

# ADMINISTRATIVE REPORT

**DATE:** OCTOBER 20, 2016

TO: MAYOR AND CITY COUNCIL

**BEN REYES, CITY ATTORNEY** 

FROM: MICHELLE FITZER, CITY MANAGER

#### PLACES TO BE

Date and Time	Event	Location
Monday, October 24, 2016 7:00 pm	Planning Commission Meeting	City Council Chamber 2131 Pear Street
Tuesday, November 1, 2016 6:00 pm	City Council Meeting	City Council Chamber 2131 Pear Street
Tuesday, November 18, 2016 6:00 pm	City Council Meeting	City Council Chamber 2131 Pear Street

#### • HALLOWEEN CARNIVAL IN FERNANDEZ PARK – OCTOBER 29<sup>TH</sup>, 1 PM TO 5 PM

The City of Pinole Recreation Department is pleased to announce the 2016 Halloween Carnival scheduled for Saturday, October 29<sup>th</sup>. Everyone is welcome! Bounce houses, face painting, balloon animals, carnival games, and music. Come dressed up in your Halloween costume for the parade that starts at 3:30 pm. For more information or to volunteer please, contact Ally Renshaw at (510) 724-9004 or <a href="mailto:youth@ci.pinole.ca.us">youth@ci.pinole.ca.us</a>. See the attached flyer.

#### • <u>CONTRA COSTA COLLEGE STUDENT VETERANS RESOURCE CENTER,</u> THURSDAY NOVEMBER 10<sup>TH</sup>, 11AM TO 1:00PM

Grand Opening & Veterans Day Celebration join us for lunch and activities as we dedicate the new Student Veteran Resource Center, honor student, faculty and staff. See attached flyer for more details.

## • <u>VETERANS DAY MEMORIAL AND FLAG RETIREMENT CEREMONY – NOVEMBER 11<sup>TH</sup>, 11 AM TO NOON</u>

The Pinole Historical Society and the City of Pinole invite you to attend the 9<sup>th</sup> Annual Veterans Day festivities at Fernandez Park. Please join in to honor Veterans, past and present. See attached flyer for more details.

• <u>VINO AND CANVAS EVENT AT THE PINOLE YOUTH CENTER –</u> NOVEMBER 12<sup>TH</sup>, 6:30 PM – 9:30 PM

The Pinole Youth Center is pleased to announce the 1<sup>st</sup> annual Vino and Canvas Fundraiser scheduled for Saturday, November 12<sup>th</sup>. Vino and Canvas invites adults to enjoy a glass of wine while painting a beautiful masterpiece. Tickets on sale now at the Pinole Youth Center. For more information or to volunteer please, contact Ally Renshaw at (510) 724-9004 or youth@ci.pinole.ca.us

#### ITEMS OF INTEREST

• <u>POLICE OFFICERS ARE WEARING PINK PATCHES FOR BREAST CANCER</u>

AWARENESS MONTH

Pinole Police Officers are wearing pink patches for the month of October to promote breast cancer awareness. You may see pink t-shirts under the Officer's uniforms as well. There are a limited number of Police patches available for purchase by patch collectors. The cost is \$5. Please contact Beth Bartke in the Police Chief's office (510-724-8955) to purchase a patch.

October is also Domestic Violence Awareness Month. Our friends at STAND! For Families Free of Violence continue to work to end the cycle of family violence for families in Contra Costa County.





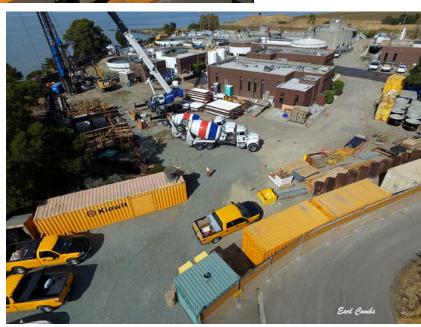
# • <u>SETTLEMENT AGREEMENT REACHED WITH SPECIAL DISTRICT SERVICES</u> (SDS)

The City has reached a negotiated settlement with SDS regarding errors in a prior year's sewer rate calculation. Following a mediation session and direction from the City Council the settlement was approved at \$140,000, which recovers most of the City's revenue loss due to the error. A copy of the Settlement Agreement is attached.

#### • PINOLE HERCULES WATER POLLUTION CONTROL PLANT UPGRADE

Progress continues to be made on the Pinole Hercules Water Pollution Control Plant Upgrade Project. Below are the latest photos provided to the City by one of our residents – thank you Mr. Combs. Construction remains on schedule with completion expected in December 2018.





#### STARBUCKS, SPROUTS, RETAIL SHOP SPACE CONSTRUCTION

These construction projects are also moving along. Starbucks should be open soon. Sprouts is likely looking at an opening after the first of the year. Thank you again to Mr. Combs for the below photos.





#### PINOLE VALLEY HIGH SCHOOL CONSTRUCTION PROJECT STATUS

WCCUSD has provided the latest 3-week look ahead construction schedule, attached for reference.

#### • SWEEPER SCHEDULE INTERRUPTED BY EQUIPMENT BREAKDOWN

The City's sweeper has reached the age of 21 years. The typical service life of a municipal sweeper is 10 years. The City has worked diligently to extend the life of the sweeper to keep our overall street sweeping costs down. Several weeks ago as we commenced the September sweeping schedule, the sweeper broke down. We are sending it to a specialty mechanic in Tracy to be assessed and repaired, if it is possible. As soon as, as the sweeper is repaired, we will place it into service to recommence the sweeper routes where it left off assuming it is repairable.



#### CONTRA COSTA COUNTY VOTING DROP-OFF BOXES

Residents can save postage and time with this expanding vote-by-mail program.

Contra Costa residents will find it easier to vote in the upcoming November 8<sup>th</sup> Election, as the Contra Costa Elections Office once again partners with local agencies to provide convenient "CoCo Vote-N-Go" drop off locations, prior to and on Election Day.

Voters will find the drop-off boxes at all Contra Costa City Halls and the County Administration Building, located at 651 Pine St. in Martinez.

There are six new drop-off locations in Contra Costa County for the November 2016 election: the Discovery Bay Community Center, the Kensington Library, the El Sobrante Library, the Crockett Library, the Ygnacio Valley Library and the Dougherty Station Library.

#### CONTRA COSTA COUNTY HEALTH REQUESTS YOUR INPUT

The Contra Costa County Environmental Health Division is requesting public input in the issue of prescription medication disposal. We received the below message:

The misuse of prescription medication has become a serious public health issue in Contra Costa County and across the nation. We need your input to help identify the best methods of disposing unused, expired or unwanted, and left-over prescription medication. If you are an adult resident of Contra Costa County, please take a moment to complete our survey on prescription drug disposal options.

#### We want your input!

#### https://www.surveymonkey.com/r/Contra\_Costa\_Prescription\_Drug\_Disposal\_Survey

#### ADVISORY BOARDS VACANCIES

Staff will be inviting application for vacancies on various City approved Advisory Boards. Currently, there are three (3) vacancies for the Community Services Commission, one (1) vacancy on the Traffic and Pedestrian Safety Committee (TAPS), and a vacancy for a representative and alternate for the Contra Costa Library Commission.

Notices of vacancies are posted on the City's Website, Cable services, and in the City Hall lobby. If you aware of any citizens who are interested in serving their community as a Board member please have them apply at City Hall.

#### • CITIZENS' BOND OVERSIGHT COMMITTEE (CBOC) VACANCY

The West Contra Costa Unified School District is seeking Pinole residents interested in serving on the School's Citizens' Bond Oversight Committee. There is currently one (1) position open which is for a two (2) year term.

The purpose of the Committee is to inform the public concerning the expenditures and uses of bond revenues. The Committee's legal charge is to actively review and report on the expenditures of taxpayer's money for school construction.

To apply go to the CBOC website <a href="http://www.wccusd-bond-oversight.com">http://www.wccusd-bond-oversight.com</a>, select "Join the CBOC Team", complete and submit the application and supporting documents. For more Information, call or email Anton Jungherr, Secretary CBOC, at (510) 697-7212 (cell) or <a href="mailto:jungherr3@aol.com">jungherr3@aol.com</a>

Appointments will be made by the Board of Education, West Contra Costa Unified School District.



Saturday, October 29th, 1:00-5:00pm Fernandez Park, Pinole



\$2 JUMPERS

\$2 FACE PAINTING \$2 BALLOONS

\$5 MEGA PASS

Includes unlimited jumper pass, 1 face painting & 1 balloon



Come and enjoy FREE music, kids crafts, pumpkin patch, & costume parade!

Parade starts at 3:30, all ages welcome!

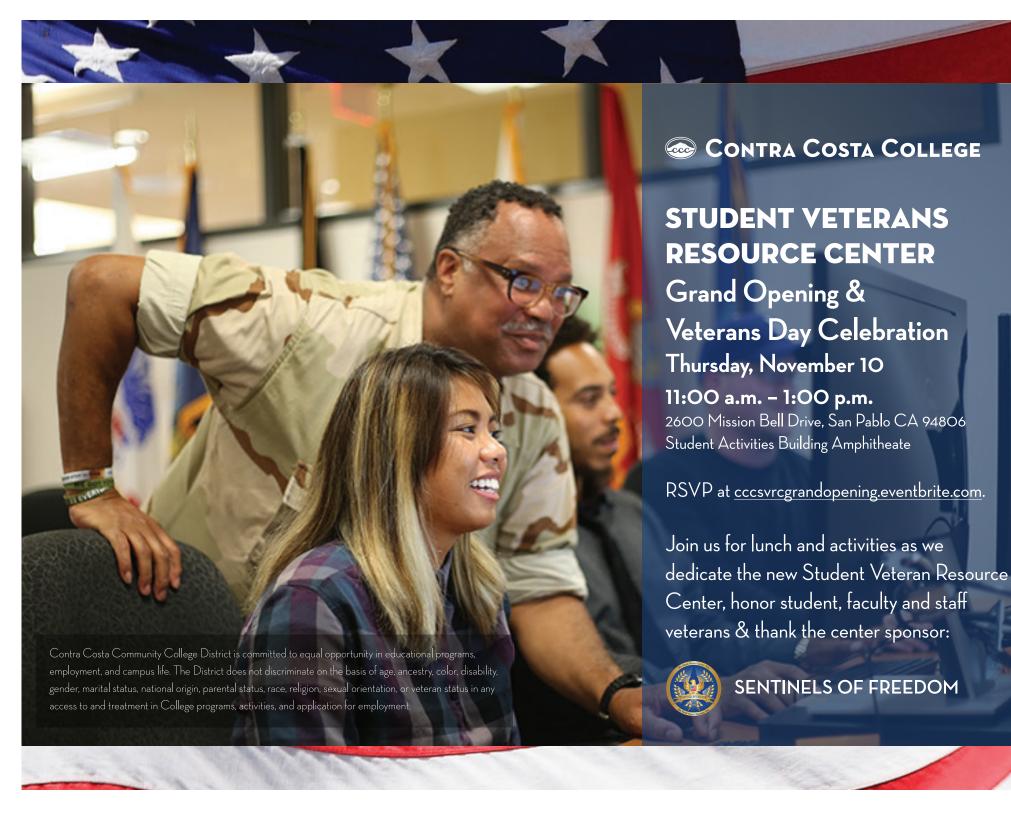
### All proceeds benefit Pinole youth



BROUGHT TO YOU BY THE PINOLE RECREATION

DEPARTMENT AND THE PINOLE YOUTH FOUNDATION





The Pinole Historical Society
and the
City of Pinole
invite you to participate in the
9th annual

VETERANS DAY MEMORIAL AND
FLAG RETIREMENT CEREMONY
Eridey Nevember 11, 2016

Friday, November 11, 2016 11 a.m.-noon, Fernandez Park, Pinole

Please join us as we honor our veterans, past and present, living and deceased.

To donate a flag for the retirement ceremony, please call (510) 724-9507 or e-mail info@PinoleHistoricalSociety.org.

For more information, contact the Pinole Historical Society www.PinoleHistoricalSociety.org info@PinoleHistoricalSociety.org

Pinole **Historical**Society



# Vino & Canvas Fundraiser

The Pinole Youth Center would like to celebrate their 1st annual fundraiser of art and fun with the community.

Vino & Canvas invites ADULTS to enjoy a glass of wine, while painting a beautiful masterpiece. Tickets on sale NOW at the Pinole Youth Center

Date: 11/12/2016

Time: 6:30pm -9:30pm

Tickets \$30

Pinole Youth Center 635 Tennent Ave Pinole CA 94564

Contact: 510-724-9004 youth@ci.pinole.ca.us

#### SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made and entered into by and between the CITY OF PINOLE ("CITY"), and SPECIAL DISTRICT SERVICES ("SDS") (together, referred to herein as the "Settling Parties," or individually as a "Settling Party").

#### **RECITALS**

- A. On or about March 6, 2012, the CITY and SDS entered into an Consulting Services Agreement (the "Agreement") whereby SDS agreed to, among other things, manage the process by which sewer user fees were added to the property tax bills for collection by the County (the "Services").
- B. On or about October 2014, the City received a complaint from a commercial customer that its annual sewer fee had doubled without any appreciable change in usage. As a result of this complaint and others, City staff calculated that in 2013 SDS under-billed approximately 130 commercial customers resulting in a loss of revenue of \$160,000. In March 2016, following attempts to informally resolve the matter with representatives from SDS, the CITY tendered a formal claim to SDS' carrier detailing the damages suffered by the City (the "Claim").
- C. On September 6, 2016, SDS and the City participated in a mediation session with the Honorable Jack Komar though JAMS. As a result of the mediation, the Settling Parties now desire and intend to settle the Claim, and as between them, and all matters arising from or in any way relating to the Agreement, the Services, and all matters now existing or which may exist in the future relating to any of the foregoing.

#### **AGREEMENT**

NOW, THEREFORE, the Parties agree as follows:

#### 1. **EFFECTIVE DATE**

This Settlement Agreement shall have an Effective Date which shall be the later of the date on which CITY and SDS signs this Settlement Agreement.

#### 2. PAYMENTS AND OBLIGATIONS

2.1 SDS shall pay to CITY the sum of one hundred and forty thousand dollars (\$140,000.00) (the "Settlement Sum"). No later than ten business days after the Effective Date of the Agreement, SDS shall transmit to the CITY a check made payable to the "City of Pinole" in the amount of the Settlement Sum. Time is of the essence for all payment terms in this Settlement Agreement. CITY and SDS shall cooperate as necessary to achieve the prompt release of payment, and execute all documents required for that purpose.

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- 2.2 Except for the obligations imposed by this Settlement Agreement the mutual releases in this Settlement Agreement shall take effect on the Effective Date. CITY's defense and indemnity obligations under Paragraph 2.3 herein shall take effect upon delivery of the Settlement Sum as called for under the Agreement.
- 2.3 CITY shall defend and indemnify SDS, its officers, and employees, against any existing claims, causes of action, and related expenses and costs thereof arising out of or related to the Services.
- 2.4 SDS shall reasonably cooperate with CITY, if asked, with any claim the CITY may have against any insurance carrier, in connection with the Services.

#### 3. RELEASES

3.1 <u>Mutual Release Between the Settling Parties.</u> In consideration for SDS' payment of the Settlement Sum, and for other valuable consideration, receipt of which is hereby acknowledged, and except as to rights, remedies, and obligations created by this Settlement Agreement, each Settling Party, on its own behalf and on behalf of its respective and/or related agencies, divisions, parents, affiliates, subsidiaries, corporate or civic officers and directors, partners, employees, agents, city council, predecessors, successors, assigns, sureties, and insurers, hereby generally release and discharges the other Settling Party and its respective agencies, divisions, parents, affiliates, subsidiaries, corporate or civic officers and directors, employees, agents, city council, predecessors, successors, assigns, sureties, insurers, from, and relinquish, extinguish and waives any and all claims, disputes, demands, liabilities, controversies, legal actions, lawsuits, causes of action, damages, costs, expenses, and attorney fees of any kind or nature whatsoever, whether legal or equitable, in tort or in contract, actual or contingent, asserted or un-asserted, that either Settling Party ever had or now has, for, or arising out of, the Services or the Claim, whether actual or alleged, asserted, or which could have been asserted, and whether suspect or unsuspected.

#### 4. RELEASE OF UNKNOWN CLAIMS

4.1 It is expressly agreed and understood by the Settling Parties that the releases contained herein include any and all claims, demands, actions, causes of action, rights, remedies, debts, liabilities, obligations and defenses of every kind, nature and description whatsoever, whether now known or unknown, arising out of or relating to the Services. The Settling Parties, and each of them, acknowledge that they have had explained to them by their attorneys, and that they are familiar with, Section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties, and each of them, expressly waive and relinquish all rights and benefits which they have, had or may have under Section 1542 of the Civil Code and any and all similar laws of any other jurisdiction arising out of or relating to the Services. The only exception to their release are the exceptions and obligations imposed by this Settlement Agreement.

#### 5. MISCELLANEOUS TERMS

- 5.1 No Admission of Liability. This Settlement Agreement represents the settlement of disputed claims and does not represent any admission of liability on the part of any Settling Party hereto, each of which expressly denies such liability.
- 5.2 Attorney Fees and Costs. The Parties agree that they will each bear responsibility for their own attorney fees, expert and consultant fees, and other litigation costs, except as otherwise provided herein.
- 5.3 Enforcement. Should either Settling Party hereto incur costs, fees, or expenses in connection with any action for breach of this Settlement Agreement, including, but not limited to, an application to enforce the provisions of this Settlement Agreement under the provisions of California Code of Civil Procedure section 664.6, the prevailing Settling Party in any said action shall be entitled to recovery of all reasonable costs, expenses, and attorney's fees incurred therein.
- 5.4 Advice of Counsel. The Settling Parties have carefully read this Settlement Agreement and know and understand the contents, and have signed it freely and voluntarily, after consultation with legal counsel.
- 5.5 Counterparts. The Settling Parties agree that this Settlement Agreement may be signed in counterparts and that it may be fully executed when signed by the Settling Parties whether the signatures of the Settling Parties appear on the original or on one or more copies of this Settlement Agreement. Facsimile or scanned signatures shall be deemed to be equivalent to, and enforceable as, an original signature.
- 5.6 No Third Party Beneficiaries. This Settlement Agreement is made solely for the benefit of the Settling Parties, their related entities, and their respective successors and assigns, and no other person or entity may have or acquire any right, claims, defense, or affirmative defense by virtue of this Settlement Agreement, including, without limitation, any CITY subcontractor or any insurer of any tier.
- 5.7 Authority to sign Settlement Agreement. The individuals signing this Settlement Agreement and the Settling Parties on whose behalf such individuals are signing hereby represent and warrant that they are empowered and authorized to sign on behalf of and bind the Settling Parties for which they have signed.

This Agreement is subject to the approval of the City Council for the CITY.

- 5.8 Integrated Agreement. This Settlement Agreement contains the entire agreement between the Settling Parties with regard to the matters set forth in it and shall be binding upon the Settling Parties hereto, as well as upon all of their respective representatives, predecessors, successors, assigns, agents, partners, joint venture partners, parent companies, subsidiary companies, officers, directors, employees, shareholders, counsel, and experts. This Settlement Agreement supersedes the Settling Parties prior written and oral communications, and may be amended only by a written agreement executed by the Settling Parties at the time of the modification.
- Ownership of Claims and Matters Released. The Settling Parties providing 5.9 the releases and dismissals set forth herein represent and warrant that they are owners of all rights and claims being dismissed, discharged, and released herein and that there are no portions of those rights that have been transferred or assigned to any other person or entity.
- Non-waiver. No breach of any provision hereof shall be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.
- Interpretation. This Settlement Agreement shall not be construed against either of the Settling Parties or their representatives who have drafted it or any portion of it. The captions of the sections of this Settlement Agreement are for reference only and are not to be construed in any way as part of this Settlement Agreement.
- Reformation. In the event that any portion of this Settlement Agreement shall be found void or voidable by a court of competent jurisdiction, such portion shall be stricken and the Settlement Agreement shall be reformed to approximate, as closely as the law permits, the intent of the stricken portion or portions.
- Applicable Law. The Parties agree that this Settlement Agreement has been entered into in the State of California and shall be governed by, and construed and enforced in accordance with the laws of the State of California.

SO AGREED:

DATED: 9/21/16

SPECIAL DISTRICT SERVICES.

Print Name: RICHARD K. CIARK SHIRLEY M. SMITH

Print Title: PRINCIPAL PRINCIPAL

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SETTLEMENT AGREEMENT AND MUTUAL RELEASE -SPECIAL DISTRICT SERVICES / CITY OF PINOLE

DATED: 10/11/16	CITY OF PINOLE  BY: Michelle Fitzer  Print Name: MICHELLE FITZER  Print Title: CITY MANAGER
APPROVED AS TO FORM:	
DATED: Oct. 6, 2016	LEWIS BRISBOIS BISGAARD
·	BY: Stephen C. Uls Stephen Ubl, Esq. Attorney for Special District Services
DATED: 10/11/16	MEYERS NAVE RIBACK SILVER & WILSON  BY:
· ·	Eric S. Casher, Esq. Attorney for City of Pinole

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Joseph E. Canciamilla County Clerk-Recorder and Registrar of Voters

Scott O. Konopasek Assistant County Registrar

#### CONTRA COSTA COUNTY ELECTIONS DIVISION

555 Escobar Street, Martinez, CA 94553 (925) 335-7800

FOR IMMEDIATE RELEASE October 4, 2016

CONTACT: Paul Burgarino, Community Education and Engagement Specialist

PHONE: 925-335-7805

#### DROP-OFF BOXES RETURN TO CONTRA COSTA CITY HALLS THIS MONTH

Residents can save postage and time with this expanding vote-by-mail program

Contra Costa residents will find it easier to vote in the upcoming November 8th Election, as the Contra Costa Elections Office once again partners with local agencies to provide convenient "CoCo Vote-N-Go" drop off locations, prior to and on Election Day.

Voters will find the drop-off boxes at all Contra Costa city halls and the County Administration Building, located at 651 Pine St. in Martinez, starting the week of October 10<sup>th</sup> -- when permanent vote-by-mail ballots are mailed.

There are six new drop-off locations in Contra Costa County for the November 2016 election; the Discovery Bay Community Center, the Kensington Library, the El Sobrante Library, the Crockett Library, the Ygnacio Valley Library and the Dougherty Station Library.

"We are excited to work with all of these local partners to be able to offer voters this opportunity to drop off their ballots in a safe and secure fashion," said Joe Canciamilla, Contra Costa Registrar of Voters. "We urge voters to take advantage of this service."

The City of Pinole's drop off box is located at City Hall, 2131 Pear Street.

Contra Costa voters can drop their ballot at any location, regardless of where they live. The distinguishable boxes will be available during normal business hours.

The postage for vote-by-mail envelopes this election is 68 cents; however, the drop-off box service eliminates the need for those stamps.

City staff members will have the popular "I Voted" stickers available for those who drop off their ballots.

Ballots must be postmarked on or before November 8<sup>th</sup>. Ballots may also be dropped off between 8:00 am and 5:00 pm at the Contra Costa Elections Office in Martinez, located at 555 Escobar Street, or at any polling place on Election Day.

For more information about voting by mail, call 925-335-7800 or visit the Elections Office website at <a href="https://www.cocovote.us">www.cocovote.us</a>.

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