



# CITY COUNCIL REPORT

9A

**DATE:** MAY 21, 2019

**TO:** MAYOR AND COUNCIL MEMBERS

**FROM:** MICHELLE FITZER, CITY MANAGER

**SUBJECT: CONSIDERATION OF THE LIBRARY MAINTENANCE AND SERVICE AGREEMENT BETWEEN THE CITY OF PINOLE AND CONTRA COSTA COUNTY**

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## **RECOMMENDATION**

It is recommended that the City Council consider the Library Maintenance and Service Agreement between the City of Pinole and Contra Costa County.

## **BACKGROUND**

Previously the Council discussed the possibility of the City providing funding to the County to increase the hours of operation at the Pinole Library from 24 to 35 hours per week. The initial discussion occurred on October 16, 2018, followed by November 13, 2018, and finally December 18, 2018. At the December 18<sup>th</sup> meeting a Council majority directed the City Manager to include funding in the FY 2019/20 budget to reimburse Contra Costa County for facility expense costs at the Pinole Library in exchange for the Library to be operated for 35 hours per week commencing on July 1, 2019. The City Manager was also authorized to work with the County staff on an Agreement for an annual reimbursement of facility costs.

## **REVIEW & ANALYSIS**

A draft Agreement was received from Contra Costa County Librarian Melinda Cervantes on April 5, 2019. Staff and the City Attorney's Office provided comments on April 11, 2019. A few more rounds of revisions occurred over the next five (5) weeks, concluding with the Agreement attached hereto for Council consideration. Key components of the Agreement are:

- **TERM:** The Agreement shall run for 1 year, commencing on July 1, 2019 and ending on June 30, 2020, and will automatically renew on a yearly basis unless written notice is given by either party of their intent to terminate the agreement.
- **TERMINATION:** The Agreement may be terminated by either party at any time by giving the other party written notice at least one year prior to the

proposed termination date; provided, however, if the City experiences a substantial budget shortfall, as determined by the City, due to circumstances beyond its reasonable control, the City may terminate this agreement by providing the County with a 120-day written termination notice.

- HOURS OF OPERATION: In exchange for the City paying the Maintenance Costs in accordance with this agreement, the County shall perform Library Services at the Library for that number of hours equal to Base Hours (currently 35).
- COST: The Maintenance Costs for the Fiscal Year beginning July 1, 2019 is \$138,284. This amount will be modified annually to reflect the County's actual costs.
- PAYMENTS: Payments are to be made quarterly, following receipt of an invoice from the County.

One key component that warrants specific discussion is Section 6.B. We initially added this section to speak to what happens if the County defaults and reduces the hours of operation at the Library. The language the County will agree to states:

County Default.

1. Default. If the Base Hours provided to the City by the County in any 30-day period is less than the Countywide Base Hours and no City default exists pursuant to Section 6.A, it is a default under this agreement; provided, however, no County default will exist if the Base Hours are less than the Countywide Base Hours as a result of circumstances beyond the County's reasonable control.
2. Remedy. Upon the occurrence of a default by the County, the City will not be required to pay the full Maintenance Costs for the period of time that the Base Hours were less than the Countywide Base Hours. The reduction in the amount the City will be required to pay for Maintenance Costs will be equal to the result obtained by multiplying the Maintenance Costs for such period by the Payment Reduction Factor.

The reason I believe it is important to discuss this provision in detail is because there is likely a perception that the City is paying the County for facility maintenance costs to ensure that the Pinole Library will be open for 35 hours per week. In the event that the County determines that they need to reduce "Base Hours", which are currently 35 hours per week across all County libraries, they can do so and the City

would still be required to pay for facility maintenance costs. Now, two points to consider: 1) the County feels it is very unlikely that a reduction in Base Hours would occur, and if it does they believe it would be after discussion with all of the cities who receive Library services from the County; and 2) that the facility maintenance costs would go down if the Library were open fewer hours. But I wanted to bring this to the Council's attention, because I want it to be clear to Council and the Community that the City paying for facility maintenance costs does not guarantee 35 hours per week. My recollection of the discussions at prior Council meetings left me with the impression that there may be that understanding, so it is important that we all are aware of the facts.

Should Council wish to approve the Agreement, as resolution is attached.

### **FISCAL IMPACT**

The County has quoted \$138,284 as the cost for FY 2019/20. This amount has been included in the draft operating budget.

### **ATTACHMENTS**

- A: Resolution
- B: Library Maintenance and Service Agreement between the City of Pinole and Contra Costa County

**RESOLUTION NO. 2019-\_\_**

**A RESOLUTION OF THE CITY OF PINOLE, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, APPROVING THE LIBRARY MAINTENANCE AND SERVICE AGREEMENT BETWEEN THE CITY OF PINOLE AND CONTRA COSTA COUNTY**

**WHEREAS**, previously the Council discussed the possibility of the City providing funding to the County to increase the hours of operation at the Pinole Library from 24 to 35 hours per week; and

**WHEREAS**, the initial discussion occurred on October 16, 2018, followed by November 13, 2018, and finally December 18, 2018; and

**WHEREAS**, at the December 18<sup>th</sup> meeting a Council majority directed the City Manager to include funding in the FY 2019/20 budget to reimburse Contra Costa County for facility expense costs at the Pinole Library in exchange for the Library to be operated for 35 hours per week commencing on July 1, 2019; and authorized the City Manager to work with the County staff on an Agreement for an annual reimbursement of facility costs; and

**WHEREAS**, the City Manager and the City Attorney’s Office has worked with the County Librarian and County Counsel to draft an Agreement; and

**WHEREAS**, the County has quoted \$138,284 as the cost for FY 2019/20, and this amount has been included in the FY 2019/20 draft operating budget.

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

Section 1. Approve the Library Maintenance and Service Agreement between the City of Pinole and Contra Costa County; and

Section 2. Authorize the City Manager to execute the Agreement.

**PASSED AND ADOPTED** this 21<sup>st</sup> day of **May, 2019**, 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 21<sup>st</sup> day of May, 2019.

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Heather Iopu, CMC  
City Clerk

**LIBRARY  
MAINTENANCE AND SERVICE  
AGREEMENT**

This library maintenance and service agreement is dated July 1, 2019 (the “**Effective Date**”), and is between the CITY OF PINOLE, a California municipal corporation (the “**City**”), and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the “**County**”).

**Recitals**

- A. The County is the owner of the real property located at 2935 Pinole Valley Road, Pinole, CA 94564 (the “**Property**”).
- B. The Property has been improved with a building, a parking lot and landscaping. The building is the site of the Pinole Library (the “**Library**”). The County operates the Library as a public library that lends books and other media to the public and offers programs to the public.
- C. The City and the County agree that the presence of a public library in a community enhances the quality of life in that community. The City and the County therefore desire to work cooperatively to permit the County to operate the Library as a public library. Toward this end, the City desires (i) to contribute to the cost of maintaining the Library in exchange for receiving Library Services at the Library for Base Hours, and (ii) to pay for the cost of Library Services made available at the Library through Extra Hours.

The parties therefore agree as follows:

**AGREEMENT**

1. **DEFINITIONS.** The following terms have the following meanings:

“**Actual Hours**” means the number of hours of Library Services that the County will provide each week in a Fiscal Year at the Library and is the sum of Base Hours and Extra Hours.

“**Agreement Supplement**” means a supplement to this Agreement in substantially the form of Exhibit A – Form of Agreement Supplement.

“**Base Hours**” means the number of hours of Library Services that the County will provide each week in a Fiscal Year at the Library, as shown on each Agreement Supplement in accordance with Section 5 below.

“**Countywide Base Hours**” means the number of hours of Library Services the County provides each week in a Fiscal Year to County-operated City-owned libraries.

“**Extra Hours**” means the number of hours of Library Services that the City elects to obtain from the County each week at the Library that are in excess of Base Hours. The City is responsible for the cost of Extra Hours.

“**Fiscal Year**” means a twelve-month period beginning July 1.

“**Librarian**” means the person designated by the County as the County Librarian.

“**Library Services**” includes lending books and other media to the public, offering programs to the public, and providing collection management and technical services in the course of operating the Library. Except as otherwise provided herein, Library Services does not include Maintenance Costs.

“**Maintenance Costs**” means the cost of maintaining the Library, as reasonably determined by the County, and includes the cost of landscaping, pest control, utilities, custodial services and routine maintenance.

“**Payment Reduction Factor**” means 1 minus a fraction, the numerator of which is the number of Base Hours provided by the County to the City over the relevant period of time and the denominator of which is the Countywide Base Hours over the same period of time.

2. **TERM.** The “**Initial Term**” of this agreement begins on the Effective Date and ends on June 30, 2020.
  - A. Automatic Renewal. This agreement will automatically renew on a yearly basis unless written notice is given by either party of their intent to terminate the agreement at least one year in advance in accordance with Section 2.B, Termination, below. Each annual renewal period is a “**Renewal Term**.” Each Renewal Term will automatically commence on the day following the last day of the prior Term. Upon commencement of a Renewal Term, the “Term” of this agreement will be deemed to mean the Initial Term and each Renewal Term.
  - B. Termination. Either party may terminate this agreement at any time by giving the other party written notice at least one year prior to the proposed termination date; provided, however, if the City experiences a substantial budget shortfall, as determined by the City, due to circumstances beyond its reasonable control, the City may terminate this agreement by providing the County with a 120-day written termination notice. In the event of termination, (i) the County shall discontinue invoicing the City and the City will not be required to pay for Library Services provided after the termination date, and (ii) the County shall reduce the number of hours the Library is operated to that number that leaves the County indifferent to the City’s reduced contribution to Maintenance Costs, even if such reduction results in the closure of the Library.
3. **CONSIDERATION – BASE HOURS.** In exchange for the City paying the Maintenance Costs in accordance with this agreement, the County shall perform Library Services at the Library for that number of hours equal to Base Hours.

4. **CONSIDERATION – EXTRA HOURS.** In exchange for the City paying for the cost of Extra Hours, as such costs are determined by the County, the County shall perform Library Services at the Library for the number of Extra Hours determined by the City and the County in accordance with Section 5.C, City Election; Extra Hours, below.
5. **OPERATIONS: HOURS; COSTS.**
- A. **Initial Period.** For the Initial Term (i) the number of Base Hours the County will provide, (ii) the number of Extra Hours the City elects to obtain from the County, (iii) the resulting number of Actual Hours, and (iv) the cost to the City for Maintenance Costs and Extra Hours (such costs, the “**City’s Obligation**”) are set forth in Agreement Supplement No. 1, which supplement is substantially in the form of Exhibit A.
- B. **Annual Modifications.** For each Renewal Term, the Librarian will provide an Agreement Supplement to the City in substantially the form of Exhibit A by March 31 of each year. The Agreement Supplement will set forth (i) the number of Base Hours the County will provide in the upcoming Fiscal Year, (ii) the number of Extra Hours of Library Service the County anticipates that the City will elect to obtain from the County at the Library in the upcoming Fiscal Year (in the absence of more current information from the City, the County will assume the number of Extra Hours in the upcoming Fiscal Year will be equal to the number of Extra Hours then in effect), (iii) the resulting number of Actual Hours during which Library Services will be conducted at the Library in the upcoming Fiscal Year, and (iv) the cost of the City’s Obligation.
- C. **City Election: Extra Hours.** Within 60 days of receiving the Agreement Supplement, the City shall notify the Librarian in writing if it intends to modify the number of Extra Hours at the Library in the upcoming Fiscal Year. Such modification may be based on fiscal or other considerations identified by the City.
1. **Change in Extra Hours from Prior Fiscal Year.** If the County receives a notice modifying the number of Extra Hours desired in the upcoming Fiscal Year within the time allotted, the parties shall use good faith efforts to finalize a revised Agreement Supplement for the upcoming Fiscal Year before the July 1 start of that Fiscal Year. If the City fails to make a final determination regarding the number of Extra Hours before the start of the upcoming Fiscal Year, the Agreement Supplement issued by the Librarian for the upcoming Fiscal Year will be effective until the City makes its final determination and a revised Agreement Supplement for that Fiscal Year is executed. The final, revised, Agreement Supplement will be effective upon its execution by the County and the City.
2. **No Change in Extra Hours from Prior Fiscal Year.** If the County does not receive a notice modifying the number of Extra Hours desired in the upcoming Fiscal Year within the time allotted, the County and the City shall each execute the original Agreement Supplement issued by the Librarian for the upcoming Fiscal year, which Agreement Supplement will become effective on July 1 of the Fiscal Year to which it applies.





To County: Melinda Cervantes, County Librarian  
Contra Costa County Library  
777 Arnold Drive, Suite 210, Martinez, CA 94553  
Phone: (925) 608-7700  
Facsimile: (925) 608-7761

Either party may at any time designate in writing a substitute address for that set forth above, and thereafter notices are to be directed to such substituted address. If sent in accordance with this Section, all written notices will be deemed effective (i) upon confirmed facsimile transmission, (ii) the next business day, if sent by overnight courier, and (iii) three days after being deposited in the United States Postal system.

- B. Governing Law. The laws of the State of California govern all matters arising out of this agreement.
- C. Severability. In the event that any provisions of this agreement are held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of this agreement will not in any way be affected or impaired.
- D. Entire Agreement. Neither party has relied on any promise or representation not contained in this agreement. All previous conversations, negotiations and understandings are of no further force or effect.

[Remainder of Page Intentionally Left Blank]

- E. Construction; Modification. This agreement is not to be construed as if it has been prepared by one of the parties, but rather as if both parties have prepared it. This agreement may be modified only by a writing signed by both parties.

The parties are executing this agreement as of the date set forth in the introductory paragraph.

**COUNTY**

COUNTY OF CONTRA COSTA, a  
political subdivision of the State of  
California

By: \_\_\_\_\_  
Melinda S. Cervantes  
County Librarian

**CITY**

CITY OF PINOLE, a  
municipal corporation of the State of  
California

By: \_\_\_\_\_  
Michelle Fitzer  
City Manager

**APPROVED AS TO FORM:**

SHARON L. ANDERSON, COUNTY COUNSEL

By: \_\_\_\_\_  
Kathleen M. Andrus  
Deputy County Counsel

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

**EXHIBIT A**

**Form of Agreement Supplement**

AGREEMENT SUPPLEMENT No. 1

This Agreement Supplement No. 1 is dated July 1, 2019 and supplements the Library Maintenance and Service Agreement dated July 1, 2019, between the City of Pinole, a municipal corporation of the State of California (the “**City**”), and the County of Contra Costa, a political subdivision of the State of California (the “**County**”).

Unless otherwise defined herein, capitalized terms have the meanings given to such terms in the Lease.

1. In exchange for the payment of the Maintenance Costs by the City, the number of Base Hours to be provided by the County in the Fiscal Year beginning July 1, 2019, is 35.
2. The number of Extra Hours to be provided in the Fiscal Year beginning July 1, 2019 is 0.
3. The number of Actual Hours to be provided in the Fiscal Year beginning July 1, 2019 is 35.
4. The Maintenance Costs for the Fiscal Year beginning July 1, 2019 is **\$138,284**.
5. The cost of the Extra Hours for the Fiscal Year beginning July 1, 2019 is \$0.
6. The City’s Obligation for the Fiscal Year beginning July 1, 2019 is **\$138,284**.
7. This Agreement Supplement No. [1] is effective in accordance with the terms of the Library Maintenance and Service Agreement.

**COUNTY**

COUNTY OF CONTRA COSTA, a political subdivision of the State of California

By: \_\_\_\_\_  
Melinda S. Cervantes  
County Librarian

**CITY**

CITY OF PINOLE, a municipal corporation of the State of California

By: \_\_\_\_\_  
Michelle Fitzer  
Pinole City Manager