,706.20	1,148.95	16,820.86	8,203.70	3,760.21
Fees-Fire	8,569.70	1,468.25	21,495.26	10,483.56	4,805.18
Fees-Transportation	66,916.26	414.83	30,737.54	5,685.73	1,298.42
Fees-Storm Drainage	7,816.11	1,104.82	5,911.02	4,571.92	1,303.69
Fees-Public Facilities	11,564.30	1,981.00	15,713.95	14,146.73	6,484.23
Fees-Wastewater	43,738.36	-	-	38,655.18	16,064.00
Fees-Administrative OH	4,359.56	482.15	-	-	-
Fees-Parks & Recreation	-	-	-	-	-
Interest	396.56	16.78	669.04	733.19	1,840.97
Other Revenue	-	-	-	-	-
<b>Total Revenue</b>	<b>150,067.05</b>	<b>6,616.78</b>	<b>91,347.67</b>	<b>82,480.01</b>	<b>35,556.70</b>
<b>EXPENDITURES</b>					
Expenditures	-	-	-	-	-
<b>Total Expenditures</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>REVENUE OVER (UNDER)</b>					
<b>EXPENDITURES</b>	<b>150,067.05</b>	<b>6,616.78</b>	<b>91,347.67</b>	<b>82,480.01</b>	<b>35,556.70</b>
<b>Fund Balance, Beginning of Year</b>	<b>(257,144.21)</b>	<b>(107,077.16)</b>	<b>(100,460.38)</b>	<b>(9,112.71)</b>	<b>73,367.30</b>
<b>Fund Balance, End of Year</b>	<b>(107,077.16)</b>	<b>(100,460.38)</b>	<b>(9,112.71)</b>	<b>73,367.30</b>	<b>108,924.00</b>



## Parkland Dedication Fund - 275

### *Statement of Revenues, Expenditures and Changes in Fund Balance Last Five Fiscal Years*

Description	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20
<b>REVENUE</b>					
Fees-Parks & Recreation	-	-	8,014.00	36,183.44	26,226.93
Interest	50.01	1.07	139.73	344.94	1,505.18
Other Revenue	-	-	-	-	-
<b>Total Revenue</b>	<b>50.01</b>	<b>1.07</b>	<b>8,153.73</b>	<b>36,528.38</b>	<b>27,732.11</b>
<b>EXPENDITURES</b>					
Expenditures	-	-	-	-	798.91
<b>Total Expenditures</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>798.91</b>
<b>REVENUE OVER (UNDER) EXPENDITURES</b>	<b>50.01</b>	<b>1.07</b>	<b>8,153.73</b>	<b>36,528.38</b>	<b>26,933.20</b>
<b>Fund Balance, Beginning of Year</b>	<b>16,403.61</b>	<b>16,453.62</b>	<b>16,454.69</b>	<b>24,608.42</b>	<b>61,136.80</b>
<b>Fund Balance, End of Year</b>	<b>16,453.62</b>	<b>16,454.69</b>	<b>24,608.42</b>	<b>61,136.80</b>	<b>88,070.00</b>

## NOTES TO THE DEVELOPMENT IMPACT FEE REPORT

The Notes address two items required by California Government Code Section 66006 (b). First, Notes #1 and #2 provide information on bonds and notes payable associated with improvements to the City's wastewater system and upgrade to the Water Pollution Control Plant. Second, Note #3 provides information on refunds made, if applicable, due to sufficient funds being collected to complete financing on incomplete public improvements, and the amount of reallocation of funds made due to administrative costs of refunding unexpended revenues exceeding the amount to be refunded.

### NOTE # 1 – BONDS

#### A. 2016 WASTEWATER REVENUE REFUNDING BONDS

On June 30, 2016, the City of Pinole issued an \$8,251,000 Wastewater Revenue Refunding Bond (Bank Qualified) to redeem its 2006 Wastewater Revenue Bonds which were issued to finance certain capital improvements to the City's wastewater system. The bonds bear annual interest at 2.95% which is payable semi-annually on March 1 and September 1 of each year through 2036. Principal payments are due annually beginning on September 1, 2016 through 2036. The bond is secured with pledged net wastewater revenues.

Bonds payable debt service requirements for business-type activities are shown below:

Year Ending, June 30	2016 Wastewater Revenue	
	Principal	Interest
2021	\$ 318,000	\$ 200,866
2022	329,000	191,322
2023	341,000	181,440
2024	347,000	171,292
2025	362,000	160,834
2026-2030	1,968,000	635,607
2031-2035	2,287,000	322,656
2036-2037	1,016,000	30,238
Total	6,968,000	1,894,254
Due within one year	\$ 318,000	\$ 200,866
Due after one year	6,650,000	1,693,389
	\$ 6,968,000	\$ 1,894,254

**NOTE # 2 – NOTES PAYABLE****A. STATE WATER RESOURCES LOAN (WASTEWATER)**

In May 2016, the City entered into a loan agreement with the State of California's State Water Resources Control Board for the purpose of financing its 50% share of the Pinole-Hercules Wastewater Pollution Control Plant Upgrade project to comply with Regional Water Quality Board NPDES permit requirements. Funds are drawn on the agreement as work is completed up to the maximum amount of \$26.7 million plus any construction period interest. The loan accrues interest at a rate of 1.7% annually and is amortized over the life of the agreement through August 2048. Net revenues, defined as all sewer enterprise fund revenues less operations and maintenance costs (excluding depreciation and amortization expenses), is pledged as future debt service. As of June 30, 2020, the outstanding debt on the loan is \$25,456,833. Loan payments are due annually on each August 31 based on the payment schedule below:

Year Ending, June 30	2016 Clean Water State Revolving	
	Principal	Interest
2021	\$ 682,858	\$ 406,326
2022	668,026	421,158
2023	679,383	409,801
2024	690,932	398,252
2025	702,678	386,506
2026-2030	3,696,687	1,749,232
2031-2035	4,021,772	1,424,147
2036-2040	4,375,445	1,070,475
2041-2045	4,760,220	685,700
2046-2049	5,178,831	267,088
Total	\$ 25,456,833	\$ 7,218,685
Due within one year	\$ 682,857.79	\$ 406,326.14
Due after one year	24,773,976	6,812,358
	\$ 25,456,833	\$ 7,218,685

**NOTE # 3 – REFUNDS PAYABLE****A. REFUNDS OF DEVELOPER FEES**

When the City no longer needs the funds for the purposes collected, or if the City fails to make required findings or perform certain administrative tasks prescribed by AB 1600, the City may be required to refund, on a prorated basis, to owners of the properties upon which the fees for the improvement were imposed, the monies collected for that project and any interest earned on those funds. At this time, all fees being collected pursuant to the Development Fee Program have been earmarked for current or future capital projects necessary to maintain the current levels of service within existing service areas to serve new development.

## **DEVELOPMENT IMPACT FEE PROJECT IDENTIFICATION**

The Development Impact Fee funded projects listed below conform to the following reporting requirements defined by California Government Code Section 66006 (b):

- An identification of each public improvement on which fees were expended and the amount of expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.
- An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement.

All of the current projects including all funding sources and approximate dates of funding can be found in the FY 2020-21 through 2024-25 Capital Improvement Plan.

- Project #SW1901 Hazel Street Drainage Improvements – \$8,000
- Project #SW2001 Roble Road Drainage Improvements – \$200,000



## **CITY COUNCIL REPORT**

**9A**

**DATE: DECEMBER 15, 2020**

**TO: MAYOR AND COUNCIL MEMBERS**

**FROM: HECTOR DE LA ROSA, ASSISTANT CITY MANAGER**

**SUBJECT: APPROVE A SECOND AMENDMENT TO THE OPERATING AGREEMENT FOR AQUATIC PROGRAM COORDINATION AND FACILITY USE WITH THE PINOLE SEALS FOR USE OF THE SWIMMING POOL FROM JUNE 27 – JULY 31, 2020**

---

### **RECOMMENDATION**

It is recommended that the City Council adopt a resolution approving a second amendment to the Operating Agreement for Aquatic Program Coordination and Facility Use with the Pinole Seals for use of the swimming pool from June 27 – July 31, 2020 and authorize the City Manager to execute the Agreement.

### **BACKGROUND**

On April 2, 2019, the City Council approved a two-year agreement with the Seals to operate the City's swimming pool for the 2019 and 2020 summer seasons. The agreement not only detailed the time period in which the pool would be open to the community but also projected the number of attendees per day and the associated revenues and expenditures.

Below is an overview of the terms of the agreement as well as the revenue and expenditure projections. While the dates of the pool opening would change in 2020 from that of 2019, the revenue and expenditure projections remained the same.

- Pool would be open from April 6<sup>th</sup> through October 13<sup>th</sup> in 2019 and 2020.
- Revenues were projected to be \$33,320 in 2019 and expenditures \$56,078 for a net loss of \$22,758.
- Revenues were projected based on attendance of 68 users during the weekends from April through June and from August through October and during the week/weekend from June through August.
- The Seals would offer swim lessons, water aerobics and/or Zumba classes during the weekend and generate some additional revenues.
- Pool use/access is \$5 regardless of age, Lap Swim \$3 and multiple day passes would be discounted by 10%.
- The agreement allows for up to \$15,000 as reimbursement from the City to the Seals should the swim season expenditures exceed revenues.

On March 17, 2020, prior to the commencement of the Seals use of the Pinole Swimming Pool (April 2020) and public swim, Contra Costa County not only ordered the public to Shelter in Place (SIP) due to COVID but also restricted the gathering and use of public facilities.

On July 10, 2020, three months after the original opening date, the pool opened for five hours a day, six days a week. From July through mid-August, average attendance was down from initial projections by 1/3. The Seals projected attendance at 68 persons per day, while the average attendance was at 44 persons per day. The low attendance could have been attributed to the public's concern over COVID.

Below is a recap of the 2020 Swim Season:

- Pool was in operation for 46 days
- Revenues include Lap Swim, and Public Use
- No Swim Lessons or Parties were provided this year

- Revenues: \$11,414.00
- Expenditures: \$29,379.96
- Net Difference (\$17,965.96) - City agreed to pay up to \$15,000

- Category of Attendees:
 

○ Swimmers	1,967	82.13%
○ Non-Swimmers	5	0.21%
○ Lap Swimmers	518	17.66%

<b>Attendees</b>	<b><u>Projected</u></b>	<b><u>Actual</u></b>
April 4 - June 7 – Weekends (20 days)	1360	0
June 9 - Aug 16 – Weekdays (60 days)	4080	1,419
Aug 22 - Sept 27 – Weekends (12 days)	816	717
Oct 3 - Oct 18 – Weekends (6 days)	<u>408</u>	<u>354</u>
<b>Total Attendees</b>	<b>6664</b>	<b>2490</b>

- Pinole Residents: 1,198 or 48.1%      Non-Pinole: 1,292 or 51.9%

Due to the unforeseen and uncontrollable pandemic, the Seals were unable to operate the pool for the entire proposed swim season (April – October) which had a significant impact on the revenues generated.

Per the agreement, all revenues generated during the Summer Swim Season are to be remitted to the City. Furthermore, the Seals are to pay all pool related expenses, provide the City with documents pertaining to the expenses and request reimbursement for costs to operate the pool.

The Seals have incurred \$29,379.96 in expenses for management and operations of the swimming pool for Summer 2020. Per the agreement, the City agreed to reimburse the Seals for expenditures but limited its liability to an amount equal to the total revenues generated during the summer swim season plus an additional \$15,000. The maximum allowable reimbursement per the agreement is \$26,414 (\$11,414 plus \$15,000, respectively) resulting in an unreimbursable amount to the Seals of \$2,965.96 (\$29,379.96 less \$26,414).

Given the circumstance this year which not only delayed the pool opening in April but required closure of the pool for a period of 15 days due to fires and thunderstorms, the Seals are requesting an increase in the reimbursement allowance sufficient to cover the shortage.

Should the Council approve the Seals request, staff has attached a resolution approving an amendment to the contract between the City and the Seals increasing the reimbursable amount in 2020 from \$15,000 to \$17,965.96, to cover the Seals expenditures.

The revenues and expenditures incurred by the Seals are mutually exclusive of any other operational costs related to the time frame in which the Pool was operational such as chemicals, supplies, janitorial, and utilities.

## **FISCAL IMPACT**

The Seals were issued a reimbursement check in October in an amount of \$21,768.60. If the amendment is approved, the City will issue a warrant to the Seals for the remaining balance of \$7,611.36.

On a Fiscal Year basis (July 1, 2020 – June 30, 2021), it is projected that the cost to maintain the pool, during the on/off swim season, will result in revenues exceeding expenditures. However, it is unknown at this time if the County will continue to be in Shelter in Place on April 1, 2021, the date the Pinole Swimming Pool is scheduled to open for the 2021 swim season.

## **ATTACHMENTS**

Attachment A – Resolution

Attachment B – Operating Agreement for Aquatic Program Coordination and Facility Use

Attachment C – First Amendment to the Aquatic Program Coordination and Facility Use Agreement

Attachment D – Second Amendment to the Aquatic Program Coordination and Facility Use Agreement

Attachment E – 3 Year Summer Swim Season Budget vs Actual Summary



# ATTACHMENT A

## RESOLUTION NO 2020-

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PINOLE APPROVING A SECOND AMENDMENT TO THE OPERATING AGREEMENT FOR AQUATIC PROGRAM COORDINATION AND FACILITY USE WITH THE PINOLE SEALS FOR USE OF THE SWIMMING POOL FROM JUNE 27 – JULY 31, 2020 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT**

**WHEREAS**, the City is the owner of the Pinole Swimming Pool located at 2450 Simas Ave; and

**WHEREAS**, since 1996, the Pinole Seals Swim Club (Seals) have used the City's Pool from April 1 – October 30 for their recreational and competitive swimming activities through a facility use agreement with the City; and

**WHEREAS**, in 2019, the City entered into a two-year agreement with the Seals to use the pool for practices, conditioning and to host competitive events; and

**WHEREAS**, due to the pandemic, the County Health Orders to close all non-essential facilities, and the cancellation of the Seals League events, the Seals have not been able to operate the pool for the entire swim season (April – October); and

**WHEREAS**, due to the truncated swim season, projected revenues have not been realized while expenses have remained fixed; and

**WHEREAS**, at the conclusion of the swim season, expenditures exceed revenues by \$17,965.96, which is in excess of the approved reimbursement from the City to the Seals of \$15,000; and

**WHEREAS**, the Seals are requesting an amendment to the Agreement to increase the City's reimbursement amount sufficient to cover the shortfall of \$17,965.96; and

**NOW, THEREFORE, BE IT RESOLVED** that the Pinole City Council does hereby:

Section 1. Approve an increase in the reimbursement amount from \$15,000 to \$17,965.96 for the 2020 swim season.

Section 2: Approve the Second Amendment to the Operating Agreement for Aquatic Program Coordination and Facility Use with the Pinole Seals for Use of the Swimming Pool from June 27 – July 31, 2020.

Section 3. Authorize the City Manager, or his designee, to execute the Amendment to the Operating Agreement for Aquatic Program Coordination and Facility Use and to take all actions to execute such documents as necessary to carry out the intent of this Resolution.

# ATTACHMENT A

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pinole held on the 15th day of December 2020 by the following vote:

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

I hereby certify that the foregoing resolution was introduced, passed, and adopted on this 15<sup>th</sup> day of December 2020.

---

Heather Iopu, CMC  
City Clerk

## OPERATING AGREEMENT FOR AQUATIC PROGRAM COORDINATION AND FACILITY USE AT THE PINOLE SWIM CENTER

This Operating Agreement for Aquatic Programs and Facility Management at the Pinole Swim Center (this "**Agreement**") is entered into this 1<sup>st</sup> day of April, 2019 ("**Effective Date**") by and between the City of Pinole, a California municipal corporation (the "**City**") and the Pinole Seals Swim Club, a California non-profit Corporation (the "**SEALS**"). The City and the SEALS are collectively referred to herein as the "**Parties**."

### 1. PURPOSE

The purpose of this Agreement is to provide for management, maintenance services and programs of the Pinole Swim Center, located at 2450 Simas Avenue, Pinole, CA 94564, hereinafter referred to as the "**Center**," and to ensure the public's safety, convenience and enjoyment thereof.

The Center includes the pool house, walkways, patios and deck area, parking lot, storage shed, exterior signs and landscaping. The SEALS are hereby granted a non-exclusive interest in the use of the Center. The use of the Center by the City, other public agencies and entities and the general public is subject to the terms and conditions of the interest provided to the SEALS herein. The City shall provide to the SEALS an unoccupied Center. The SEALS shall have the right to operate various programs at the Center for the benefit of the public.

The SEALS shall provide facility management and administration of the Center in order to maximize the beneficial use of the Center to the public.

### 2. TERM, HOURS OF OPERATION

The term of this Agreement (the "**Term**") shall commence on the Effective Date and continue through October 21, 2020. Any extension to the Term must be made in writing and signed by both Parties.

The swim season, during which the Center is available to the community, is defined as the beginning of April, through the last weekend of October, (the "**Swim Season**"). The operating hours for the Center are set forth in Exhibit A, which is incorporated in this Agreement by this reference.

The SEALS may not use the facility at any time outside of the Swim Season.

### 3. OPERATION, MANAGEMENT, AND USE OF CENTER.

#### 3.1 Care and Maintenance of Center.

The SEALS expressly agrees at all times during the Term of this Agreement to maintain and operate the Center in a clean, safe, wholesome and sanitary condition, free of trash and garbage.

The SEALS are responsible for exercising reasonable care of all facilities and for repairing damage caused by the SEALS use and programs with the exception of damage to the Center caused by normal wear and tear and occurrences beyond the reasonable control of the Seals.

The SEALS expressly agrees at all times during the Term of this Agreement to comply, or to cause compliance with the Pinole Municipal Code, and any and all present and future laws, general rules or regulations of any governmental authority now, or at any time during the Term of this Agreement, in force relating to sanitation or public health, safety, or welfare; and The SEALS shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto, adopted by Federal, State, or other governmental bodies, departments or officers thereof. The City is responsible for maintaining the Center in such a way as to comply with all health code regulations and for responding to health inspections and inquiries.

The SEALS shall be responsible for care and maintenance of the following:

1. Office area, including snack bar, countertops and floor
2. Telephones and clocks
3. Deck area, including trash receptacles and recycling containers, including;
  - a. Removal of trash to dumpsters located in parking lot daily
  - b. Maintaining garbage and recycle container lids clean and free of debris
4. Placing recycle tote containers at curbside on garbage day
5. Providing garbage bags as needed
6. Tables and chairs
7. All program equipment currently owned by SEALS
8. The SEALS are responsible for daily installation of supplies.

### **3.2 Operation of Center**

The Seals are responsible for opening and closing the Center, swim program design and all operations of the Center, including staffing and fee structure. The SEALS are responsible for hiring and paying all staff, including but not limited to lifeguards, during the Term. All admission fees shall be set by the SEALS but require written approval by the City of Pinole City Council. As of the Effective Date of this Agreement, the City Council has approved an admission fees as reflected in Exhibit A.

The SEALS shall retain sole title to the SEALS owned personal property. The SEALS shall have full use and access to existing program and office equipment.

### **3.3 Use of Center.**

3.3.1 Permitted Uses. The SEALS shall use, and permit the Center to be used, for recreation, celebration, exhibition, and play.

3.3.2 Prohibited Uses. The SEALS shall not use or permit the Center to be used in whole or in part for any purpose, other than as herein set forth, without the prior written consent of the Recreation Manager or his/her designee.

3.3.3 Other Groups. If other groups (including but not limited to the West Contra Costa Unified School District) desires to rent the Center for any reason during the Term of this Agreement, each agreement shall be reviewed and approved by the Recreation Manager or his/her designee.

3.3.4 Disasters. The City reserves the right to preempt any other use, in the event of any emergency, calamity, or disaster, declared by the Pinole City Council, for the duration of such declared event.

### **3.4 Personnel.**

The SEALS shall employ the services of a knowledgeable, experienced, and competent manager to oversee the Center and provide supervision of all operations under this Agreement. Additionally, The SEALS shall have a competent employee that is a certified lifeguard on the Center swim deck at all times while the Center is being used for recreational programs and services, in addition to a lifeguard present during any outside rental including, but not limited to, private party rentals, or rental of the Center by any other third party.

The SEALS must provide background checks on all personnel prior to employment by the SEALS and must ensure that all lifeguards have the necessary certifications for employment.

### **3.5 Operating Costs; Budget; Books and Records.**

3.5.1 City Budget Responsibilities. The City shall provide a maximum of Fifteen Thousand Dollars (\$15,000) (the “**City Contribution**”) toward the reimbursement of all expenses incurred by the SEALS for the operations and management of the Center. A draft budget for the Swim Season is attached as Exhibit B (the “**Budget**”) to this Agreement and incorporated herein by this reference.

On the date that this Agreement is signed by both Parties, the City shall provide an advance to the SEALS in the amount of Nine Thousand Five Hundred Dollars (\$9,500) (the “**Advance**”) to cover the initial expenditures for operation of the Center.

Thereafter, the SEALS shall submit an invoice for reimbursement of expenses monthly, or bi-weekly (as agreed upon by the Parties) that details line item amounts expended and the items for which they were expended. The first invoice shall also include an accounting for funds expended out of the Advance.

The City shall pay the invoices within 30 days of receipt.

Operating expenses explicitly do not include the SEALS overhead cost or payments made to any regional, state, national or international association. Operating costs do include direct costs related to administration and payroll processing.

Deviation and adjustment from the adopted expenditures Budget shall not be made without the written consent of the Recreation Manager or his or her designee.

3.5.2 SEALS Budget Responsibilities. All revenues received from use of the pool shall be submitted to the City by the SEALS on a weekly basis. The SEALS shall submit a reconciliation of weekly attendance together with the weekly revenue receipts.

The SEALS agree to provide a contribution (the “**SEALS Contribution**”) to the City in the amount of Seven Thousand Five Hundred Dollars (\$7,500) as a contribution to the operating revenues of the Center during the Term of this Agreement. The Contribution is not a reimbursable expense under this Agreement.

3.5.3 Attendance, books, and records. The SEALS shall keep separate, true and accurate books and records showing all transactions under this Agreement related to the revenues and operational expenses of the Center. The City shall have the right at all reasonable times, to examine, and if necessary, audit such books and records. The SEALS should maintain daily attendance records in a manner that identifies the type of patron, residency of patron, and program utilized at the Center. The attendance shall be reconciled with the revenues and provided to the City in accordance with Section 3.5.2.

### **3.6 Rates and Charges.**

With the execution of this Agreement, the City Council has accepted and approved the schedule of program fees and charges as reflected in Exhibit A. The SEALS shall cause the approved schedule of rates, fees, and charges to be printed and posted in a manner and location as designated by the Recreation Manager or his or her designee.

Any proposal by the SEALS to increase fees, rates, or rental rates must be presented to and approved by the City Council. The justification for any such increase shall be set out in writing and all City Council decisions in this regard shall be final.

### **3.7 Operating Rules and Procedures.**

3.7.1 With the execution of this Agreement, the City Council has accepted and approved a draft of pool use rules, regulations, operating policies and procedures, a copy of which is attached as Exhibit C and incorporated herein by this reference. The rules must include, but are not limited to explicit requirements for insurance, supervision, security, alcoholic beverages, hold harmless provisions, cleaning deposits, hours of operation, maintenance and replacement schedules, scheduling, and reservation provisions and practices.

3.7.2 It is the responsibility of the SEALS to post Rules and Procedures in a clearly visible location for patron review.

3.7.3 Rules, regulations, operating policies and procedures may not be modified without the express written consent of the City. All such rules, regulations, operating policies and procedures shall be incorporated into this Agreement and made a part hereof.

### **3.8 Scheduling Requirements.**

The SEALS shall schedule the use of the Center in order to maximize the public's use, enjoyment and convenience and to minimize conflicts between users. The SEALS shall keep records of all users and activities. The Recreation Manager or his/her designee shall have the right at all reasonable times, to examine the records and/or schedule...

### **3.9 Record of Complaints.**

The SEALS shall record any and all complaints related to the Center including, but not limited to, the operation and maintenance of the center and issues related to public conduct of visitors to the Center. Such record of complaints shall be made available to the Recreation Manager or his or her designee upon request and at all reasonable times for review.

### **3.10 Concession Limitations.**

The SEALS are subject to City's right to prohibit the sale or rental of any item which it deems objectionable, beyond the scope of merchandise deemed necessary for proper service to the public, or of inferior quality. The Seals will be responsible for all State taxes and licensing associated with selling of goods or products.

### **3.11 Security and Reporting.**

All violations of law, abuse or damage to the Center, or injuries to the public or the SEALS employees, shall be reported immediately to the Recreation Manager or his or her designated representatives. The SEALS shall maintain a record of all known or reported violations of law, abuse or facility damage, or injuries to the public, which shall be available for inspection by the Recreation Manager or designated representative upon request.

### **3.13 Nuisance.**

The SEALS shall not create or allow to be created a nuisance in the Center.

## **4. CITY'S OBLIGATIONS**

### **4.1 Care and Maintenance.**

The City is responsible for maintaining the Center in compliance with Contra Costa Environmental Health standards during the Swim Season.

The City is responsible for maintaining the Center in a good state of repair. The City is responsible for landscaping, pool maintenance and chemicals, and utilities. The City shall be responsible for care and maintenance of the following:

1. Cleaning and sanitizing bathrooms, exterior faucets and showers four (4) days per week during pool operations of 6 – 7 days a week.
2. Providing disposable bathroom supplies including toilet paper, soap, paper

- towels, sanitary supplies and bathroom trash bags
- 3. Pool chemistry, cleaning and water analysis
- 4. Parking lot, signs, walkways, landscaping, and irrigation
- 5. Heating, ventilation, and mechanical systems
- 6. Electrical system including interior and exterior lighting and telephones
- 7. All plumbing, drains and sewers
- 8. Fire extinguishers
- 9. Refrigerator
- 10. Window panes and glass
- 11. Pool Covers
- 12. Lane lines
- 13. Provide and maintain Automated External Defibrillator (AED)
- 14. Provide and maintain Umbrella's for shading for the SEALS staff and patron use
- 15. Any capital improvements or repairs exceeding \$2,000 approved by the City

#### **4.2 Utilities and Services.**

The City shall be responsible for payment of gas, water, electrical, and garbage collection charges.

### **5. OTHER FINANCIAL OBLIGATIONS**

#### **5.1 Distribution of Profit or Loss.**

Net profit, if any, at the end of the Term shall be shared equally (50%/50%) between the City and the SEALS. As set forth in Section 3.5., the City shall be responsible for funding up to a maximum \$15,000 in total operational expenses during the Swim Season.

Any operating costs or any overall net loss after the City funds the \$15,000 City Contribution shall be the sole responsibility of the SEALS. The City reserves the right to terminate this Agreement early upon expenditure of the entire City Contribution.

#### **5.2 Capital Maintenance Costs.**

The City shall be responsible for all capital maintenance necessary for optimizing the life of the Center's amenities.

### **6. INSPECTION AND ENTRY**

The City, through the City Manager or his or her designee, shall have the right to enter the Center for the purpose of any inspection, observation, preservation and maintenance. The SEALS will be given reasonable notice when such work may become necessary and shall adjust operations in such a manner that the City may proceed expeditiously.



## **7. TERMINATION**

The City may terminate this Agreement upon the occurrence of a breach of agreement by the SEALS, as defined and in the manner established in Section 11 of this Agreement. Additionally, either Party may terminate this Agreement upon delivery and receipt of written notice ninety (90) calendar days prior to the proposed termination.

At, or prior to the expiration, of this Agreement the City and the SEALS shall meet to review contract performance. The SEALS will be responsible for removing/storing all the SEALS property from the Center within thirty (30) days after the latter of the conclusion of negotiations or expiration of this Agreement. After this time all personal property remaining upon the Center property shall be considered the property of the City.

## **8. INSURANCE AND INDEMNIFICATION**

### **8.1 Insurance Requirements.**

Before beginning any work under this Agreement, the SEALS, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the SEALS and its agents, representatives, employees, and subcontractors. The SEALS shall maintain the insurance policies required by this Section throughout the Term of this Agreement. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

### **8.2 Workers' Compensation.**

The SEALS shall, at its sole cost and expense, maintain statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly by SEALS, including subcontractors. The statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than TWO MILLION DOLLARS (\$2,000,000.00) per accident.

### **8.3 Commercial General and Automobile Liability Insurance.**

**8.3.1 General Requirements.** SEALS, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the Term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement.

Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

8.3.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as the commercial general liability policy CG 0001 covering comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) Code 1.

8.3.3 Professional Liability Insurance (Required for all licensed SEALS). SEALS, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000) per claim.

8.3.4 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis (except professional liability insurance).
- b. All insurance required by this Section shall include a separation of insured's provision.

8.3.5 Notice of Reduction in or Cancellation of Coverage. The SEALS shall not suspend, void, cancel, or reduce in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, to the City. If such reduction or cancellation occurs by carrier, the SEALS shall also provide the City written notice by certified mail, return receipt requested, within thirty (30) days.

8.3.6 Additional Insured; Primary Insurance. An endorsement certified by the Insurance company shall be attached to all policies (excluding worker's compensation and professional liability) stating that the City and its officers, employees, agents, and volunteers shall be covered as additional insureds. A certified endorsement shall be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

8.3.7 Indemnification. To the fullest extent allowed by law, the SEALS shall indemnify, defend and hold harmless the City and its officials, officers, employees, agents, and volunteers ("**Indemnitees**") from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of the SEALS or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of the SEALS shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises

wholly from the negligence or willful misconduct of the Indemnitees and (2) the actions of the SEALS or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. This indemnification and hold harmless clause, in its entirety, shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply and shall survive the termination of this Agreement.

## **9. TAXES**

This Agreement may create a possessory interest in public property, which is subject to property taxation. In the event that such possessory interest is created, the SEALS agree to be subject to the payment of and to pay property taxes levied on such interest. the SEALS agrees to pay the above and all other lawful taxes, assessments, or charges which at any time may be levied by the State, County, City or any tax assessment levying body upon any interest in this Agreement, or any possessory right which the SEALS may have in or to the Center covered hereby, or the improvements thereon by reason of SEALS's use or occupancy thereof, or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment and property owned by the SEALS in or about the Center.

The SEALS shall comply with all laws, regulations, and ordinances regarding the collection of taxes due a local government agency and otherwise administer the same.

## **10. SIGNS AND ADVERTISING**

No permanent signs, names, placards or advertising matter shall be inscribed, painted or affixed upon the Center without the prior written consent of the Recreation Manager or his/her designee. All signs must conform to the standards of the Pinole Municipal Code.

## **11. BREACH**

A breach shall occur if, after ten (10) days written notice and failure to cure, the SEALS shall fail to perform according to the requirements of this Agreement. If a breach occurs or if a public nuisance or health and safety danger exists at the Center, the City may immediately terminate the Agreement upon written notice to SEALS, take possession of the Center, and the SEALS shall vacate the Center within thirty (30) days from termination unless the Center must be vacated earlier for the public health, safety and welfare. In such event, the SEALS agree to pay all costs incurred by the City in its taking possession of the Center.

A breach shall occur if, after thirty (30) days written notice and failure to cure, the City shall fail to perform according to the requirements of this Agreement. If a breach occurs or if continued operation of the Center is not possible due to the City's inaction, the SEALS may immediately terminate the Agreement upon written notice to the City, relinquish possession of the Center within thirty (30) days from termination. In such event, the SEALS and the City will enter into negotiations for the City to pay fair and reasonable costs and lost profits to the SEALS.

## **12. MISCELLANEOUS PROVISIONS**

### **12.1 Acts of God.**

Neither Party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events or conditions beyond the Party's control

### **12.2 Unenforceable Provisions.**

In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other Party.

### **12.3 Entire Agreement.**

This Agreement constitutes the entire agreement between the parties and there are no conditions, agreements or representations between the parties except as expressed in said document. It is not the intent of the parties to this Agreement to form a partnership or joint venture.

### **12.4 Attachments.**

Where the terms and conditions of this Agreement and any attachments or exhibits hereto conflict, the parties expressly agree that the terms and conditions of this Agreement shall prevail and preside.

### **12.5 Notices.**

Any notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, and addressed as follows:

**The Pinole Seals Club:**

Phil Malgren & Rochelle Muffett  
The Pinole Seals Swim Club  
P.O. Box 516  
Pinole, CA 94564

**To the City:**

City Manager  
City of Pinole  
2131 Pear Street  
Pinole, CA 94564

The address to which notices shall or may be mailed as aforesaid by either party, shall or may be changed by written notice given by such party to the other as hereinbefore provided, but nothing herein contained shall preclude the giving of any notice by personal service.

The Recreation Manager or his/her designee shall be the Agreement Officer and shall receive communications from the SEALS and render decision, unless otherwise stated by this Agreement, on behalf of the City.

## **12.6 Nondiscrimination.**

The SEALS employees and agents shall not segregate or discriminate because of race, religion, color, creed, ancestry, sex, sexual orientation, age, national origin, marital status or physical handicap against any person or group of persons by refusing to furnish such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. SEALS, its employees and agents are also prohibited from establishing or permitting the establishment or any practice or policy involving segregation or discrimination with respect to the use of the Center.

## **12.7 Applicable Law.**

This Agreement is made under and is subject to the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance.

## **12.8 Approvals.**

Approvals required by the City shall not be unreasonably withheld.

## **12.9 Modification and Amendment.**

Notwithstanding any of the provisions of this Agreement, the City and the SEALS may hereafter, by mutual consent, agree in writing to any lawful modification, addition or deletion of the terms and conditions of this Agreement.

## **12.10 Transfer and Assignments.**

No transfer or assignment by the SEALS that affects this Agreement, or of any part thereof or interest therein, directly or indirectly, voluntarily, or involuntary shall be made unless such transfer or assignment is first consented to in writing by the City.

## **12.11 Terms Binding on Successors.**

All terms, covenants, and conditions of this Agreement shall inure to benefit of and be binding upon the successor and assigns of the Parties hereto. The provisions of this paragraph shall not be deemed as a waiver of any of the conditions against assignment hereinbefore set forth.

## **12.12 Time of the Essence.**

Time shall be of the essence in the performance of this Agreement.

## **12.13 Attorney Fees.**

In case the City shall bring suit for action resulting from breach of the terms of this Agreement, the SEALS shall pay to the City reasonable attorneys' fees, which shall be fixed by court.

#### 12.14 Paragraph Titles.

The paragraph titles in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect this document.

#### City of Pinole

#### THE SEALS

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Authorized Seal Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Heather Iopu, City Clerk

\_\_\_\_\_  
Authorized Seal Officer

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
Eric S. Casher, City Attorney

## **EXHIBIT A**

### **Operating Hours Pinole Swim Center Summer 2019**

#### **Public Operating Hours\*:**

See attached Brochure

## EXHIBIT B – PROPOSED BUDGET

### Operational Preview

Summer 2019

		Operational Hours	Staff Hours
Monday	Closed		
Tuesday	12pm - 4pm	4	5
Wednesday	12pm - 4pm	4	5
Thursday	12pm - 4pm	4	5
Friday	12pm - 6pm	6	7
Saturday	1pm - 6pm	5	6
Sunday	1pm - 6pm	3	4
<b>Total</b>			
<b>Hours/Week</b>		<b>26</b>	<b>32</b>

Staff to arrive 30 minutes prior to opening and stay 30 minutes after closing

#### Expenses by Category

##### April 7 - June 17, 2019 (weekend hrs)

	Rate	Hours/Week	Total
Manager	\$ 22.00	12	\$ 264.00
Supervisor	\$ 22.00	12	\$ 264.00
Front Office	\$ 12.08	12	\$ 144.96
Lifeguard #1	\$ 12.08	12	\$ 144.96
Lifeguard #2	\$ 12.08	12	\$ 144.96
Lifeguard #3	\$ 12.08	12	\$ 144.96
<b>Subtotal Expense/Week</b>			<b>\$ 1,107.84</b>
<b>10 Weeks of Operation</b>			<b>\$ 11,078.40</b>

##### June 11 - August 18, 2019 (Tuesday- Sunday)

	Rate	Hours/Week	Total
Manager	\$ 22.00	34	\$ 264.00
Supervisor	\$ 22.00	34	\$ 748.00
Front Office	\$ 12.08	19	\$ 229.52
Lifeguard #1	\$ 12.08	34	\$ 410.72
Lifeguard #2	\$ 12.08	34	\$ 410.72
Lifeguard #3	\$ 12.08	12	\$ 144.96
<b>Subtotal Expense/Week</b>			<b>\$ 2,691.92</b>
<b>10 Weeks of Operation</b>			<b>\$ 26,919.20</b>

Scheduled for F,  
Sa, Su and on call

Scheduled for weekends  
only - on call for the other  
days of the week



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**EXHIBIT B – PROPOSED BUDGET****Operational Preview****Summer 2019****Operational  
Preview****Modified Weekend Hours : August 25 - October 21, 2019**

	Rate	Summer 2019	Total
Manager	\$ 22.00	12	\$ 264.00
Supervisor	\$ 22.00	12	\$ 264.00
Front Office	\$ 12.08	12	\$ 144.96
Lifeguard #1	\$ 12.08	12	\$ 144.96
Lifeguard #2	\$ 12.08	12	\$ 144.96
Lifeguard #3	\$ 12.08	12	\$ 144.96
<b>Subtotal Expense/Week</b>			<b>\$ 1,107.84</b>
<b>9 Weekends of Operation</b>			<b>\$ 9,970.56</b>

**Total Staff Expenses \$ 47,968.16**

June 19 – Oct 21	
Monday	CLOSED
Tuesday	68
Wednesday	68
Thursday	68
Friday	68
Saturday	68
Sunday	68
Weekly Patron Total	408
Admission Fee	\$5
<b>Total Revenue for the Weeks</b>	<b>\$33,320</b>
April 7 – June 17/Aug 25 - Oct 21	
Saturday	68
Sunday	68
Weekly Patron Total	136
Admission Fee	\$5
<b>Total Revenue for the Week</b>	<b>\$680</b>
<b>1<sup>st</sup> 10 weeks of Operation</b>	<b>\$6,800</b>
<b>2nd 10 weeks of Operation</b>	<b>\$20,400</b>
<b>3rd 9 weeks of Operation</b>	<b>\$6,120</b>
<b>Model #1 Season Revenue</b>	<b>\$33,320</b>

**Pinole Swim Center  
Operational Overview  
Summer 2019**

Incremental Expenses

EQUIPMENT	Work Comp Ins	\$ 1,320.00
	Life Guard Uniforms	\$ 300.00
	Advertisement	\$ 500.00
	Misc. Expense	\$ 100.00
	First Aid Supplies	\$ 300.00
OTHER	Insurance	<u>\$ 5,590.00</u>

**Total Incremental Expenses** **\$ 8,110.00**

Total Rec Swim Expense **\$ 47,968.16**

**Total Pool Operations Expenses** **\$ 41,873.08**

**Total Public Swim Revenue** **\$ 33,320.00**

**Net Loss** **(\$ 22,758.00)**

## **EXHIBIT C**

### **POOL RULES AND REGULATIONS**

#### **Pool Rules**

1. Children under the age of 8 must be directly supervised by an adult at all times.
2. No floatation devices allowed in the pool. This includes water wings, life jackets, and suits with floatation sewn into them.
3. NO running, pushing, shoving or dunking.
4. NO rough housing, excessive splashing or hanging on to shoulders and back.
5. Diving in from the diving well only on grass side and only head first. No back flips or other non-front jumps.
6. Lap swimmers must be a minimum of 18 years of age. (Junior lap swimmers may be authorized by SEALS Supervisor and must have card.)
7. Lap swimmers may use kick boards, pull buoys, hand paddles and fins. Adult lap swimmers may use mask and snorkel; otherwise equipment may not be used.
8. NO cut offs or denim. Swimsuits are preferred, shorts and t-shirts are okay. T-shirts can't be excessively large or hinder movement.
9. Swimmers must shower before entering pool.
10. Persons with open sores, wounds rashes or bandages are not allowed in the pool.
11. Food and drink permitted in the picnic and grass area only. All must be in plastic containers, NO glass or breakable objects allowed in the facility.
12. NO alcohol and NO smoking in the facility.
13. Lifeguard has complete and total authority.

#### **Pool Closure**

The management may close the facility without notice due to fecal accident, weather, low usage, or other unforeseen circumstances. If the pool is closed early, no refunds are given. Reopening of the pool following a fecal accident is in accordance with health department requirements and may require pool closure for the remainder of the day. If thunderstorms are present, pool users will be asked to exit the pool and will not be able to reenter until the thunder and lightning has been absent for ½ an hour. If at anytime pool use drops below 20, the pool may be subject to early closure at the direction of the Seals Supervisor.

#### **Swim Lessons (Fee based programs)**

The SELAS may offer swim lessons and other programs at an additional cost. Registration is required. Registration begins on a designated date and generally continues until the first day unless otherwise noted. Payment in full is required at the time of registration. Space is available on a first come first serve basis. Programs are non-refundable and non-transferable unless the program is cancelled or changed by the SEALS. There are no make-ups for missed classes.

#### **Group Use/Facility Rental**

Scheduled group use is offered during the weekend at a fixed rate. Hours and pool availability are defined and scheduled on a reservation basis. Payment must be presented upon reservation. Facility rental outside of these scheduled times must be approved by the SEALS Supervisor and will be charged on an hourly basis. Group must present SEALS Supervisor with a certificate of insurance listing the SEALS and the City of Pinole as additionally insured prior to date of reservation.

Scheduled groups using the facility during Rec Swim will be limited to 40 pool users at a time. Additional chaperones will be required. This is to maintain safety while still allowing the facility to be available to the public.

# ATTACHMENT C

## AMENDMENT TO THE OPERATING AGREEMENT FOR AQUATIC PROGRAM COORDINATION AND FACILITY USE AT THE PINOLE SWIM CENTER BETWEEN THE CITY OF PINOLE AND THE PINOLE SEALS SWIM CLUB

This Amendment to the Service and Use Agreement dated April 1, 2019 (the "Agreement"), between the City of Pinole, a general law city and municipal corporation, ("City") and the Pinole Seals Swim Club ("Seals") (together sometimes referred to as "Parties") is approved as of the date executed below.

**Effect of Amendment.** The terms and conditions of this Amendment are intended by the Parties to modify the Agreement. To the extent there is any inconsistency between the terms of this Amendment and the terms of the Agreement and/or its Appendix, the terms of this Amendment shall control.

### 3. Operating Costs; Budget; Books and Records

**3.5.2 SEALS Budget Responsibilities.** All revenues received from use of the pool shall be submitted to the City by the Seals on a weekly basis. The Seals shall submit a reconciliation of weekly attendance together with the weekly revenue receipts.

The Seals agree to provide a contribution (the "**SEALS Contribution**") to the City in the amount of Seven Thousand Five Hundred Dollars (\$7,500) in the 2019 Swim Season and Two Thousand five Hundred Eight-Seven Dollars and Fifty cents (\$2,587.50) for the 2020 Swim Season as a contribution to the operating revenues of the Center during the Term of this Agreement. The Contribution is not a reimbursable expense under this Agreement.

With the exception of the foregoing, all other terms and conditions in the Services Agreement, dated April 1, 2019, remain in force and effect.

**The Parties have executed this Amendment to the Agreement as of the date signed by the City**

City of Pinole

Contractor

\_\_\_\_\_  
Andrew Murray, City Manager

\_\_\_\_\_  
Pinole Seals Swim Club

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to Form

Attest:

\_\_\_\_\_  
Eric S. Casher, City Attorney

\_\_\_\_\_  
Heather Iopu, CMC, City Clerk

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

# ATTACHMENT D

## SECOND AMENDMENT TO THE OPERATING AGREEMENT FOR AQUATIC PROGRAM COORDINATION AND FACILITY USE AT THE PINOLE SWIM CENTER BETWEEN THE CITY OF PINOLE AND THE PINOLE SEALS SWIM CLUB

This Second Amendment to the Service and Use Agreement dated April 1, 2019 (the "Agreement"), between the City of Pinole, a general law city and municipal corporation, ("City") and the Pinole Seals Swim Club ("Seals") (together sometimes referred to as "Parties") is approved as of the date executed below.

**Effect of Amendment.** The terms and conditions of this Amendment are intended by the Parties to modify the Agreement. To the extent there is any inconsistency between the terms of this Amendment and the terms of the Agreement and/or its Appendix, the terms of this Amendment shall control.

### 3. Operating Costs; Budget; Books and Records

3.5.1 City Budget Responsibilities. The City shall provide a maximum of Seventeen Thousand Nine Hundred and Sixty-Five Dollars and Ninety-Six cents (\$17,965.96) (the "**City Contribution**") toward the reimbursement of all expenses incurred by the SEALS for the operations and management of the Center. A draft budget for the Swim Season is attached as Exhibit B (the "**Budget**") to this Agreement and incorporated herein by this reference.

On the date that this Agreement is signed by both Parties, the City shall provide an advance to the SEALS in the amount of Nine Thousand Five Hundred Dollars (\$9,500) (the "**Advance**") to cover the initial expenditures for operation of the Center.

Thereafter, the SEALS shall submit an invoice for reimbursement of expenses monthly, or bi-weekly (as agreed upon by the Parties) that details line item amounts expended and the items for which they were expended. The first invoice shall also include an accounting for funds expended out of the Advance.

The City shall pay the invoices within 30 days of receipt.

Operating expenses explicitly do not include the SEALS overhead cost or payments made to any regional, state, national or international association. Operating costs do include direct costs related to administration and payroll processing.

Deviation and adjustment from the adopted expenditures Budget shall not be made without the written consent of the Recreation Manager or his or her designee. With the exception of the foregoing, all other terms and conditions in the Services Agreement, dated April 1, 2019, remain in force and effect.

# ATTACHMENT D

**The Parties have executed this Amendment to the Agreement as of the date signed by the City**

City of Pinole

Contractor

\_\_\_\_\_  
Andrew Murray, City Manager

\_\_\_\_\_  
Pinole Seals Swim Club

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to Form

Attest:

\_\_\_\_\_  
Eric S. Casher, City Attorney

\_\_\_\_\_  
Heather Iopu, CMC, City Clerk

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

City of Pinole and Pinole Seals Agreement  
SUMMER SWIM SEASON  
Three (3) Year Analysis

	2018		2019		2020	
	Budget	Actual	Budget	Actual	Budget	Actual
<b>Revenue</b>						
Public Swim	\$ 31,420	\$ 27,975	\$ 33,320	\$ 26,297	\$ 33,320	\$ 9,835
Lap Swim		\$ 912		\$ 1,005		\$ 1,554
Non-Swim		\$ 740		\$ 1,405		\$ 25
Punch Card		\$ 1,332		\$ 1,417		\$ -
Lessons		\$ 4,098		\$ 16,908		\$ -
Rentals/Events		\$ 8,026		\$ 2,945		\$ -
<b>Total Revenues</b>	<b>\$ 31,420</b>	<b>\$ 43,083</b>	<b>\$ 33,320</b>	<b>\$ 49,977</b>	<b>\$ 33,320</b>	<b>\$ 11,414</b>
<b>Expenses</b>						
Staff (Lifeguards, Supervisor)	\$ 34,911	\$ 39,701	\$ 47,968	\$ 48,132	\$ 47,968	\$ 23,341
Supplies	\$ 600	\$ 1,053	\$ 600	\$ 75	\$ 600	\$ 228
Professional Services	\$ 500	\$ 75	\$ 500	\$ 863	\$ 500	\$ 267
Workers Compensation Insur	\$ 711	\$ 518	\$ 1,320	\$ 1,119	\$ 1,320	\$ 1,965
Liability Insurance	\$ 5,590	\$ 5,590	\$ 5,590	\$ 5,394	\$ 5,590	\$ 3,579
Misc. Expenses	\$ 100		\$ 100	\$ 39	\$ 100	\$ -
<b>Total Expenses</b>	<b>\$ 42,412</b>	<b>\$ 46,937</b>	<b>\$ 56,078</b>	<b>\$ 55,621</b>	<b>\$ 56,078</b>	<b>\$ 29,380</b>
<b>Net Income</b>	<b>\$ (10,992)</b>	<b>\$ (3,854)</b>	<b>\$ (22,758)</b>	<b>\$ (5,644)</b>	<b>\$ (22,758)</b>	<b>\$ (17,966)</b>
<b>Attendees</b>	Projected	Actual	Projected	Actual	Projected	Actual
April 7 - June 17	1474	1286	1360	1185	1360	0
June 19 - Aug 18	3618	4465	4080	4264	4080	1419
Aug 25 - Sept. 29	804	468	952	813	816	717
Oct. 5 - Oct 13	402	120	272	78	408	354
<b>Total Attendees</b>	<b>6298</b>	<b>6339</b>	<b>6664</b>	<b>6340</b>	<b>6664</b>	<b>2490</b>







## **CITY COUNCIL REPORT**

**10A**

**DATE: DECEMBER 15, 2020**

**TO: MAYOR AND COUNCIL MEMBERS**

**FROM: ANDREW MURRAY, CITY MANAGER**

**SUBJECT: RECEIVE A REPORT ON TYPES OF FINANCIAL ASSISTANCE THAT  
CITIES ARE PROVIDING TO SMALL BUSINESSES REGARDING  
COVID-19**

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### **RECOMMENDATION**

City staff recommends that the City Council receive a report on types of financial assistance that cities are providing to their small businesses regarding COVID-19, and provide direction to staff.

### **BACKGROUND**

At its meeting of October 20, 2020, the City Council requested a future City Council agenda item on types of financial assistance that other cities are providing to their small businesses to help them address the challenges presented by COVID-19. It had recently been reported that the City of Concord was implementing a new program, using a portion of its Coronavirus Aid, Relief, and Economic Security (CARES) Act funding, through which 130 small businesses would receive \$5,000 grants to cover operating expenses such as rent, bills, payroll, and personal protective and safety equipment.

### **REVIEW AND ANALYSIS**

Consumer behavior has dramatically changed due to the COVID-19 pandemic, particularly in response to the stay-at-home orders. Businesses that provide in-person services that have been deemed nonessential by public health officials, such as restaurants, retail, and personal services, have been severely restricted. As a result, many such businesses have experienced precipitous reductions in their revenues, which has made it difficult for them to cover their expenditures and remain solvent.

According to HdL, the City's sales and property tax consultant, sales tax collections by the City during the second quarter of 2020 (April – June), the most recent quarter for which data is available, were approximately 22% lower than collections during the second quarter of the prior year. This reflects the reduced sales and revenue that businesses in the City generated. As noted above, some business sectors have been particularly hard hit by COVID-19 and the stay-at home orders. The table below illustrates the sectors that experienced the greatest decrease in sales tax revenue year-over-year, as well as the number of such businesses in the City.

<b>Business type</b>	<b>Year-over-year change</b>	<b>Number in Pinole</b>
Family apparel	-71.1%	10
Electronics/appliance stores	-66.4%	15
Contractors	-64.0%	8
Home furnishings	-63.8%	8
Sporting goods/bike stores	-50.6%	7
Service stations	-49.7%	8
Casual dining	-48.7%	37
Art/gift/novelty stores	-46.3%	8

Note that not all business sectors experienced a year-over-year decline in sales and revenues during the second quarter of 2020. The following sectors reported double-digit increases in sales taxes year-over-year: building materials (66.9%); medical/biotech (45.6%); grocery stores (21.6%); and discount department stores (11.2%).

In general, regardless of sector, smaller businesses have fewer assets than do larger businesses. Therefore, they are at greater risk of insolvency when expenditures exceed revenues. In Pinole, large businesses account for most of the economic activity and sales and business license tax revenue. The fifty largest businesses in the City, almost all of which are chains, including some locally-owned franchises, generate approximately 80% of the sales tax revenue. However, small businesses do provide many other benefits to the community. The City's business license information indicates that there are approximately 1,060 businesses operating in the City, slightly over half of which are very small businesses, with five or fewer employees.

The federal government, State, and County have each created programs to aid businesses impacted by COVID-19. Below is a list of the most prominent programs, some of which provide grants, whereas others provide loans that must be repaid.

#### County

- Layoff Aversion Grant Program
- Business Assistance Call Center and Human Resources Call Center

#### State

- California Rebuilding Fund
- Small Business Hiring Credit Fund
- Pandemic Unemployment Assistance

#### Federal

- Paycheck Protection Program
- Economic Injury Disaster Loan Program

The County has created a one-stop Business Assistance Call Center to inform business owners of the variety of forms of assistance available across all levels of government.

Despite the many programs created to provide businesses with assistance, some businesses will experience lost revenue or increased costs that will threaten their solvency. In recognition of the tremendous contribution that small businesses make to communities, the significant challenges many of them are facing due to COVID-19, and the fact that some will face a funding gap despite federal, State, and County assistance, some cities have created their own small business assistance programs.

Of the nineteen cities in Contra Costa County, seven have created their own COVID-19 business assistance programs. The seven are primarily the County's larger cities, although two smaller cities also created programs (Concord, Antioch, San Ramon, Pittsburg, Brentwood, Pleasant Hill, and Moraga). The amount devoted by the cities to their programs averaged 9% of the cities' CARES Act funding. (For comparison, 9% of Pinole's CARES Act funding of \$240,831 would amount to approximately \$22,000.) The assistance usually took the form of modest grants to small businesses, through a program administered either by the city, a nonprofit organization (such as a chamber of commerce), or in collaboration between the two.

An example from a smaller city, Moraga created a Small Business Relief Program to which it has committed \$30,000 to provide grants ranging from \$500 to \$2,000 to small businesses for reimbursement. Some program parameters include that businesses must operate out of a storefront, have between three and twenty employees, and cannot be a chain store or franchise. There are more eligible businesses than the program budget can fund, so grants are awarded on a first come, first served basis.

Another example from a smaller city, Pleasant Hill allocated \$50,000 toward grants of up to \$2,000 to businesses for the purchase or rental of outdoor furniture and of up to \$1,500 for advertising and marketing expenses.

Were the City Council to decide to proceed with a COVID-19 small business assistance program, the City would need to determine program parameters, such as whether financial assistance would take the form of grants or loans, which types and sizes of businesses would be eligible, what amount of financial assistance would be provided, and how the City would award assistance if the demand for assistance exceeded the funding allocated. City staff has not conducted a gap analysis to determine which businesses are in greatest need, nor what type of assistance might provide the greatest benefit to businesses and the local economy overall. Were the City Council to decide to proceed with a program, City staff would conduct research and outreach and to the business community and propose a program design for City Council's consideration.

It is worth noting that chambers of commerce in many communities have played a significant role in supporting small businesses during COVID-19. The City has not been actively engaged with the local chamber of commerce, the Bay Front Chamber, for some time. The Chamber has recently approached the City about potentially becoming a member of the Chamber (the cost for annual membership and sponsorship ranges

from \$500 to \$2,500) and sponsoring one of the Chamber's key marketing initiatives, the NorthShore Trail Guide (\$1,500 to sponsor the 2021 edition). The City Council can determine whether to become a member of the Chamber and sponsor the NorthShore Trail Guide 2021 as part of its deliberation regarding COVID-19 support to local businesses or at a later time.

### **FISCAL IMPACT**

City staff presented a report to City Council on November 3, 2020 regarding expenses for which the City has sought CARES Act reimbursement. The City has already requested reimbursement for the full amount of its CARES Act allocation, \$240,831, for personnel, supplies, and professional services. Therefore, the City does not have any CARES Act funding to devote to a new business assistance program.

The City does have unassigned General Fund balance that the City Council could appropriate for business assistance. The current five-year forecast for the General Fund, updated in October 2020, anticipates that the City will have approximately \$3.9 million of unassigned General Fund balance at the end of fiscal year (FY) 2020-21.

### **ATTACHMENTS**

None