



**CITY OF PITTSBURG
AGENDA**

MAY 01, 2023

**CITY HALL COUNCIL CHAMBER
65 CIVIC AVENUE, PITTSBURG, CA**

**SPECIAL MEETING
BUDGET WORKSHOP
5:00 P.M.**

**REGULAR MEETING
7:00 P.M.**

**CITY COUNCIL
HOUSING AUTHORITY
PITTSBURG ARTS AND COMMUNITY FOUNDATION
PITTSBURG POWER COMPANY
SOUTHWEST PITTSBURG GEOLOGIC HAZARD ABATEMENT DISTRICT II
SUCCESSOR AGENCY**

PRESIDING

**Shanelle Scales-Preston, Mayor/Chair
Juan Antonio Banales, Vice- Mayor/Chair
Jelani Killings, Council Member/Board Member
Dionne Adams, Council Member/Board Member
Angelica Lopez, Council Member/Board Member**

**FOR HOUSING AUTHORITY:
S.L. Floyd, Housing Authority Member
Annie Hill Herring, Housing Authority Member**

Pittsburg City Council meetings are held the first and third Mondays of each month at 7:00 p.m. The Housing Authority meets in conjunction with the City Council on the third Monday of each month. The Pittsburg City Council meets regularly in the Council Chamber at 65 Civic Avenue, unless otherwise noted above. The City Council also sits as the Board of Directors of several other City agencies. The stipends for all agency members conform to state statutes governing compensation amounts. All other Agencies meet on an as needed basis and will be listed above if applicable. Copies of the open session agenda packets, which are distributed to the City Council, are on file in the office of the City Clerk, 65 Civic Avenue, Pittsburg, California, and are available for public inspection, beginning 72 hours in advance, during normal business hours (8:00 a.m. – 5:00 p.m., Monday through Friday, except from noon to 1:00 p.m. and City holidays). The agenda and reports are also located on the City's website at www.pittsburgca.gov. Additionally, if any reports or documents, which are public records, are distributed to the City Council less than 72 hours before the meeting, those reports and documents will also be available for public inspection in the City Clerk's Office and on the day of the meeting in the Council Chamber at the public counter area below the dais.

5:00 PM - SPECIAL MEETING - BUDGET WORKSHOP

The Audience Remarks period is for the public to comment on any items scheduled to be heard during the Closed Session portion of the meeting, if applicable.

7:00 PM - CONVENE IN OPEN SESSION FOR REGULAR MEETING

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

CITY MANAGER REPORTS/REMARKS

The City Manager may make brief announcements or informal comments at this time and brief the Council on items of interest. (No Action Required)

PUBLIC COMMENTS

Members of the audience who wish to address the City Council or Agency Boards on issues that are not scheduled for the agenda and on any items listed as part of the Consent Calendar should complete a Speaker's Card available at the dais. Please read the card carefully in order to fill out the card properly. Submit the completed card to the City Clerk before the item is called, preferably before the meeting begins. Individuals will be given three minutes to address the Council unless additional time is allowed as provided for spokespersons. Prior to speaking, each member of the public shall state their name and business and City of residence in a clear and audible tone of voice. (No Action Required)

COMMITTEE REPORTS

Council Members may make a report on their committee assignments at this time. (see attached list of adhoc committees and other public agencies in which Council members participate). (No Action Required)

CONSIDERATION

1. Adoption of a City Council Resolution to Authorize the City Manager to Execute an Agreement with Cal Poly Humboldt Sponsored Programs Foundation's Northern California Small Business Development Center to Establish and Administer a Restaurant Coaching Program

The City of Pittsburg ("City") and the Cal Poly Humboldt Sponsored Programs Foundation's Northern California Small Business Development Center ("NorCal SBDC") are proposing to enter into an agreement whereby NorCal SBDC shall coordinate the development and implementation of "Pittsburg Eats," a program intended to help existing restaurateurs within Pittsburg modernize their operations and receive one-on-one technical assistance.

2. Adoption of a City Council Resolution Accepting a Metropolitan Transportation Commission OBAG3 Grant for Project 2052—Delta de Anza Multi Modal Trail Safety Improvements

On January 2023, the Contra Costa Transportation Authority (CCTA) approved a list of projects recommended for funding through the One Bay Area Grant 3 (OBAG 3). One of the projects included in the list is Project 2052—Delta de Anza

Multimodal Trail Safety Improvements. As part of the OBAG 3 process, the City will submit the attached resolution of local support.

3. Adoption of a City Council Resolution Authorizing the City Manager to Execute a Consulting Services Agreement with Northpoint Security Services, Inc. for Park Security Patrol Services

After a detailed review of the responses to the City's Request for Proposals for Pittsburg Park Security Patrol Services (RFP), staff recommends the City Council to authorize the City Manager to execute a Consulting Services Agreement (Agreement) with Northpoint Security Services, Inc.

CONFLICT OF INTEREST STATEMENT

City Council/Agency Members may make any conflict of interest declarations pertaining to Consent Calendar items at this time.

COMBINED CITY COUNCIL, PITTSBURG ARTS AND COMMUNITY FOUNDATION, PITTSBURG POWER COMPANY, SUCCESSOR AGENCY AND SOUTHWEST PITTSBURG GHAD II CONSENT CALENDAR

4. Adoption of Ten City Council Resolutions to Find Developers in Compliance with their Respective Development Agreements for: Southwest (San Marco), Tuscany Meadows, Liberty, Trans Bay Cable, Edgewater, Belle Harbor (Waterstone), Sky Ranch II, Montreux, Columbia Solar, and Greystone.

State law requires local jurisdictions to conduct a periodic review of active development agreements (DAs) within the community. For the calendar year 2022, staff has conducted reviews of ten active DAs, including: Southwest (San Marco) Development, Tuscany Meadows Subdivision, Liberty Subdivision, Trans Bay Cable, Edgewater Development, Belle Harbor (Waterstone) Subdivision, Sky Ranch II Subdivision, Montreux Subdivision, Columbia Solar, and Greystone Subdivision. Staff has found each developer to be in compliance with the terms of their respective DA, and as such, recommends the City Council adopt ten resolutions finding good faith compliance and authorizing the City Manager to execute Certificates of Compliance as appropriate.

5. Adoption of a City Council Resolution Authorizing the Execution of the First Amendment to Consulting Services Agreement between City of Pittsburg and Opticos Design, Inc. for the Accessory Dwelling Unit Pre-Approved Plan

The proposed item would authorize the City Manager to execute the First Amendment to the Consulting Services Agreement with Opticos Design, Inc. in an amount not to exceed \$244,475. This amount would allocate an additional \$8,000 to the existing Consultant Budget of \$236,475 for contract design and consulting services related to streamlining the City's permitting and entitlement process for multifamily development projects and Accessory Dwelling Unit ("ADU") projects.

6. Adoption of a City Council Resolution Allocating Additional Funds to Project 3021—City Park Tree Maintenance and Authorizing the City Manager to Execute the First Amendment to the Consultant Services Agreement with Hamilton Tree Service, Inc.

During the most recent storm events, emergency work began to reduce stress on certain trees in City Park. If approved, the resolution would allocate additional funds to Project 3021—City Park Tree Maintenance (the “Project”) and authorize execution of the First Amendment to the consulting services agreement with Hamilton Tree Service, Inc. for additional tree maintenance and removals in City Park.

7. Adoption of a City Council Resolution to Comply with State Housing Laws

The One Bay Area Grant 3 (OBAG 3) establishes the policy framework and commitments for investing federal Surface Transportation Block Grant Program (STP) and Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds for a four-year period covering federal fiscal year (FY) 2022/23 through FY 2025/26. As part of the OBAG 3 program, the City of Pittsburg must comply with state housing laws related to surplus lands, accessory dwelling units, density bonuses, and the Housing Accountability Act to maintain funding eligibility.

8. Adoption of a City Council Resolution Authorizing the Use of \$365,000 of Measure M Surplus Funds for Additional Library Services

To better serve the needs of the community, the City worked with the Contra Costa County Library (County Library) to extend the hours of service by an additional 12 hours at the Pittsburg Library.

9. Adoption of a City Council Resolution Directing the City Engineer to Prepare and File an Annual Report for the Citywide Landscaping and Lighting Assessment District 1988-01 for FY 23/24

Directing the City Engineer as the Engineer of Work to prepare and file the Engineer’s Report is the first of three steps in the annual renewal process for the Citywide Landscaping and Lighting Assessment District 1988-01. Upon receipt and approval of the Engineer’s Report, the City Council may order that assessments be placed on the county tax roll. Revenue collected through this district is necessary to fund citywide landscaping and lighting operations.

10. Adoption of Two City Council Ordinances Amending Rezoning Designations, Including Approval of a Master Plan, and Approving a Development Agreement for the Faria/Southwest Hills Annexation Project, AP-10-717 (GP, RZ, DA, ANNEX)

On April 17, 2023, the City Council adopted Resolutions certifying a Final Environmental Impact Report; approving CEQA Findings; adopting a Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program; approving General Plan mapping and text amendments; and initiating annexation proceedings for the Faria/Southwest Hills Annexation Project. The City Council also introduced and waived further reading of two ordinances amending the

rezoning designations, adopting a master plan, and approving a development agreement for the proposed project. The project site is located in the hills southwest of the existing city limits and is commonly known as the Faria property APN's 097-180-002, 097-180-006, 097-190-002, 097-200-002, 097-200-003, 097-230-008 & 097-240-002 (now APN's 091-040-002, 092-010-002 & -006, 092-020-002 & -003, 092-040-008, 092-050-002, and a portion of 092-030-012).

11. Adoption of a City Council Resolution Directing the City Engineer to Prepare and File an Annual Report for the Oak Hills Landscaping and Lighting Assessment District 1988-02 for FY 23/24

Directing the City Engineer as the Engineer of Work to prepare and file the Engineer's Report is the first of three steps in the annual renewal process for the Oak Hills Landscaping and Lighting Assessment District 1988-02. Upon receipt and approval of the Engineer's Report, the City Council may order assessments to be placed on the county tax roll. Revenue collected through this district is necessary to fund landscaping and lighting operations in the Oak Hills area.

COUNCIL REQUEST FOR FUTURE AGENDA ITEMS

Council Members may request items to be considered for future agendas. An item will only be brought forward with a majority vote and will appear on a future agenda with staff recommendations for further Council consideration.

COUNCIL MEMBER REMARKS

Council Members may make brief announcements or informal comments at this time. (No Action Required)

ADJOURNMENT TO MAY 15, 2023

NOTICE TO PUBLIC

GENERAL INFORMATION

Copies of the open session agenda packets, which are distributed to the City Council, are on file in the office of the City Clerk, 65 Civic Avenue, Pittsburg, California, and are available for public inspection, beginning 72 hours in advance, during normal business hours (8:00 a.m. – 5:00 p.m., Monday through Friday, except City holidays). The full packets are also located on the City's website at www.pittsburgca.gov. If any reports or documents, which are public records, are distributed to the City Council less than 72 hours before the meeting, those reports or documents will be available for public inspection in the City Clerk's Office and on the day of the meeting in the Council Chamber at the public counter area below the dais.

SPEAKER'S CARD

Members of the audience who wish to address the City Council on issues that are not scheduled for the agenda and on any items listed as part of the agenda should complete a Speaker's Card available at the dais. Please read the card carefully in order to fill out the card properly. Submit the completed card to the City Clerk before the item is called, preferably before the meeting begins. Individuals will be given up to three minutes to address the Council unless additional time is allowed as provided for spokespersons. Speakers are not permitted to yield their time to another speaker. Prior to speaking, each member of the public shall state their name and business and City of residence in a clear and audible tone of voice. Pursuant to the Brown Act, no action may be taken by the City Council on items not already scheduled on the agenda; however, the City Council may refer your comments/concerns to staff or request that the item be placed on a future agenda.

PUBLIC HEARINGS

Persons who wish to speak on Public Hearings listed on the agenda will be heard when the Public Hearing is opened, except on Public Hearing items previously heard and closed to public comment. After the public has commented, the item is closed to public comment and brought to the Council/Agency level for discussion and action. Further comment from the audience will not be received unless requested by the Council/Agency.

There is a 90-day limit for the filing of a challenge in the Superior Court to certain City administrative decisions and orders which require a hearing by law, the receipt of evidence, and the exercise of discretion. The 90-day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge an action taken by the City Council in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised in the public hearing, or in written correspondence delivered to the City Council prior to or at the public hearing. The City Council may be requested to reconsider a decision if the request is made prior to the next City Council meeting, regardless of whether it is a regular or special meeting.

NOTICE TO THE DISABLED AND VISUALLY OR HEARING IMPAIRED

In compliance with the Americans with Disabilities Act, the City of Pittsburg will provide special assistance for disabled residents. Upon request, an agenda for any meeting shall be made available in appropriate alternative formats. The Council Chamber is equipped with sound amplifier units for use by the hearing impaired. The units operate in conjunction with the Chamber's sound system. You may request the sound amplifier from the City Clerk for personal use during Council meetings. If you need special assistance to participate in this meeting, or are requesting a specially formatted agenda, please contact the City Clerk at 925-252-4850. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format. (28 CFR 35.102-35.104 ADA Title II)

DISRUPTIVE CONDUCT

The Council requests that you observe the order and decorum of our Council Chamber by turning off or setting to vibrate all cellular telephones and electronic devices, and that you refrain from making personal, impertinent, or slanderous remarks. Boisterous and disruptive behavior while the Council is in session, and the display of signs in a manner which violates the rights of others or prevents others from watching or fully participating in the Council meeting, is a violation of our Municipal Code and any person who engages in such conduct can be ordered to leave the Council Chamber by the Mayor.

LIVE MEDIA BROADCASTING ADVISEMENT

City Council meetings are webcast live on the City's website at www.pittsburgca.gov on the Agendas and Live Meetings page. Past meetings and approved minutes are also archived on that webpage. Watch the live meeting via the City's webcast (www.pittsburgca.gov), or on Delta TV Comcast Channel 32, or Delta TV AT&T U-Verse Channel 99. For more information, please contact the City Clerk's office at 252-4850.

City Council Outside Agency / Liaison / Sub-Committees Assignments - 2023

Updated January 17, 2023

<u>OUTSIDE AGENCY BOARDS</u>	<u>COUNCIL MEMBER(S)</u>	<u>TYPE</u>	<u>MEETS</u>	<u>TIME</u>	<u>STAFF</u>
ABAG	Shanelle Scales-Preston / Jelani Killings Alt.	Standing	Annual		G. Evans
Delta Diablo*	Juan Banales / Shanelle Scales-Preston Alt.	Standing	2 nd Wednesday	4:30 pm	J. Samuelson
East Co. Co. County Habitat Conservancy	Juan Banales / Jelani Killings Alternate	Standing	4 th Monday Bi-Monthly	2:00 pm	J. Davis
East County Water Management	Juan Banales / Jelani Killings Alternate	Standing	Annual		J. Samuelson
MCE Clean Energy Board	Shanelle Scales-Preston / Angelica Lopez Alt.	Standing	Quarterly	7:00 pm	D. Buchanan
TRANSPLAN / ECCRFFA	Shanelle Scales-Preston / Juan Banales Alt.	Standing	2 nd Thursday	6:30 pm	J. Samuelson
Tri-Delta Transit (2 reps)**	S. Scales-Preston & Dionne Adams / Jelani Killings Alt.	Standing	Last Wednesday	4:00 pm	J. Samuelson
<u>LIAISON TO</u>	<u>COUNCIL MEMBER(S)</u>	<u>TYPE</u>	<u>MEETS</u>	<u>TIME</u>	<u>STAFF</u>
East Bay League of Calif. Cities	Shanelle Scales-Preston / Jelani Killings Alt.	Standing	3 rd Thursday		G. Evans
Los Medanos Health Advisory Committee	Shanelle Scales-Preston & Jelani Killings	Ad Hoc	As needed		M. Aliotti
Mayor's Conference	Shanelle Scales-Preston / Juan Banales Alt.	Standing	1 st Thursday	6:30 pm	G. Evans
School Districts Committee (2x2)	Jelani Killings & Angelica Lopez / Dionne Adams Alt.	Standing	2nd Thursday even months	4:00 pm	M. Aliotti
<u>SUBCOMMITTEES</u>	<u>COUNCIL MEMBER(S)</u>	<u>TYPE</u>	<u>MEETS</u>	<u>TIME</u>	<u>STAFF</u>
CAC CDBG	Dionne Adams & Angelica Lopez / S. Scales-Preston Alt.	Standing	As needed		M. Aliotti
City Infrastructure and Transportation	S. Scales-Preston & Juan Banales / Jelani Killings Alt.	Standing	As needed		J. Samuelson
Community Services	S. Scales-Preston & Angelica Lopez / Dionne Adams Alt.	Standing	As needed		M. Aliotti
Constituent Management Services	S. Scales-Preston & Dionne Adams / Angelica Lopez Alt.	Ad Hoc	As needed		M. Aliotti
Economic Develop/Waterfront	Jelani Killings & Dionne Adams / S. Scales-Preston Alt.	Standing	As needed	4:30 pm	J. Davis
Finance	S. Scales-Preston & Juan Banales / Dionne Adams Alt.	Standing	Monthly	3:30 pm	P. Rodrigues
Government Performance	Juan Banales & Jelani Killings	Ad Hoc	As needed		J. Brizel
Land Use	Juan Banales & Dionne Adams / Angelica Lopez Alt.	Standing	Monthly	1:30 pm	J. Davis
My Brothers Keeper	S. Scales-Preston & Jelani Killings	Ad Hoc	As needed		K. Simonton
Pittsburg Arts & Community Foundation	S. Scales-Preston & Jelani Killings / Dionne Adams Alt.	Standing	As needed		K. Simonton
Pittsburg Police Activities League (PAL)	S. Scales-Preston & Angelica Lopez / Dionne Adams Alt.	Standing	Monthly		S. Albanese
Pittsburg Recognition	Juan Banales & Jelani Killings	Standing	As needed		M. Aliotti
Power Company Advisory	Dionne Adams & Angelica Lopez / Juan Banales Alt.	Standing	As needed		D. Buchanan
Public Safety	S. Scales-Preston & Jelani Killings / Juan Banales Alt.	Standing	As needed	5:00 pm	S. Albanese
Sister City Committee	Jelani Killings & Angelica Lopez / S. Scales-Preston Alt.	Standing	As needed		K. Simonton
Tobacco, Cannabis, Alcohol Policy Review	Juan Banales & Jelani Killings	Ad Hoc	As needed		G. Evans

*Stipend of \$170 per month

**Stipend of \$100 per month



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution to Authorize the City Manager to Execute an Agreement with Cal Poly Humboldt Sponsored Programs Foundation's Northern California Small Business Development Center to Establish and Administer a Restaurant Coaching Program

MEETING DATE: May 1, 2023

EXECUTIVE SUMMARY

The City and the Cal Poly Humboldt Sponsored Programs Foundation's Northern California Small Business Development Center ("NorCal SBDC") are proposing to enter into an agreement whereby NorCal SBDC shall coordinate the development and implementation of "Pittsburg Eats," a program intended to help existing restaurateurs within Pittsburg modernize their operations and receive one-on-one technical assistance.

FISCAL IMPACT

Staff is requesting the City Council allocate \$200,000 of American Rescue Plan Act (ARPA) funds to cover the cost of the contract. The contract commences on May 4, 2023 and expires on June 30, 2025.

RECOMMENDATION

City Council adopt a resolution authorizing the City Manager to execute an agreement with NorCal SBDC to establish and administer a restaurant coaching program.

BACKGROUND

On May 9, 2022, the City Council held a budget workshop, which included a discussion on the use of up to \$350,000 for local business coaching. Staff has determined that a budget of \$200,000 would be adequate for implementation of the program.

SUBCOMMITTEE FINDINGS

In 2022, the Community Services Subcommittee, as part of its discussion on potential uses of ARPA funds, considered the use of up to \$350,000 for administration of a program which would support local business coaching, and recommended the coaching focus on assisting restaurants in rebounding from the COVID-19 pandemic. The Subcommittee has consistently supported the use of funding to for this endeavor.

STAFF ANALYSIS

As mentioned above, staff is recommending the City hire NorCal SBDC due to its experience, track record of working with local restaurateurs, and project management capabilities. As part of the base contract, NorCal SBDC would administer application and screening processes, cohort training, technical trainings and one-on-one programing, and virtual roundtables. A more detailed overview is provided in Attachments 3 and 4. All module would be provided in English and Spanish.

Specifically, the program will include several phases within the contract program.

1. The Kickoff Period Phase will focus on advising, curriculum development, and client onboarding.
2. Cohort Training Phase will include six classes focusing on finance, online presence, daily operations and food costing.
3. Advanced Classes and Advising Phase will present more technical assistance and guidance with one-on-one sessions.
4. Roundtable Phase will bring experienced restaurateurs and subject matter experts for the participants.

ATTACHMENTS:

1. Proposed Resolution
2. Professional Services Agreement
3. Pittsburg Eats Program Overview
4. Pittsburg Eats "Road Map"

Report prepared by: Jordan Davis, Director of Community and Economic Development

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF PITTSBURG AND
NORTHERN CALIFORNIA SMALL BUSINESS DEVELOPMENT CENTER**

THIS Agreement ("Agreement") for consulting services is made by and between the City of Pittsburg ("City") and the Cal Poly Humboldt Sponsored Programs Foundation's Northern California Small Business Development Center ("Consultant") (together referred to as the "Parties") as of May 4, 2023 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2025, or the date the Consultant completes the services specified in Exhibit A, whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as referenced herein.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided herein above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed Two Hundred Thousand Dollars (\$200,000), as set forth in Exhibit A, attached hereto and incorporated herein for services to be performed under this Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and

subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the fixed fees for services performed prior to the invoice date. Invoices shall contain the following information, unless waived by the City Manager, or his or her designee:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- The total number of deliverables completed under the Agreement by Consultant; and
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and deliverables completed. City shall pay undisputed invoices that comply with the above requirements within 30 days from the receipt of the invoice.

2.3 Final Payment. Consultant shall submit its final invoice within 60 days of completing its services. Consultant's failure to submit its final invoice within this 60 day period shall constitute Consultant's waiver of any further billings to, or payments from, City.

2.4 RESERVED.

2.5 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

2.6 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written authorization from the City Manager, or his or her designee.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement

Section 4. INSURANCE REQUIREMENTS. Before beginning any services under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall be fully responsible for the acts and omissions of its subcontractors or other agents.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Consultant is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, 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 \$2,000,000 per occurrence and \$4,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Consultant has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

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

- a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.
- b. City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Consultant, including

materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Consultant. Coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.

- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and non-contributing.
- d. The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
- e. Consultant agrees to give at least 30 days prior written notice to City before coverage is canceled or modified as to scope or amount.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, 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 \$1,000,000 per occurrence or claim covering the Consultant's errors and omissions.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must

purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.

- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Submittal Requirements. Consultant shall submit the following to City prior to beginning services:

- a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
- b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

4.4.2 Acceptability of Insurers. All insurance required by this Agreement is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.3 Deductibles and Self-Insured Retentions. Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than \$100,000.

4.4.4 Wasting Policies. No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the scope of work, without prior written approval of the City Manager, or his or her designee.

4.4.7 Excess Insurance. If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND RESPONSIBILITIES.

5.1 General Requirement. To the fullest extent permitted by law, Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers (collectively, "Indemnitees") from and against any and all liability, loss, damage, claims, expenses, and costs, including without limitation, attorney's fees, costs and fees of litigation, (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services under this Agreement, or its failure to comply with any of its obligations contained in this Agreement, or its failure to comply with any applicable law or regulation, except such Liability caused by the sole negligence or willful misconduct of City.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damage or claims for damages whether or not such insurance policies shall be determined to apply.

To the fullest extent permitted by law, City shall indemnify, defend with counsel acceptable to Consultant, and hold harmless Consultant and its officers, officials, employees, agents and volunteers (collectively, "Indemnitees") from and against any and all liability, loss, damage, claims, expenses, and costs, including without limitation, attorney's fees, costs and fees of litigation, (collectively, "Liability") of every nature arising out of or in connection with City's obligations under this Agreement, or its failure to comply with any of its obligations contained in this Agreement, or its failure to comply with any applicable law or regulation, except such Liability caused by the sole negligence or willful misconduct of Consultant.

- 5.2 PERS Indemnification.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City.
- 6.2 Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever which is not explicitly included in this Agreement.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder. Consultant shall also, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates as determined by the California Department of Industrial Relations.
- 7.3 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have, and will maintain at their sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

- 7.4 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** Upon ten days' prior written notice, either party may cancel this Agreement at any time and without cause upon such written notification to the other party. In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.
- 8.2 Amendments.** The parties may amend this Agreement only by a writing signed by the parties hereto.
- 8.3 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City Manager, or his or her designee. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the scope of work, without prior written approval of the City Manager, or his or her designee.
- 8.4 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and

Consultant, including but not limited to the provisions of Section 5, shall survive the termination of this Agreement.

8.5 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.5.1 Immediately terminate the Agreement;

8.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.5.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.5.4 The remedies mentioned in this Agreement are not exclusive of any other right, power or remedy permitted by law. The City's failure or delay in exercising any remedy shall not constitute a waiver of such remedy or preclude the further exercise of City's rights.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. City and Service Provider shall have the right to publish, disclose, disseminate and use, in whole and in part, any data and information received or developed under this agreement. The parties agree that neither will use the name of the other party or its employees in any advertisement, press release or publicity with reference to this agreement or any product or service resulting from this agreement, without prior written approval of the other party.

9.2 Consultant's Books and Records. Consultant shall maintain any and all records or documents evidencing or relating to charges for services and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Pursuant to Government Code Section 8546.7, the Agreement may be subject to the examination and audit of the State Auditor for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in Contra Costa County or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 10.7 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.8 Notices.** Any notice, demand, request, consent or approval that either party is required to give the other pursuant to this Agreement, shall be in writing and may be given by either (i) personal service, or (ii) certified

United States mail, postage prepaid, return receipt requested. Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable.

Consultant : Cal Poly Humboldt Sponsored Programs Foundation
1 Harpst Street, SBS 427
Arcata, CA 95521-8299
ATTN: Christiana Gomez Frye

City: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
ATTN: City Manager

10.10 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent there are any inconsistencies between this Agreement, the Exhibits, and Consultant's proposal, the Agreement shall control. To the extent there are any inconsistencies between the Exhibits and the Consultant's Proposal, the Exhibits shall control.

Exhibit A Scope of Services and Compensation Schedule

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.12 Construction of Agreement. Each party hereto has had an equivalent opportunity to participate in the drafting of the agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

10.13 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any third parties.

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The Parties have executed this Agreement as of the Effective Date.

CITY OF PITTSBURG

CONSULTANT

Garrett Evans, City Manager

Kacie Flynn, Executive Director
Cal Poly Humboldt SPF

Attest:

Alice E. Evenson, City Clerk

Approved as to Form:

Donna Mooney, City Attorney

EXHIBIT A

SCOPE OF SERVICES and COMPENSATION SCHEDULE

Kickoff period (2-4 weeks) – \$9,000 for advising, curriculum development, and client onboarding

- Outreach and Marketing in English and Spanish
- Application and Screening Process
- Content creation, curriculum development, and client onboarding
- Determination of necessity for Spanish language curriculum/advising
- Possible on-site pre-visits to participating restaurants
- Review each participant's online presence
- Communicate the needs assessment individually
- Assign each a primary advisor

Deliverable: Restaurants are onboarded as Norcal SBDC clients (i.e. assigned a client number) and assigned a primary advisor

Cohort Training (6 weeks) – \$16,000 per class for six classes, includes coursework and advising – \$96,000

- Advisors from Restaurant Program and Finance Center will present course materials via Zoom webinar and be available for follow on one-on-one sessions
- Participants will work through their goals with their primary advisor
- As courses progress, advisors work with clients to do a deeper dive into their finances, getting online or maximizing online presence, reviewing daily operations and food costing, etc.
- Guest speakers from the field as inspiration and motivation join webinars from time to time
- Legacy Restaurant status tips and techniques, offered as a goal and aspiration
- Graduation night with the city and special dignitaries invited to meet successful participants

Deliverable: Classes to be invoiced upon completion, with attendance sheet provided and recording available as documentation

Round 2 (4 weeks) – \$20,000 per class for four advanced classes and advising – \$80,000

- Advisors from Restaurant Program and Finance Center will present advanced and more technical course materials via Zoom webinar and be available for follow on one-on-one sessions
- Program qualifies participating restaurants for an additional \$5,000

- Deeper dive into more complicated and specialty topics, joined by experts in these areas
- Graduation night with the city and special dignitaries invited to meet successful participants

Deliverable: Classes to be invoiced upon completion, with attendance sheet provided and recording available as documentation

Roundtable (ongoing) – \$5,000 per event for three virtual or in-person industry gatherings - \$15,000

- Three to four virtual or in-person industry gatherings are held, bringing together experienced restaurateurs, guest speakers, and subject matter experts. Following a panel discussion, the floor is opened up for a free flowing and informative conversation.
- One-on-one sessions available outside of the meetings
- Available to both restaurateurs that did and those that did not qualify for the grants
- Able to reach a wider audience and support the food community at large
- If demand is there, can be held in Spanish

Deliverable: Roundtables to be invoiced upon completion, with attendance sheet provided and recording available (if held online) as documentation

Note: Advisors listed above may be independent contractors

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANT

By: _____

Title: _____

2784980.1



PittsburgEats

Working in partnership with the Norcal SBDC, the Pittsburg Office of Community and Economic Development provides technical and financial assistance to county constituents and businesses through a new program. Grants of up to \$10,000 are made available to businesses that meet all eligibility criteria (as determined by the Pittsburg OCED), complete a comprehensive small business training program, and have multiple one-on-one expert advising sessions. Marketing and technical assistance provided by the SBDC help restaurants in Pittsburg to not just survive but thrive in the post-pandemic reality we live in today.

The pandemic and associated shut downs had far-reaching effects on local economies. No economy was immune, though restaurants were among the most impacted industries, and recovery has been slow. Consumer behavior has changed, supply chain disruption has played havoc on ingredient availability and menus, labor costs increased for a smaller available workforce, and rising inflation have combined to evaporate already thin profit margins. A cornerstone of a downtown economy, a thriving restaurant scene provides benefits to nearby shops, venues, their entire diverse supply chain, and their community at large. Conversely, losing restaurants in key commercial areas, or having high turnover, destabilizes a downtown that is looking for cohesion after so much time spent sheltered in place. By revisiting the basics of sound financial management, lean and efficient operations, exploring takeout and online ordering, increasing their digital presence and social media marketing, restaurants have a better chance to survive and thrive.

The Northern California Small Business Development Center Network (Norcal SBDC) is the largest small business technical assistance program operating in the State of California, and the fifth largest SBDC network in the United States. Serving the northern 36 counties of California, the Norcal SBDC has 15 years of experience providing direct training and one-on-one advising, meeting and generally exceeding annual goals. Utilizing a hub-and-spoke model, 18 locations spread throughout the region serve local entrepreneurs, and collaborate closely with regional programs such as the Finance Center (helping get the most challenging of deals through), International Trade, Manufacturing, and the Restaurant Program. The Restaurant Program represents the best of the restaurant industry in a region known for its culinary prowess, with successful entrepreneurs joining the ranks as advisors from all parts of the food industry. By collaborating with the 18 centers to adapt their curricula to the local context, the Restaurant Program leverages expansive resources and experience to help small restaurant and food businesses.

Enter **PittsburgEats** – a bespoke program to buoy the restaurants of Pittsburg, from the Waterfront and beyond. With an investment of \$200,000, the Norcal SBDC proposes to provide high quality technical assistance in the form of training and one-on-one advising to support local restaurants and prepare them to apply for city grants ranging from \$5,000 to \$10,000. Building on the success of the Dream Fund, where the Norcal SBDC was able to leverage an investment from the State of California to provide nine hours of training and at least one hour of one-on-one

advising to over 900 entrepreneurs throughout Northern California to help them apply for over \$6,000,000 in grant funds from the state! These were also in \$5,000 and \$10,000 increments, and transformative to the recipients and the communities they call home.

The Restaurant Program team will create a new program, PittsburgEats, to assist local restaurants with a customized training program and one-on-one consulting services at no cost to the clients. The combination of training, and on-site and virtual one-on-one advising will help the businesses gain access to resources and guidance to ensure their success and sustainability. Following completion of the curriculum, local restaurants will be qualified for city grants with the SBDC team assisting in the screening and application process. The team will advise on how to best use the grant funds to achieve the best results and maximize their impact.

In collaboration with the City of Pittsburg, the Norcal SBDC will market PittsburgEats to the community, in English and Spanish. Depending on response, a version of PittsburgEats will be offered in Spanish. Cohorts will be formed, and in response to the types, sizes, and stages of restaurants enrolled, the training program will be tailored to the specific needs of each restaurant. The topics covered may include things like menu planning, marketing strategies, cost control, customer service, and financial management. The Norcal SBDC has found that while most restaurant owners and employees understand *some* of these topics, a refresher and a deeper dive is almost always beneficial as they can analyze real work challenges in a new light, providing real benefit to them, their clients, and their communities.

Classroom work will be augmented by one-on-one advising. PittsburgEats will feature a high-touch approach, one that the Norcal SBDC does not typically provide, but we believe will create significant impact for the restaurants in Pittsburg. While clients will be encouraged to contact their advisors by phone or Zoom meeting, sessions can also be held on-site at the client's facility. Whether virtual or in -person, the advisor will have the ability to 'see' the restaurant and give the client actionable advice and support.

The Norcal SBDC will also convene periodic roundtables for any interested restaurants in Pittsburg, not just for program participants. These roundtables will bring together experienced restauranteurs from the

The goal of this program is to provide the restaurants with the resources they need to succeed and help to create a vibrant restaurant scene in the area. By pre-qualifying candidates, the Norcal SBDC will provide robust training and mentoring to the restaurants of Pittsburg. The Norcal SBDC knows that the City can do appropriate due diligence on grant recipients, but by partnering with the SBDC, the City can be confident that their grant funds are going to the best and most prepared candidates. We look forward to working with the City of Pittsburg to provide this invaluable assistance to local restaurants.

Proposed Schedule

Session 1 – From Survive to Thrive!

Your restaurant has been in survival mode for too long, take the first steps on your journey to thriving. This webinar is a brief introduction to entrepreneurship and what goes into managing a legacy restaurant. It will include a high-level overview of some of the things that will be critical to your success, including assessing how well suited your restaurant operation is in the current food environment, brushing up your entrepreneurial skills, and how to make sure your business is visible to the public in the current food world.

In this session, you'll meet restaurant program advisors, and we'll cover the importance of planning in creating successes for a small business. We will also spend some time providing an overview of different topics we will cover in the following sessions, such as:

- Needs Assessment – what do you need to grow and thrive?
- Modernizing menus
- Social Media Marketing – using social media to enhance presence, online ordering, and sales
- Finances – Food Costing
- ADA compliance
- Design/Remodel 101: How to make the most of your space
- Identify other ways to stay relevant and increase sales – Events, Tastings, Signature products, and off-site sales of artisan products like sauces and dressings

Session 2 – Daily Operations and Planning for Success

Businesses with a plan are 6 times MORE successful than a business without a plan. But there are multiple types of business plans, so how do you know which type best meets your needs and how do you go about creating one? In this interactive Webinar, we will guide you through your options and help you as you work through a simple tool that will get you started creating a business plan. The course will cover:

- Creating a business plan
- Daily operations
- Job descriptions
- The value of a quality employee handbook
- SOP's
- Modernizing the menu
- Financial Requirements

Session 3 – Small Business Finance 101

For many entrepreneurs, understanding the numbers can be a daunting task. This task will be made accessible by an expert joining us from the Norcal SBDCs Finance Center. This engaging webinar is designed to help startup and existing entrepreneurs demystify the most important aspects of financial management for small businesses. This is not a dull accounting course, but rather an in-depth exploration of the most essential financial topics from an entrepreneur's perspective. Join us for practical and powerful financial information to help you thrive in your business. Take control of your financial future and join us for a webinar on money management! You'll learn the basics and fine-tune your skills to make responsible decisions in both your personal and business life. Topics include:

- Financial planning
- Managing bank accounts
- Start-up budgets
- Simple projections.
- Essential financial topics for the restaurateur
- The three most crucial financial statements and how to read

Session 4 – Marketing and Social Media for Success

Join us for an engaging and informative webinar on the essential building blocks of marketing, as today we will work with the premier Marketing expert working with the Norcal SBDC! You will gain valuable insights, understand the competitive landscape, learn to identify and target your ideal audience, and develop a comprehensive marketing plan using the classic 4Ps. This course will provide you with the knowledge and skills you need to stand out from the competition and drive success for your business.

Getting your business “digitized” to reach all your customers is critical to success these days. You'll learn the ins and outs of the major online social media apps, how to reach your customer with engaging posts vs sales posts and how to simplify the posting process itself with scheduling software. What you can expect:

- Platforms to get your business online
- Review of the major online media companies
- How to find local influencers to promote your food
- Photography tips
- Promotional vs engaging posts and why you need mostly engaging
- Tracking the effectiveness of your efforts

Session 5 – Understanding Food Cost

For many entrepreneurs, understanding food cost can be overlooked, misunderstood, or simply lost on that endless TO DO list that you never quite get around to doing. In this course, you will finally start costing your menu items! Whether you are more comfortable programming an Excel sheet or buying a food costing software program, this session will give you the tools you need and the standards to help you get your costs understood and how to price your food to ensure you stay in business, profitably. What you can expect:

- How to price for profitability
- Industry benchmark for food cost
- How to work from a budget
- Industry techniques for calculating plate cost
- Understanding Profit and Loss statements
- Weekly flashcards to keep on track
- Best practices for managing inventory

Session 6 – Hospitality: Become a Legacy Business

The Hospitality Industry is our chosen field, yet its meaning is often overlooked and misunderstood. We bring it front and center, defined and presented by an expert with a toolkit for all. Identify the traits of long term, multi-decade, and even multi-generational restaurants and food businesses. Catering? Special Events? Tastings? Artisan Food Products? Grab and Go?

Culinary Classes, in person or online? Community Involvement? Support a local team or cause? We will dive into topics like:

- Stamping your brand and experience from your to-go bags and into the minds and hearts – and bellies – of your customers
- New products, merchandise, and swag
- Fundamentals of Hospitality

Finally – The last week will feature a ‘Graduation Night’ where a special gathering will be held bringing together all program participants, their advisors and instructors, local dignitaries, and community members to show off what they’ve learned! A convivial night of sharing experiences and swapping stories, offering gratitude to the gracious funder that is the City of Pittsburgh, showing off specialty food and drinks, this night will be a celebration of PittsburghEats, and more importantly, will be the first steps in building a cohesive restaurant scene in Pittsburgh.

The Norcal SBDC envisions that clients that complete all six of the above courses, plus engage in one-on-one meetings with their advisors would be considered pre-qualified for a \$5,000 grant from the City of Pittsburgh. If the City would like to increase its impact, the Norcal SBDC has a second round of coursework that it recommends. This coursework complements and builds on the first six classes and could be used to prequalify restaurants for an additional \$5,000 investment.

Round 2

Session 7 – Design, Remodel, and ADA Compliance

Are you a restaurant owner looking to make the most of your space? Join our design and ADA compliance experts on this webinar as we teach you the insider secrets to building your restaurant environment out for maximizing sales and seating options. From simple fixes to large scale remodels, not to mention paying for them, there are a number of things to consider before changing one’s space, but these changes can have significant and positive effects on your bottom line!

Session 8 – Small Business Finance 201 – Financial Planning, Projections, and Overhaul

This is a deeper dive for anyone with a need to not only understand their sales and financial figures but to do more planning for the future. It will include a deeper dive into one’s financials, how to consider taking on loans to achieve concrete goals such as remodels, expansion, additional locations, or just how to get a better sense of how to grow and plan for the future

Session 9 – Human Resources

No more crying in the walk-in! Get ahead of the challenges and learn how to proactively manage your workforce. Your head chef may know the difference between a batonnet, a julienne, and a brunoise, but does he know how to get the most of his staff and stay in compliance with sometimes tricky HR rules and regulations? Additionally, these days you have to motivate your staff in a wholly different way than many of us are accustomed to, win the battle for Generation Z hearts and minds, and have the stable, happy, and efficient team of your dreams!



Road Map for PittsburgEats

Kickoff period (2-4 weeks)

- Outreach and Marketing in English and Spanish
- Application and Screening Process
- Determination of necessity for Spanish language curriculum/advising
- Possible on-site pre-visits to participating restaurants
- Review each participant's online presence
- Communicate the needs assessment individually
- Assign each a primary advisor

Cohort Training (6 weeks)

- Advisors from Restaurant Program and Finance Center will present course materials via Zoom webinar and be available for follow on one-on-one sessions
- Participants will work through their goals with their primary advisor
- As courses progress, advisors work with clients to do a deeper dive into their finances, getting online or maximizing online presence, reviewing daily operations and food costing, etc.
- Guest speakers from the field as inspiration and motivation join webinars from time to time
- Legacy Restaurant status tips and techniques, offered as a goal and aspiration
- Graduation night with the city and special dignitaries invited to meet successful participants

Round 2 (4 weeks)

- Program qualifies participating restaurants for an additional \$5,000
- Deeper dive into more technical topics, joined by experts in these areas
- Graduation night with the city and special dignitaries invited to meet successful participants

Roundtable (ongoing)

- Three to four virtual or in-person industry gatherings are held, bringing together experienced restaurateurs, guest speakers, and subject matter experts. Following a panel discussion, the floor is opened up for a free flowing and informative conversation.
- One-on-one sessions available outside of the meetings
- Available to both restaurateurs that did and those that did not qualify for the grants
- Able to reach a wider audience and support the food community at large
- If demand is there, can be held in Spanish

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Authorizing the City Manager to Execute)
a Professional Services Agreement with)
Cal Poly Humboldt Sponsored Programs)
Foundation's Northern California Small)
Business Development Center to)
Establish and Administer a Restaurant)
Coaching Program)

RESOLUTION NO. 23-_____

WHEREAS, the COVID-19 pandemic has severely impacted the restaurant industry, with many restaurants continuing to feel the effects of the required closures for much of 2020 and 2021; and

WHEREAS, the City Council seeks to assist its business community in rebounding and modernizing operations to continue to flourish in today's market; and

WHEREAS, on May 9, 2022, the City Council held a budget workshop, which included a discussion on the use of up to \$350,000 of American Rescue Plan Act (ARPA) funding for local business coaching; and

WHEREAS, in 2022, the Community Services Subcommittee, as part of its discussion on potential uses of ARPA funds, considered the use of this funding for administration of a program which would support local business coaching, and recommended the coaching focus on assisting restaurants in rebounding from the COVID-19 pandemic; and

WHEREAS, the Subcommittee has consistently supported the use of funding to for this endeavor; and

WHEREAS, staff has determined that a budget of \$200,000 would be adequate for implementation of the program; and

WHEREAS, the Cal Poly Humboldt Sponsored Programs Foundation's Northern California Small Business Development Center ("NorCal SBDC") was selected for its experience in assisting small businesses, including restaurants in Pittsburg with similar one-on-one training and technical assistance.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Pittsburg hereby authorizes the City Manager to execute an agreement with Cal Poly Humboldt Sponsored Programs Foundation's Northern California Small Business Development Center for local restaurant coaching in an amount not to exceed Two Hundred Thousand Dollars (\$200,000).

BE IT FURTHER RESOLVED that the agreement shall commence May 4, 2023 and expire June 30, 2025.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 1st day of May 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution)	RESOLUTION NO. 23-
Accepting Metropolitan Transportation)	
Commission OBAG 3 Grant for Project)	
2052 – Delta De Anza Multimodal Trail)	
<u>Safety Improvements)</u>	

WHEREAS, the City of Pittsburg submitted an application to the Metropolitan Transportation Commission (MTC) for funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA), and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as “Regional Discretionary Funding”) for Project 2052—Delta de Anza Multimodal Trail Safety Improvements (the “Project”) for the One Bay Area Grant 3 (OBAG 3) Program; and

WHEREAS, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the Federal Transportation Act) including, but not limited to the Surface Transportation Block Grant Program (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149), and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

WHEREAS, state status, including California Streets and Highways Code §182.6, §182.7, and 2381(a)(1), and California Government Code 14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and

WHEREAS, pursuant to the Federal Transportation Act and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No.3606, Revised) that sets out procedures governing the application and use of Regional Discretionary Funding; and

WHEREAS, the City of Pittsburg is an eligible project sponsor for Regional Discretionary Funding; and

WHEREAS, the City Council authorizes the City Manager or designee to execute and file an application with MTC for Regional Discretionary Funding for the Project as referenced in this Resolution.

WHEREAS, as part of the application and award for Regional Discretionary Funding, the City commits to allocate local matching funds to the Project; and

WHEREAS, the City understands that the Regional Discretionary Funding is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional Regional Discretionary Funding; and

WHEREAS, the Project will comply with the procedures, delivery milestones, and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, Revised); and

WHEREAS, the City will complete the project as described in the application, subject to environmental clearances, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and

WHEREAS, the City understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, Revised), and the City has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by City; and

WHEREAS, there is no legal impediment to the City making applications for or being granted the funds, and there is no pending or threatened litigation that might in any way adversely affect the Project or the ability of the City to deliver such project.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby accepts the MTC OBAG 3 grant award in the amount of \$4,427,000 and that the above recitals are true and correct and incorporated herein.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 1st day of May, 2023 by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Accepting a Metropolitan Transportation Commission OBAG3 Grant for Project 2052—Delta de Anza Multi Modal Trail Safety Improvements

MEETING DATE: May 1, 2023

EXECUTIVE SUMMARY

On January 2023, the Contra Costa Transportation Authority (CCTA) approved a list of projects recommended for funding through the One Bay Area Grant 3 (OBAG 3). One of the projects included in the list is Project 2052—Delta de Anza Multimodal Trail Safety Improvements. As part of the OBAG 3 process, the City will submit the attached resolution of local support.

FISCAL IMPACT

The City anticipates an OBAG grant award of \$4,427,000 for Project 2052—Delta de Anza Multimodal Trail Safety Improvements (the “Project”). The minimum local match is 11.47% (\$507,777) of the total federally funded cost. The local match is expected to be divided amongst all participating agencies (Contra Costa County, East Bay Regional Park District, Pittsburg, and Antioch).

RECOMMENDATION

City Council adopt the attached resolution accepting funding assigned to the Metropolitan Transportation Commission (MTC) through OBAG 3, commit to a future allocation of local matching funds, and state assurance to complete the Project.

BACKGROUND

On May 2022, CCTA announced a call for projects for the OBAG 3 program to allocate approximately \$750 million in federal funding for projects from 2023 to 2026.

On July 15, 2022, the City submitted the OBAG 3 application for the Project and was selected through a competitive process to receive \$4,427,000 in Congestion Mitigation and Air Quality (CMAQ) funding.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

Project 2052—Delta de Anza Multimodal Trail Safety Improvements includes a series of safety and operational improvements within the communities of Bay Point, Pittsburg, and Antioch. These enhancements will address policies common to MTC Regional Safety/Vision Zero Policy, MTC's Equity Platform, MTC Regional Active Transportation Plan, the County Climate Action Plan, CCTA'S Vision Zero Policy, and the Pittsburg Moves Active Transportation Plan.

This existing paved, multi-use hiking, bicycling, and equestrian trail currently spans over 16 miles, connecting cities within central and eastern Contra Costa County. The highly used trail provides important connections for recreational and commute trips by alternative modes, linking local neighborhoods to key community assets such as schools, parks, grocery stores, and BART stations.

The Project will enhance safety at key conflicting points and augment the overall sustainability and operations of the facility through the implementation of at-grade crossing improvements, lighting, and increased green space. Thirty-five (35) at-grade crossings exist on the Delta De Anza Trail. Of these 35 crossings, 17 occur on facilities that are part of CCTA'S High Injury Network, and six exist on facilities identified in the CCTA's priority network for safety. In coordination with Contra Costa County, City of Antioch, East Bay Regional Park District, and East Bay Municipal Utility District (EBMUD), the City of Pittsburg will design and construct improvements that may or may not include the following:

1. Delta de Anza Trail Intersection: Install raised Crosswalks, rapid rectangular flashing beacons, high visibility crosswalks, lighting, way-finding signage, and green bike lanes.
2. Delta de Anza Trail Improvements: Install landscaping, lighting, trail pavement, fencing, and other improvements consistent with the City's Living Green Gardens initiative for sustainability.

The Project will serve as a connector project that will improve access and mobility for large numbers of pedestrians and bicyclists through these areas.

ATTACHMENTS: Resolution

Report Prepared By: Julissa Rico Ruiz, Consultant Engineer



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Authorizing the City Manager to Execute a Consulting Services Agreement with Northpoint Security Services, Inc. for Park Security Patrol Services

MEETING DATE: May 1, 2023

EXECUTIVE SUMMARY

After a detailed review of the responses to the City's Request for Proposals for Pittsburg Park Security Patrol Services (RFP), staff recommends the City Council to authorize the City Manager to execute a Consulting Services Agreement (Agreement) with Northpoint Security Services, Inc.

FISCAL IMPACT

The proposal is for \$200,000 for a term commencing July 1, 2023 and expiring June 30, 2023. Funding will be from Measure M Surplus Funds which currently has a balance of \$665,000 for this effort.

RECOMMENDATION

City Council adopt the Resolution authorizing the City Manager to: 1) execute the Agreement with Northpoint Security Services, Inc. for park security patrol services; 2) extend the term of the contract twice for one additional year each; 3), use an additional \$200,000 in compensation for each of the two one-year term extensions; and 4) appropriate Measure M surplus funds to fund the services commencing Fiscal Year 2023/24.

BACKGROUND

COVID guidelines limited access to shelters because shelters with congregate accommodations were prohibited. Only the unhoused meeting specific requirements were admitted to the Project Room Key shelters. The guidelines also limited interactions with encampments to minimize the spread of COVID. Although the City received complaints, staff was limited in what they could do because of strict COVID guidelines. As COVID subsided and guidelines eased, staff began conducting clean ups of encampments to reduce the spread of COVID and other communicable diseases.

To reduce opportunities of the encampments reestablishing themselves in parks and facilities, staff from the Public Works, Police and Recreation Departments developed a pilot project for overnight patrols in April 2021. The initial term was for two months since it was a pilot project.

Because of the pilot project's success, a request for proposal was conducted and staff reviewed proposals from five firms. On August 2, 2021, by City Council Resolution 21-13975, a contract for park patrol services was awarded to Northpoint Security Services. Because of the park security patrol project's continued success, the term of the contract was extended and is set to expire on June 30, 2023.

In anticipation of the current contract expiring, staff conducted another RFP and three security firms responded before the deadline of February 23, 2023. Staff reviewed the responses according to the following criteria: experience providing security services of similar scope and complexity in communities comparable to Pittsburgh, ability to perform the work in the time specified, knowledge of the City and surrounding area and cost.

SUBCOMMITTEE FINDINGS

This item was discussed in the Community Services Subcommittee on February 27, 2023.

STAFF ANALYSIS

The City issued the RFP for overnight security patrols at certain City parks and facilities, in order to improve health and safety, and reduce incidences of trespassing and damage to public facilities from vandalism and theft that seem to occur overnight.

Respondents were asked to provide a description of experience and years in business, training and experience of individuals who will perform the services, and information regarding equipment and vehicles being used.

Staff reviewed proposals from three firms: Patrol Solutions, Shield Protection & Public Safety, Inc. dba Spearhead Protection and Northpoint Security Services, Inc.

This service is a supplement to the City's own Park Patrol, which closes and locks restrooms and park gates at dusk and re-opens them shortly after dawn each day. The City's Park Patrol and the contracted park security patrol service's combined efforts have helped to improve the conditions at the City's parks and facilities.

ATTACHMENTS:

Contract for Services
Resolution

Report Prepared By:

Ishani Rasanayagam, Administrative Analyst II

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF PITTSBURG AND
NORTHPOINT SECURITY SERVICES, INC.**

THIS Agreement ("Agreement") for consulting services is made by and between the City of Pittsburgh ("City") and Northpoint Security Services, Inc., a California corporation ("Consultant") (together referred to as the "Parties") as of July 01, 2023 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2024 or the date the Consultant completes the services specified in Exhibit A, whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as referenced herein. The City, at its sole discretion, may extend the term twice, for one additional year each. If the term is extended, compensation may be increased up to, but no more than the CPI for the Bay Area.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, requests in writing the reassignment of any such persons to ensure Consultant performs services in accordance with the Standard of Performance, Consultant shall, immediately upon receiving City's request, reassign such persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided herein above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed Two Hundred Thousand dollars (\$200,000.00), as set forth in Exhibit B, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Consultant but is merely a limit of potential City expenditures under this Agreement.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information, unless waived by the City Manager, or his or her designee:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall pay undisputed invoices that comply with the above requirements within 30 days from the receipt of the invoice.

2.3 Final Payment. Consultant shall submit its final invoice within 60 days of completing its services. Consultant's failure to submit its final invoice within this 60 day period shall constitute Consultant's waiver of any further billings to, or payments from, City.

2.4 Reimbursable Expenses. Reimbursable expenses, if any, are specified in Exhibit B and included in the total compensation referenced in Section

2. Expenses not listed in Exhibit B are not chargeable to, or reimbursable by, City.

2.5 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

2.6 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written authorization from the City Manager, or his or her designee.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement

Section 4. INSURANCE REQUIREMENTS. Before beginning any services under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall be fully responsible for the acts and omissions of its subcontractors or other agents.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Consultant is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, 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 \$2,000,000 per occurrence and \$4,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis.

Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Consultant has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

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

- a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.
- b. City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Consultant. Coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and non-contributing.
- d. The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
- e. Consultant agrees to give at least 30 days prior written notice to City before coverage is canceled or modified as to scope or amount.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, 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

\$1,000,000 per occurrence or claim covering the Consultant's errors and omissions.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Submittal Requirements. Consultant shall submit the following to City prior to beginning services:

- a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
- b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

4.4.2 Acceptability of Insurers. All insurance required by this Agreement is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.3 Deductibles and Self-Insured Retentions. Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than \$100,000.

4.4.4 Wasting Policies. No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

4.4.7 Excess Insurance. If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 General Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify, and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage, or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the Services, the Project out of

or in connection with the performance of the services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall pay and satisfy any judgement, award or decree that may be rendered against City or its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City or its directors, officials, officers, employees, agents, or volunteers. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor. This Section 5.1 shall survive any expiration or termination of this Agreement.

- 5.2 PERS Indemnification.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City.
- 6.2 Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder. Consultant shall also, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates as determined by the California Department of Industrial Relations.
- 7.3 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have, and will maintain at their sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.
- 7.4 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** Upon ten days' prior written notice, City may cancel this Agreement at any time and without cause upon such written notification to Consultant. In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Amendments.** The parties may amend this Agreement only by a writing signed by the parties hereto.
- 8.3 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City Manager, or his or her designee. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the City Manager, or his or her designee.
- 8.4 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant, including but not limited to the provisions of Section 5, shall survive the termination of this Agreement.
- 8.5 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.5.1** Immediately terminate the Agreement;
 - 8.5.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.5.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.5.4** Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.
 - 8.5.5** The remedies mentioned in this Agreement are not exclusive of any other right, power or remedy permitted by law. The City's failure or delay in exercising any remedy shall not constitute a waiver of such remedy or preclude the further exercise of City's rights.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All final versions of reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement, and the City may use, reuse or otherwise dispose of the documents without Consultant's permission. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential drafts and will not be released to third parties by Consultant without prior written approval of City.
- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Pursuant to Government Code Section 8546.7, the Agreement may be subject to the examination and audit of the State Auditor for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in Contra Costa County or in the United States District Court for the Northern District of California.

- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 10.7 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.8 Notices.** Any notice, demand, request, consent or approval that either party is required to give the other pursuant to this Agreement, shall be in writing and may be given by either (i) personal service, or (ii) certified United States mail, postage prepaid, return receipt requested. Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable.

Consultant : Northpoint Security Services, Inc.
2063 Main Street, Suite #106
Oakley, CA 94561
ATTN: Bill Davies, Owner

City: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
ATTN: City Manager

10.9 Professional Seal. Where applicable in the determination of the City Manager, or his or her designee, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility."

10.10 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent there are any inconsistencies between this Agreement, the Exhibits, and Consultant's proposal, the Agreement shall control. To the extent there are any inconsistencies between the Exhibits and the Consultant's Proposal, the Exhibits shall control.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.12 Construction of Agreement. Each party hereto has had an equivalent opportunity to participate in the drafting of the agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

10.13 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any third parties.

The Parties have executed this Agreement as of the Effective Date.

CITY OF PITTSBURG

CONSULTANT

Garrett Evans, City Manager



Bill Davies, Owner

Attest:

Alice E. Evenson, City Clerk

Approved as to Form:

Donna Mooney, City Attorney

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION SCHEDULE

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANT

By: _

Title: _

2784980.1

EXHIBIT A

List of Pittsburg City Parks and Facilities	
Park/Facility	Address/Location
8th St. Greenbelt	8th Street (between Harbor St. and Cumberland St.)
4th St. Plaza	4th St (between Railroad Ave. and Cumberland St.)
Americana Park	Bend of Emerson Drive, heading into Parkview Dr (bordering Salinas Ct)
Buchanan Park	4040 Harbor St
Buckley Park Plaza	Railroad Avenue, between E 5th and E 6th Streets
California Seasons Park	1951 Seasons Way
California Theater	351 Railroad Avenue
Central Park	2987 Pittsburg - Antioch Hwy
Central Harbor Park	End of Cutter Ave, off Marina Blvd
City Park	E 17th & Railroad Ave
Columbia Linear Park	End of Central Avenue
De Anza Park	E Trident Drive
Environmental Center	2581 Harbor Street
Giacomelli Park	2011 W. Leland Road
Harbor Master Office	51 Marina Blvd
Heritage Park Plaza	124 E 4th St
Highlands Park	4234 Goldenhill Dr
Highlands Ranch Park	Rangewood Drive, off Buchanan Rd
Hillsdale Park	2240 Daffodil Dr
John Henry Johnson Park	West Leland Road at John Henry Johnson Parkway (North side of Leland Road)
John Henry Johnson Trailhead	John Henry Johnson Parkway (south side of Leland Road)
Larry Lasater Park	Corner of Santa Teresa Dr and Rancho Bernardo Dr
Marina Boat Ramp	Marina Blvd
Marina Center	51 Marina Blvd
Marina Walk Park	65 Devito St
Mariner Park	8th St
Modular Unit	Bend of River Park Dr. heading into Riverview Park
Museum Parking Lot	515 Railroad Ave
Oak Hills Park	2280 Southwood Dr
Plaza Marina Building	51 Marina Blvd
Public Library	80 Power Avenue
Riverview Park	End of River Park Drive
Santa Fe Linear Park	E. Santa Fe Ave
Senior Center	300 Presidio Lane
Small World Park	2151 Harbor St
Stoneman Trailhead	End of John Henry Johnson Parkway
Veteran's Memorial	2551 Harbor St next to Small World Amusement Park
Village Park at New York Landing	240 Pebble Beach Loop
Woodland Hills Park	315 Alta Vista Dr (corner of Crestview and Alta Vista)

Pittsburg Park Security Patrol Services FY 2023-2024

	Patrol Locations		Areas of concern
STOP 1	Highlands Ranch Park	South of Buchanan Road near Ventura	Parking lot, Ball Fields/ Dog Park
STOP 2	Highlands Park	4234 Goldenhill Dr	Open area
STOP 3	Buchanan Park	4150 Harbor St	Parking lot, creek area, around facilities
STOP 4	City Park	17th & Railroad Ave	Parking lot, bathrooms, Fields
STOP 5	Ray Giacomelli Park	2011 West Leland Rd	Parking lot, bathroom
STOP 6	John Henry Johnson Park	West Leland Road at John Henry Johnson Parkway (North side of Leland Road)	Parking lot, bathroom
STOP 7	Central Park	Pittsburg-Antioch Hwy	Parking lot, Playground Equipment, Soccer Field
STOP 8	Santa Fe Linear Park	E. Santa Fe St	Park area that runs along Santa Fe
STOP 9	Harbor Master Office	51 Marina Blvd	Parking lot
STOP 10	Marina Boat Ramp	Marina Blvd	Parking lot, bathrooms, open area
STOP 11	Marina Walk Park	65 Devito St	
STOP 12	Riverview Park	Bayside Drive	Parking lot, bathrooms, open area
STOP 13	Mariner Park	8th St	Vandalism and after hours use
STOP 14	California Seasons Park	1951 Seasons Way	Open area

Exhibit B

Cost Structure

Northpoint Security Services, Inc. ("CONSULTANT") shall provide The City of Pittsburgh ("CITY") with licensed and insured security officers. The all-inclusive hourly or monthly rates for this project are as follows:

Rate Structure

- Level One Security Officers - \$39.73 per hour
 - Level Two Security Officers - \$44.73 per hour
 - Patrol Vehicle - \$2,470 per month
- * *Level Two Security Officers are those who have at least two (2) years of experience with the City under the current park patrol services contract*
 - * *All non-holiday overtime is factored into the monthly rate*
 - * *Vehicle cost includes fuel, maintenance, cleaning, insurance and all other operating costs*

The Account Manager and Supervisor's time are not billed to the City at any given time. The Account Manager and Supervisors will be on site on a regular basis at unannounced times to observe the assigned security officers. They will also serve as a liaison between the City and Consultant.

Scheduled overtime shall not be billed to the City. All project overtime has been accounted for in the billable rate. However, any unscheduled changes or additions requested by the City may result in overtime charges.

Holidays will be billed at time and a half. Consultant observes all federally recognized holidays.

Uniforms, equipment, or other expenses shall not be billed to the City at any time.

Pre-employment screening, training, ongoing training, and all other related expenses shall not be billed to the City.



Northpoint Security Services, Inc.

Bill Davies, Owner

2063 Main Street, Suite #106
Oakley, CA 94561
Phone 800-976-6619
Bill@NorthpointSecurityServices.com



California State License PPO-15383

Ishani Rasanayagam
City of Pittsburg 65
Civic Avenue
Pittsburg, CA 94565



Ishani,

It is with great pleasure we submit our proposal in response to the Request for Proposal, to provide security services for your property. We hope that this may be the start of an exciting and productive relationship.

Northpoint Security Services, Inc. is an acclaimed firm of security agents with a reputation for both effective security solutions and the use of innovative technology in the protection of life and property. We have a portfolio of completed and on-going projects with particular emphasis on retail and commercial properties. We think that your project is well suited to our strengths and aspirations

We ask a few moments of your time to review the attached information package. We are extremely interested in the project and we very much hope that you consider the Northpoint Security Services, Inc. team as a strong candidate for selection.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "W. T. Davies", followed by a horizontal line.

William T. Davies.
President, CEO
Northpoint Security Services



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Northpoint Security Services, Inc. will provide you with certified, licensed, and insured, Security Officers. Each Security Professional has been screened to the standards of the State of California Department of Justice and the Federal Bureau of Investigations (FBI).



- 1) Northpoint Security Services, Inc. has set some of the strictest background screening standards in the industry. Our personnel all submit to a battery of aptitude tests, a 5-panel drug screening, and extensive in-service training regarding protection of property and customer service.
- 2) Northpoint Security Services, Inc. offers, free of charge, supervisory personnel to insure strict adherence to our company policies and your rules, regulations and ordinances. Northpoint Security Services, Inc. supervisors are utilized as a liaison between Northpoint Security Services, Inc. and our clients. Supervisors are on duty 24 hours a day, 365 days per year for your convenience and will regularly make spot checks to prevent the issue of complacency. It is our belief that in order to assure the best quality of service that we stand by, we must keep close relationships with our personnel both on and off duty.
- 3) At Northpoint Security Services, Inc, all of our security officer will be equipped with two-way radios or mobile phones, to ensure constant communication with our management team.
- 4) Each and every security officer will be in-serviced regularly regarding your specific site to further enhance the protection we provide.

Northpoint Security Services, Inc. has taken a unique approach to the business of contract security. Many of our competitors employ minimally screened and trained guards. Our approach involves a proactive theory of well-groomed, exceptionally trained, uniformed security officers. Our strategy entails several steps to mitigate the possibility and opportunity for theft of property, or injury to persons within the facility. The following is an overview of our Security Guard Project:



Applicant Screening

- 5) The quality we bring to your environment begins long before you see our security guards. The Management Team at Northpoint Security Services, Inc. has resolved to make the recruitment and training of our personnel the key to our success; in that, we conduct hiring initiatives on a regular basis with over 100 applicants per month, with an average of 5-10 new appointees. Most applicants are unable to meet our qualifications, which are well above minimum industry standards.



Training

Northpoint Security Services, Inc. conducts training that exceeds that of any of our competitor's programs. The knowledge of our management team is passed on to our new employees. In addition to the state mandated certification courses, Northpoint Security Services, Inc. personnel must attend:



- A. 40-hour initial training
- B. 8-hour annual refresher training
- C. Customized training to meet our clients requirements



Method

Our uniformed security guards are trained to act as a criminal deterrent by adopting the principals of the C.O.S.P (*Community Oriented Security Program*) methodology. Simply put, our guards are encouraged to be an approachable source of information to patrons, residents and employees. Letting the public know that we are there for them generates a feeling of community and safety.



Patrol

The placement of our security guards is what generally places Northpoint Security Services, Inc. in the position to confidently describe the implementation of our security officer project as authentic. Our security officers are trained to make visible foot patrols throughout their posts in undetermined patterns. We encourage our personnel to interact with your patrons and employees in addition to standing a fixed post



Compliance

Northpoint Security Services, Inc. has developed a theory of
"Enforcement through Reinforcement"



The management, having forty combined years of security and law enforcement experience, has realized that prevention of crime can be accomplished by utilizing tactical approaches, rather than accusations and the traditional methods of our predecessors. The art of *verbal judo* is commonplace in our organization and has often been effective in deescalating volatile situations.



Uniforms

- 6) Our uniformed security guards are outfitted with police-style uniforms. Our corporate general orders, require that our personnel keep their uniforms pressed and clean at all times. Their shoes are polished; military-style and men are clean-shaven with neat haircuts. Our female officers are held to the same standard. We pride ourselves on the appearance of our personnel, as they are representing our agency in your facilities.



Supervision

- 7) Northpoint Security Services, Inc. supervisory personnel are required to possess a minimum of 7 years of law enforcement or security experience. Our supervisors are charged with scheduling, assigning security posts, and acting as liaison between the Board of Directors and our client. Supervisory personnel are available to you 24 hours every day in order maintain quality assurance and customer service on behalf of THE CITY OF PITTSBURG.



Hour Customer Service

Northpoint Security Services, Inc. stands above our competitors by providing an open line of communication with our

Our offices are staffed around the clock with customer service representatives for your convenience. While most of our competitors work 9AM-5PM, Northpoint Security Services, Inc. staffs 24-hour dispatch centers. Our customer service representatives are not salespeople; they are security professionals assigned to light duty or administrative functions. Desk personnel are utilized as watch-commanders with full authority to make supervisory decisions for Northpoint Security Services, Inc.



You can significantly reduce your liability with our \$3 Million comprehensive Insurance Policy



Cost



Northpoint Security Services, Inc. will provide you with a forensic breakdown of our costing specifications, on request. Northpoint Security Services, Inc. maintains a philosophy that in order to retain the highest quality security professionals in the industry, we must compensate them commensurate to their qualifications. The Management team has resolved to reduce our profit margin rather than decrease a security guard's salary. Our costing structure provides for a well-paid security professional and a conservative rate to our client.

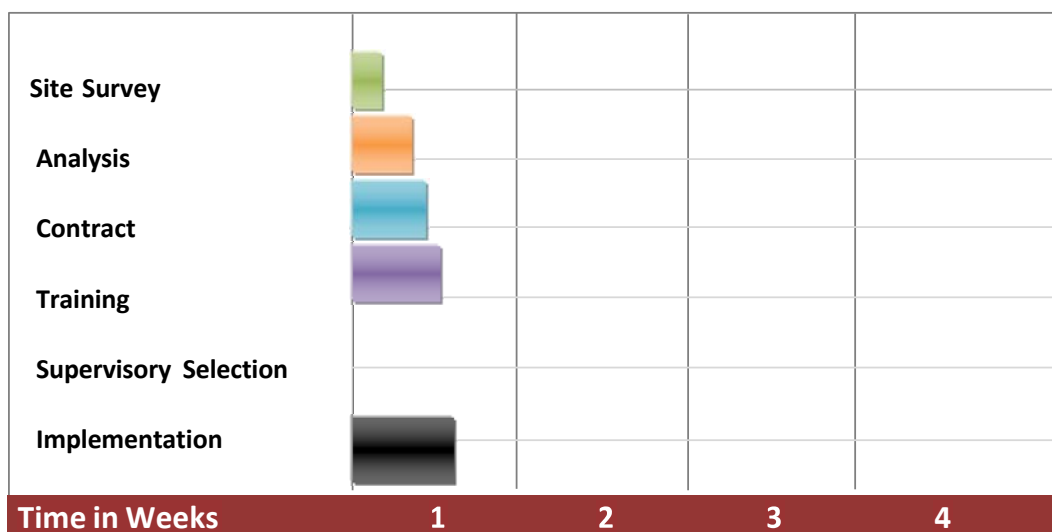


Liability

Northpoint Security Services, Inc. maintains insurance that is three times the minimum aggregate coverage obtained by most of our competitors. Our Legal Division recommends that in order to protect our assets as well as yours, we must maintain financial security in full force and effect at a level that far exceeds industry standard.



Security Service Project Schedule



Having reviewed in detail, your request for proposal particulars and understood the scope and schedule of the project, Northpoint Security Services, Inc. has put together a first class team of security professionals who we think are particularly suited to the project. We have selected prospective supervisory personnel on their ability and suitability for the type of project, and of course their availability to start right away if we are fortunate enough to be appointed.

Pictured above is a preliminary plan for project development. Northpoint Security Services, Inc. will partner with you in every stage of this project and act as both consultants and colleagues to work in a manner commensurate with both of our agency's relative skills – bringing greatly enhanced value to the project.



Executive Protection



- ▮ Discrete Bodyguard Service
- ▮ BDU Bodyguard Service
- ▮ Armed Transport Service
- ▮ Residential Protection Details
- ▮ Corporate Protection Details
- ▮ Prisoner Extradition



Uniformed Security



- ▮ Healthcare Facilities
- ▮ Residential Complexes
- ▮ Corporate Buildings
- ▮ Loss Prevention Retail
- ▮ Venues Parking
- ▮ Lots Governmental
- ▮ Bike Patrol
- ▮ Hotel Security



Security Consulting



- Physical Safety and Security Tours of Each Property
- Review of Incident Reports & Other Foresee-ability Issues
- Property Manual Review and Preparation
- International Travel Security Consulting & Protection Service
- Review of Property Security Procedures and Equipment
- Management and Employee Safety & Security training
- In-house Security Rules and Procedures



International Travel Security

- Travel warnings
- Crime reports
- Unusual currency
- Entry requirements
- Areas of instability
- Consulate contacts
- Embassies
- Disease information
- Extremist Groups





- ❑ Assessments of threats, vulnerabilities, and critical infrastructure at ports
- ❑ Coordination and cooperation among agencies
- ❑ Establishment of guidelines for commercial facilities handling certain cargo
- ❑ Patrol of rivers, shorelines, and other waterways



- ❑ Conduct tracks
- ❑ Conduct searches and apprehensions
- ❑ Narcotics detection
- ❑ Missing person location
- ❑ Explosives detection

Cost Structure

Northpoint Security Services, Inc. will provide THE CITY OF PITTSBURG with licensed and insured security officers. Our all-inclusive hourly or monthly rates for this project are as follows:

\$39.73 per hour for Level One security officers and \$44.73 for Level Two security officers, which would have at least two-years of experience with the City of Pittsburgh’s contract. All non-holiday overtime is factored into this rate.

\$2470.00 monthly patrol vehicle flat rate. Cost includes fuel, maintenance, cleaning, insurance, and all other operating costs.

Account Manager and Supervisor’s time are not billed in any way to THE CITY OF PITTSBURG. Our Account Manager and Supervisor’s will be on site on a regular basis at un-announced times to check up on the assigned security officers. They also serve as a liaison to you, our client on all security initiatives and project maintenance.

Scheduled overtime is never billed to THE CITY OF PITTSBURG. We have accounted for project overtime in our billable rate. Any unscheduled changes or additions may result in overtime charges.

Holidays are billed at time and a half. Northpoint Security Services, Inc. observes all federally recognized holidays.

Uniforms, equipment, or other expenses are never billed to THE CITY OF PITTSBURG.

Pre-employment screening, training, ongoing training, and other related expenses are never billed to THE CITY OF PITTSBURG.

This shall serve as a brief synopsis of the security services contract provided before the start of services. The security services contract and purchase order supersede any information contained in this proposal.

Requirements/Questionnaire

A. Proposing Firm and General Information

- a. Company Name and Address: **Northpoint Security Services, Inc.**
b. RFP contact person–phone/email: **Bill Davies, 925-354-1668,**
bill@northpointsecurityservices.com

B. Experience

1. Describe your company's history and experience in the field:
Northpoint Security Services, Inc. has been one of the leading private security firms in Contra Costa County since 2004. We have provided security for Contra Costa's largest land developer and commercial real estate firm, Seno Enterprises/Sierra Pacific and Graventa Enterprises, which is the one of the state's largest privately ran commercial and residential waste disposal companies, many other businesses and residential properties throughout the local area, and even the City of Pittsburg. Northpoint Security's Management Team the combined experience nearly 100 years.

Northpoint initially started the Park Patrol for the City of Pittsburg a few years ago. We have worked with the City of Pittsburg to create the program and implement its success. We have a team of dedicated professionals who have proved their worth and our company's dedication to the City of Pittsburg. The feedback and reporting have been commended at all levels of interactions we have had with the City.

2. Describe your company's knowledge and experience, if any, in Pittsburg, East Contra Costa County, and/or communities that are similar: **Northpoint Security provides security and patrol services to dozens of clients throughout Contra Costa, and many of them in the Pittsburg-Antioch area. We have worked with city governments in the county and dozens of private businesses, business associations, and residential clients. Our long-term success has been a direct result of our dedication to our clients, cities, county, neighbors, employees, and clients.**

3. Provide three reference contacts including name, telephone and email

Bob Garrison, Sierra Pacific Vice President Commercial Properties
(925) 609.6200 bgarrison@spprop.com

Tim Bredbenner, Garaventa Enterprises tim.bredbenner@mdrr.com
925-682-9113

Rob Drewry, Merit Steel rdrewry@meritsteel.com

C. Qualifications

1. Provide information regarding the training and experience of the person(s) who will perform the services for the City: **Northpoint Security has been providing this service for the City of Pittsburg for two years, to the City's satisfaction. We have highly trained employees at the ready and our in-house training is customizable to the client's needs and wants. We have adapted to the City's requests in the inception of this program and have worked to see its success. The cost savings to the city, vs. having police or other city staff patrol the parks is significant and having a dedicated patrol to the parks, helps to protect the physical assets of the City and the residents and visitors to the City of Pittsburg.**
2. Provide information regarding the equipment used and considerations or techniques used in providing services as described in the RFP: **Northpoint Security has a fleet of patrol cars to customize appearances for our clients. We can accommodate almost any reasonable request. We employ a state-of-the-art mobile patrol software that reports narrative, pictures, videos, and more. This ensures to the client that the services have been rendered and any pictures of documentation needed for follow-up by the client at a later time.**

D. Cost Proposal

1. Provide information regarding an approach and cost proposal for effective overnight security for the Primary Locations, and a planned approach and cost proposal for effective overnight security for Priority 2 Locations. Due to budget constraints, the City reserves the right to eliminate one or more locations from the scope of work.: **We have currently been providing this service for the City at the rate of \$39.73 per hour and \$2,470.00 for a patrol vehicle. We propose to continue the current rate for Level One security officers and \$44.73 for Level Two security officers, which would have at least two-years of experience with the City of Pittsburg's contract. We base this rate on ensuring our dedicated employees are properly compensated, feel valued, are motivated to strive for client satisfaction, and limit turnover. Patrol vehicle costs are based on acquisition of the vehicle, insurances, fuel, maintenance, washing, etc. The flat rate is inclusive of all vehicles needs and the labor rate is inclusive of all employer costs, other than holiday and unscheduled overtime.**
2. Provide information regarding hourly rate and any other cost considerations relevant to the proposal (separate charges for vehicle or equipment, training expense, holiday rate, rate for hours in excess of eight hours per shift): **As outlined above, we pride ourselves in transparent pricing for our clients. We provide a flat hourly rate for labor and a flat monthly rate for vehicles. Dedicated patrol phones that are available for client communications and report writing are also available at \$123.00 per month, all inclusive.**

E. Certificate of Insurance

a. Demonstrate you have the insurance required in the attached contract agreement, including an endorsement listing the City as additional insured,
Attached to this proposal

Northpoint Security sincerely appreciates being the first provider of patrol services for the city parks. We hope that our dedication to the City and community have been visible in our success. We will work together with the City Management and City Government to add and enhance the patrol services the city parks currently receive.

One of the benefits of a local, family-owned company is the ability to customize the services to the needs of our clients. We can modify, expand, alter, change, etc. all our services to adapt to the changing and progressing needs of the City.

**If the City Council needs any further information or clarification, please feel free to reach out to our company owner, Bill Davies
bill@northpointsecurityservices.com or direct at 925-354-1668**



City of Pittsburg

65 Civic Avenue
Pittsburg, CA 94565-3814

September 7, 2021

To Whom It May Concern

This letter is to confirm the City of Pittsburg hired Northpoint Security Services for overnight patrols at City parks, parking lots and facilities effective August 15, 2021.

In May 2021, the City launched a Park Patrol Pilot Project and hired Northpoint Security Services based on their initial proposal. The project provided overnight patrols at nine City parks.

In recent years, the City has experienced a significant increase in vandalism, dumping and trespassing in its parks, including establishment of several homeless encampments. The pilot project was an effort to reduce the incidence of trespassing, dumping and vandalism in public recreation areas.

The success of the pilot project led to development of a Request for Proposals with guidelines and scope of work that drew heavily from the prior experience. The City received multiple qualified proposals, and ultimately awarded a one-year contract to Northpoint to continue patrols at approximately 20 city-owned properties.

I have found Northpoint to be responsive and professional in their contacts with the public and with City staff. Their guards communicate well with City's parks maintenance employees and local police to coordinate efforts. Their daily written reports provide useful information for follow-up actions and have included photos and short videos when the situation warranted.

If you have questions regarding the City's park patrol project, please feel free to contact me directly.

Sincerely,

Jill Hecht, Deputy City Manager for Operations
jhecht@ci.pittsburg.ca.us
(925) 252-4877



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/22/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Zeigler Insurance and Financial Services, Inc 1300 Central Blvd Ste B Brentwood, CA 94513 License #: 0H18234	CONTACT NAME: Erica Juarez PHONE: (925)634-1240 FAX: (888)347-3597 E-MAIL: erica@zeiglerinsurance.com ADDRESS: erica@zeiglerinsurance.com
INSURED	Northpoint Security Services Inc. 2063 Main St #106 Oakley, CA 94561	INSURER(S) AFFORDING COVERAGE INSURER A: Summit Specialty Insurance Company NAIC # 16889 INSURER B: State Compensation Insurance Fund 35076 INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES

CERTIFICATE NUMBER: 95950281-654475

REVISION NUMBER: 38

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER	Y	Y	SCGL005000088000	12/03/2022	12/03/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$			SXCS005000025800	12/03/2022	12/03/2023	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	9146699	08/01/2022	08/01/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liabili			SCGL005000088000	12/03/2022	12/03/2023	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of Pittsburg 65 Civic Avenue Pittsburg, CA 94565	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  (ELJ)

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BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Authorizing City Manager to Execute the)
Consulting Services Agreement with)
Northpoint Security Services, Inc. for Park) RESOLUTION NO. 23-
Security Patrol Services)

WHEREAS, in April 2021, staff developed a pilot project for overnight patrols at several City parks and facilities to improve health and safety, and reduce the incidences of trespassing and damage to public facilities from vandalism and theft; and

WHEREAS, the successful pilot project was used as the basis for a request for proposal issued on June 1, 2021 and resulted in an award of a contract to Northpoint Security Services on August 2, 2021 by City Council Resolution 21-13975; and

WHEREAS, because of the park security patrol project's success, the contract with Northpoint Security Services was extended and set to expire on June 30, 2023; and

WHEREAS, in anticipation of the contract expiring, another Request for Proposals was issued on February 13, 2023 with a deadline for responses of February 23, 2023; and,

WHEREAS, three security patrol providers submitted proposals to the City for consideration; Patrol Solutions, Shield Protection & Public Safety, Inc. dba Spearhead Protection and Northpoint Security Services, Inc.; and

WHEREAS, staff's careful review of all the proposals included the following criteria: experience providing security services of similar scope and complexity in communities comparable to Pittsburgh, ability to perform the work in the time specified, knowledge of the City and surrounding area and cost.

NOW, THEREFORE BE IT RESOLVED that the City Council authorizes the City Manager to execute the Consulting Services Agreement with Northpoint Security Services, Inc. for park security patrol services, authorizes the City Manager to extend the term of the contract twice for one additional year each, and authorizes an additional \$200,000 in compensation for each of the two one-year term extensions, and appropriates Measure M surplus funds to fund the services for Fiscal Year 2023/24.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 1st day of May 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of Ten City Council Resolutions to Find Developers in Compliance with their Respective Development Agreements for: Southwest (San Marco), Tuscany Meadows, Liberty, Trans Bay Cable, Edgewater, Belle Harbor (Waterstone), Sky Ranch II, Montreux, Columbia Solar, and Greystone

MEETING DATE: May 1, 2023

EXECUTIVE SUMMARY

State law requires local jurisdictions to conduct a periodic review of active development agreements (DAs) within the community. For the calendar year 2022, staff has conducted reviews of ten active DAs, including: Southwest (San Marco) Development, Tuscany Meadows Subdivision, Liberty Subdivision, Trans Bay Cable, Edgewater Development, Belle Harbor (Waterstone) Subdivision, Sky Ranch II Subdivision, Montreux Subdivision, Columbia Solar, and Greystone Subdivision. Staff has found each developer to be in compliance with the terms of their respective DA, and as such, recommends the City Council adopt ten resolutions finding good faith compliance and authorizing the City Manager to execute Certificates of Compliance as appropriate.

RECOMMENDATION:

City Council adopt the ten attached resolutions finding:

- 1) SEECON Financial and Construction Co., Inc., in good faith compliance with the San Marco DA; and
- 2) SEECON Built Homes, Inc., in good faith compliance with the Tuscany Meadows DA; and
- 3) Forecast Land Development, LLC, in good faith compliance with the Liberty Subdivision DA; and
- 4) Trans Bay Cable, LLC, in good faith compliance with the Trans Bay Cable DA; and
- 5) Sunnyside Pittsburg, LLC, in good faith compliance with the Edgewater Apartments DA; and
- 6) Discovery Homes, Inc., in good faith compliance with the Belle Harbor (Waterstone) DA; and

- 7) SkyRanch Land Investors, LLC, in good faith compliance with the Sky Ranch II DA;
- 8) Altec Homes, Inc., in good faith compliance with the Montreux DA; and
- 9) Columbia Solar LLC, in good faith compliance with the DA Columbia Solar DA; and
- 10) SEECON Financial and Construction Co., Inc., in good faith compliance with the Greystone DA.

FISCAL IMPACT:

No impact to the General Fund or any enterprise/special funds. The subject development agreements include provisions requiring the respective developers to submit fees to cover staff costs associated with processing periodic reviews of Development Agreements.

BACKGROUND:

California Government Code Section 65864 *et seq.* authorizes and regulates the execution of development agreements (DAs) between Cities and persons who desire to develop property within the City's jurisdiction. Pursuant to the law, the City establishes procedures for the consideration of the DA applications, as well as procedures for reviewing the DAs. State law also requires the periodic review of a Development Agreement, at which time the Developer must demonstrate good faith compliance with the terms of the DA.

The last periodic reviews were conducted by the City in 2020 for eight of the DAs listed above in addition to the Garaventa DA for a total of nine with Greystone and Columbia Solar as the two additional DAs in this iteration.

STAFF ANALYSIS:

If the City Council finds that the respective developers are in compliance with their respective DAs, then the City would issue a "Finding of Compliance" for each project, which may be recorded against the properties. If, as a result of the review, the City Council finds and determines, on the basis of substantial evidence that a developer has not complied in good faith with the terms and conditions of their DA, then the City may terminate or modify the associated DA. Pursuant to the City's procedures, the City would then issue a "Finding of Non-Compliance," identifying the areas of non-compliance, the terms of compliance and a time period for the Developer to bring the project into compliance with the DA.

At this time, all current issues associated with each DA reviewed have either been addressed or will be addressed when appropriate by the respective developer or are being addressed in coordination with the developer on an on-going basis. As such, staff recommends the adoption of all ten proposed resolutions, finding good faith compliance by Developers with the terms of the DAs.

ATTACHMENTS:

Compliance Resolutions

1. Resolution finding SEECON Financial and Construction Co., Inc., in good faith compliance with the San Marco DA
 - 1a. Exhibit 1 – San Marco 2022 Summary Table
2. Resolution finding SEECON Built Homes, Inc., in good faith compliance with the Tuscany Meadows DA

- 2a. Exhibit 1 – Tuscany Meadows 2022 Summary Table
- 3. Resolution finding Forecast Land Development, LLC, in good faith compliance with the Liberty Subdivision DA
- 3a. Exhibit 1 – Liberty 2022 Summary Table
- 4. Resolution finding Trans Bay Cable, LLC, in good faith compliance with the Trans Bay Cable DA
- 4a. Exhibit 1 – Trans Bay Cable 2022 Summary Table
- 5. Resolution finding Sunnyside Pittsburg, LLC, in good faith compliance with the Edgewater Apartments DA
- 5a. Exhibit 1 – Edgewater 2022 Summary Table
Edgewater Recorded Development Agreement (full text)
- 6. Resolution finding Discovery Homes, Inc., in good faith compliance with the Belle Harbor (Waterstone) DA
- 6a. Exhibit 1 – Belle Harbor 2022 Summary Table
- 7. Resolution finding SkyRanch Land Investors, LLC, in good faith compliance with the Sky Ranch II DA
- 7a. Exhibit 1 – Sky Ranch 2022 Summary Table
- 8. Resolution finding Altec Homes, Inc., in good faith compliance with the Montreux DA
- 8a. Exhibit 1 – Montreux 2022 Summary Table
- 9. Resolution finding Columbia Solar LLC, in good faith compliance with the DA Columbia Solar DA
- 9a. Exhibit 1 – Columbia Solar 2022 Summary Table
- 10. Resolution finding SEECON Financial and Construction Co., Inc., in good faith compliance with the Greystone DA
- 10a. Exhibit 1 – Greystone 2022 Summary Table

Report Prepared By: Maurice Brenyah-Addow, Senior Planner

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Southwest (San	)	
Marco) Development Agreement	)	
Between The City of Pittsburg and	)	RESOLUTION NO. 23-
Seecon Financial and Construction	)	
Co. Inc. and Determination as to	)	
Compliance With Development	)	
Agreement	)	

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, a Development Agreement between the City of Pittsburg and Seecon Financial and Construction Co., Inc., was recorded on August 1, 1990, for the Southwest (San Marco) Development Area; and

WHEREAS, a 1st Amendment to the Development Agreement was executed on November 1, 2001; and

WHEREAS, a 2nd Amendment to the Development Agreement was executed on July 19, 2010; and

WHEREAS, a 3rd Amendment to the Development Agreement was executed on April 8th, 2013; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DAs") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Southwest (San Marco) Development Agreement was conducted, and on December 21, 2020, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and City Staff, as well as the information contained in the "San Marco DA – 2022 Annual Review" summary table, attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Southwest (San Marco) Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Southwest (San Marco) Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

Section 5. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 1st day of May, 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit 1 - San Marco DA - 2022 Annual Review Summary Table



DA Section	Condition/Requirement	Status	Comments	Action Items
1 Recitals				
2 A	To strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the public and private economic risks of development, the Legislature of the State of California adopted Sections 65864 et seq. of the Government Code ("Development Agreement Statute") which authorizes City to enter into a development agreement with a person having a legal or equitable interest in real property, for the development of property. Under the authority of the Development Agreement Statute, City adopted Resolution No. 89-7466 on June 5, 1989, establishing procedures and requirements for the consideration of development agreements.	Not Applicable		
3 B	Developer is the owner of approximately 639± acres of property located near the City of Pittsburgh, within Contra Costa County and described more specifically in Exhibit "A" attached (the "Property") located within the Southwest area described in paragraph E.	Not Applicable		
4 C	It is the intent of City and Developer to establish certain development rights in the Property which will be the subject of property development applications and this Development Agreement.	Not Applicable		
5 D	Developer desires to develop and construct on the Property, in phases, a complex of buildings for 2938 single and multifamily residential units plus walk and bicycle paths, play and picnic areas, park areas, and similar open spaces, swimming pools, parking facilities, interior roadways and other related infrastructure improvements (collectively the "Project").	Not Applicable		
6 E	On May 4, 1987, by Resolution No. 87-7138, the City Council determined that the approximately 639± acre area located adjacent and contiguous to the southwest boundary of City ("Southwest Area") should be included in the Pittsburgh sphere of influence and then annexed and developed as part of City.	Not Applicable	On 7/19/10, the City Council approved the 2nd Amendment to the Southwest DA (Ordinance No. 10-1326), which revised the map exhibit of the DA to remove 1.41 acres for which the developer intended to pursue commercial rather than residential land use entitlements (gas station).	
7 F	On June 15, 1987, by Resolution No. 87-7202, the City Council of City determined, on the basis of mutual interests of City and property owners in the Southwest Area, that City would enter into development agreement(s) with property owners in that area. The agreements are intended to insure orderly urbanization and the housing needs of existing and future City residents in a manner which makes maximum utilization of resources and reduces economic costs of development.	Not Applicable		
8 G	On August 3, 1987 by Resolution No. 87-7209, City adopted a General Plan amendment to the Southwest Area. On September 6, 1988, by Resolution No. 88-7357 the City adopted an updated General Plan. The General Plan established goals, objectives, policies and criteria to guide the development of this area, and it is the parties' intent that this area be developed consistent with those land use categories specified in the Land Use Element Map of the General Plan and applicable land use regulations as modified herein.	Not Applicable		
9 H	Developer intends to develop the Property which is described in Exhibit "A" in accordance with this Agreement.	Not Applicable		
10 I	The Southwest Area has been studied and the City has determined that development of the area must be done in an environmentally sensitive manner. City and Developer recognize that its particular development requires coordi-nation and compliance with the City General Plan, but that certain aspects of developing the Property will require flexibility and variation from other applicable City land use regulations will be necessary and appropriate to implement the Project. To the extent that the proposed Project, (as described in paragraph D above and as shown on the Land Use Element of the General Plan), differs from the current zoning regulations, the provisions of this agreement shall prevail.	Not Applicable		
11 J	In accordance with the California Environmental Quality Act ("CEQA"), City will prepare and adopt the appropriate environmental documents for the administration of this Development Agreement and the approvals necessary to carry out the Project.	Compliant	A Subsequent Environmental Impact Report (SEIR, SCH #91073029) was prepared for the San Marco Development Plan Area and certified by the Planning Commission on October 13, 1992.	
12 K	The Property proposed for the Project is presently located in the unincorporated territory of the County of Contra Costa but within the City's sphere of influence. In accordance with section 65865(b) of the Development Agreement Statute, City and Developer may enter into a Development Agreement before annexation, provided that the Agreement shall not become operative unless annexation of the Property to the City is completed within the period of time specified by the Agreement or by any extension of time provided for by the Agreement. City and Developer desire to complete annexation as soon as possible.	Not Applicable		
13 L	By entering into this Agreement, City has determined it is in the City's public interest and the interest of its citizens to do so.	Not Applicable		
14 M	Following compliance with CEQA and after conducting duly noticed public hearings, the Planning Commission recommended approval and the City Council approved this Agreement, authorized its execution and found that this Agreement is consistent with the General Plan. The Agreement was approved by City Ordinance No.	Not Applicable		
15 N	Development of the Project in accordance with this agreement and subsequent discretionary approvals will provide for orderly growth conformance with the policies and goals set forth in the General Plan in accordance with paragraph "G" and "I".	Not Applicable		
16 O	For the reasons recited, Developer and City have determined that the Project is a development for which this Agreement is appropriate. This Agreement eliminates uncertainty in planning for and in securing orderly development of the Project. Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing ordinances, resolutions and regulations as of the effective date of this agreement and subject to the terms and conditions in this Agreement, and subject to review and approval and the grant of land use entitlements by the appropriate reviewing body (Planning Commission or City Council) as to each specific proposal for development.	Not Applicable		
17 P	By entering into this Agreement, City recognizes and hereby acknow-ledges that approvals herein constitute a present exercise of the governmental authority of City.	Not Applicable		

	DA Section	Condition/Requirement	Status	Comments	Action Items
18	 Agreement Sections				
19	1	Operative date of Agreement. Under Government Code section 65856(b), the annexation of Property to City must occur on or before July 1, 1993. This agreement does not become operative unless annexation is complete by that date. The parties may, however, extend this completion date for annexation beyond July 1, 1993.	Compliant		
20	2	Term. The duration of this Agreement shall extend to October 1, 2032, unless terminated, modified or extended by mutual written consent of the parties.	Compliant	On 10/1/01, the City Council approved the 1st Amendment to the Southwest DA to extend its term from the original horizon year of 2002 to an amended horizon year of 2020 (Ordinance No. 01-1187). On 4/15/13, the City Council approved the 3rd Amendment to the DA which extended the term of the DA from its prior expiration year of 2020 to a new expiration year of 2032 in exchange for a revision to the developer's park obligations and a \$10,000 annual payment for development agreement compliance reviews. This year, the City Council will consider a 4th Amendment to the DA that would require the developer to commence construction of a minimum 30,000-square-foot commercial center on a project site located at the southwest corner of W. Leland Road and San Marco Boulevard. The same DA amendment would also require the developer to construct improvements on the 2.78-acre park site located in San Marco Subdivision Unit No. 12 at a cost not to exceed \$1,582,724.	
21	 3	Effect of Agreement on Land Use Regulations			
22	(a)	Permitted Uses. The permitted uses of the property are those uses designated in the Land Use Element of the General Plan adopted on September 6, 1988. A copy of the Land Use Element Map is attached as Exhibit "B".	Compliant		
23	(b)	Density and Land Use Intensity. At its option, the Developer may construct up to a maximum of 2,938 residential units consisting of a mix of single-family and multiple-family residential units as shown on the General Plan Map attached as Exhibit "B". The location and configuration of lots is subject to City's review and approval under the Subdivision Map Act. The parties recognize that in order for the project site to accommodate up to 2,938 mixed residential units, grading in excess of that permitted under the applicable Hillside regulations will be necessary. City agrees that in its review and approval of Developer's grading plans, it shall permit additional grading, which is necessary to construct infrastructure and building pads to effectively and efficiently accommodate the maximum number of units Developer is permitted and proposes to construct, subject to the normal property development process of the City.	Compliant	Plot plans continue to be reviewed for conformance with the approved vesting tentative map. As of the date of this periodic review, Villages A, B, E, F, G, H, J, K, and L have been completed. Village D (Positano at San Marco) is under construction. Villages C, M, N, and O have not been constructed yet.	
24	(c)	Applicable Land Use Regulations. Except as provided in subparagraph (b) relating to density and grading, the land use regulations applicable to the project shall be those land use regulations in effect on the date this agreement is entered into. The rules, regulations and policies governing the approval and the design, improvement and construction standards and specifications applicable to development of the property shall be those rules, regulations and policies in force on the date this Agreement is entered into except as specifically provided in this Agreement (e.g., subparagraphs (d) and (e) of this para graph).	Compliant		
25	(d)	Application of Building Codes. Developer is subject to changes in the Uniform Building Codes occurring from time to time subsequent to the date this Agreement is entered into which are not inconsistent with subparagraphs (a) and (b) of this para- graph and if the changes (i) are found by the City Council to be in the best interest of the health and safety of its citizens and (ii) are applicable to all other developments in the City.	Compliant		
26	(e)	Subsequent Land Use Entitlements. In subsequent land use entitlement actions concerning the property, the City may only apply those existing rules, regulations and policies that were in force and effect on the effective date of this Development Agreement with respect to the property.	Compliant		
27	 4	Fees, Charges and Assessments.			
28	(a)	City to Adjust Existing Fees. City recently adopted a new fee schedule for fees and charges which it levies in connection with land use entitlements, including subdivisions. Developer agrees that this new fee schedule (attached to this agreement as Exhibit "C") will govern the fees and charges applicable to the project and that it is the intent of the City not to impose additional fees, exactions, dedications or regulations through the exercise of the police power or the taxing power unless they are solely for unanticipated health and safety reasons as a direct result of this project and are consistent with Government Code Sections 66000 et. seq. Any additional fees shall in no event include, for example: child care, public art, libraries, community centers or other similar fees not essential to health and safety. The limitations on fees contained in this subparagraph shall not preclude the City from instituting procedures to impose taxes or assessments on the property (as opposed to development fees) pursuant to districts which may be formed under the provisions of by way of example, the Community Facilities Financing Act (Mello- Roos), or Limited Obligation Revenue Bonds (Marks-Roos) or the Landscaping Lighting and Maintenance Act. The Developer hereby reserves the right to protest the formation of and the participation of the property in any such district.	Compliant		
29	(b)	Exceptions to Limitations on City's Right to Impose Fees, Taxes, and Assessments. Notwithstanding subparagraph (a) of this section limiting the right of the City to impose fees, charges, and assessments in connection with land use entitlements and subdivisions, the City may impose the following additional fees consistent with Government Code section 66000 et seq., and taxes and assessments without protest from the developer: (i) a fee imposed or mandated by another governmental agency; or (ii) a fee imposed for citywide traffic or drainage mitigation purposes; or (iii) a fee in the form of a capital improvement facility fee for sewer purposes or water purposes. (iv) an assessment to be imposed on residential units pursuant to a Mello Roos or Marks Roos District for the exclusive purpose of providing police services to the property. (v) an assessment imposed for the benefit of the property pursuant to the Landscape Lighting and Maintenance District Act.	In Progress	Fees, taxes, and assessments the City currently imposes on projects within the San Marco PD area include: Facilities Reserve Charge (PMC Chapters 13.08, 13.12, and 13.24) for water and sewer service; Local Transportation Mitigation Fee (PMC Chapter 15.90); Regional Transportation-Development Impact Mitigation Fee (PMC Chapter 15.102); In-Lieu Parkland Dedication Fee; Community Facilities District 2007-01 for park maintenance; and Community Facilities District 2004-1 for police services.	

DA Section	Condition/Requirement	Status	Comments	Action Items
30	(c)	Compliant		
31	5	Compliant	A Subsequent Environmental Impact Report (SEIR, SCH #91073029) was prepared for the San Marco Development Plan Area and certified by the Planning Commission on October 13, 1992.	Developer has agreed to conduct pre-construction biological surveys to ensure, in concert with the City, that there will be no impact to federal, state or locally listed habitat or species.
32	6	See Comments/Action Items	Developer did not complete the improvements within the 6 years required due to a variety of reasons, many outside of their control. In 1993, the City and Developer entered into a Memorandum of Understanding to resolve this issue.	
33	7	Compliant		
34	 8			
35	(a)	Compliant		
36	(b)	Compliant		
37	 (c)	Compliant		
38	(i)	Compliant		
39	(ii)	Compliant		
40	 (d)	Compliant		
41	(i)	Compliant		
42	(ii)	Compliant		
43	(iii)	Compliant		

	DA Section	Condition/Requirement	Status	Comments	Action Items
44	 9	Construction of Facilities and Infrastructure In-Lieu of the Payment of Fees; Reimbursements; Assessment District and Benefit Districts.			
47	10	Williamson Act Fees. Upon completion of annexation of the Property, and if the City has the authority it shall act as the lead agency in administering the cancellation of the Williamson Act contract which affects a portion of the Property. If the City does not have this authority, the City shall use its best efforts to support cancellation of the contract in accordance with applicable rules and regulations and shall apply any fees which it receives in connection therewith toward public improvements and facilities to benefit the Property. The City's decision in how to apply these funds is final.	Compliant		
48	11	Assessment and Benefit District(s). The City agrees to cooperate with the Developer in establishing and implementing an assessment district(s) and benefit district(s) in accordance with applicable laws to finance or reimburse Developer for improvements constructed inside or outside of the Property.	Compliant	Fees, taxes, and assessments the City currently imposes on projects within the San Marco PD area include: Facilities Reserve Charge (PMC Chapters 13.08, 13.12, and 13.24) for water and sewer service; Local Transportation Mitigation Fee (PMC Chapter 15.90); Regional Transportation-Development Impact Mitigation Fee (PMC Chapter 15.102); In-Lieu Parkland Dedication Fee; Community Facilities District 2007-01 for park maintenance; and Community Facilities District 2004-1 for police services.	
49	12	Life of Subdivision Maps. Pursuant to Government Code Section 66542.6(a), the term of the tentative maps filed subsequent to the operative date of this Agreement shall automatically be extended for the term of this Agreement (as the term is extended by this Third Amendment).	Compliant	Language from 3rd Amendment to Southwest DA	
50	 13	Default; Remedies; Termination			
51	(a)	Failure or unreasonable delay by either party to perform any term or provision of this Agreement for a period of ninety (90) days after written notice from the other party shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such time period, then the diligent prosecution to completion of the cure shall be deemed a cure within such a period. Subject to the foregoing, after notice and expiration of the 90-day period without cure, the other party to this Agreement, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and reviewed by City Council within thirty (30) calendar days in the manner set forth in Government Code sections 65865, 65867, and 65868. If City does not accept, review, act upon or issue necessary development permits, entitlements, or other land use or building approvals for use in a timely fashion as required by this Agreement, or as otherwise agreed to by the parties, or the City otherwise defaults under the terms of this Agreement, Developer shall have all rights and remedies provided herein or under applicable law.			
52	(b)	In addition to specific provisions of this Agreement, performance by either party is not in default where delays or defaults are due to war, insurrection, strikes, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, judicial decisions, or other basis for excused performance which is not within the reasonable control of the party to be excused. If written notice of such delay is given to either party within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or such longer period as may be mutually agreed upon.			
53	(c)	All other remedies at law or in equity which are not otherwise provided for in this Agreement or in the City's regulations governing development agreements are available to the parties to pursue if there is a breach.			
54	 14	Changes in Law.			
55	(a)	If state or federal laws or regulations enacted after the effective date of this Agreement prevent or preclude compliance with one or more provisions of this agreement, such provisions of this Agreement shall be modified or suspended only to the extent necessary to comply with such state or federal laws or regulations.	Not Applicable		
56	(b)	City agrees that other development approvals within the City shall not diminish Developer's plans for the full development of the Property in accordance with this Agreement, despite increased burden by virtue of other development upon public facilities subject to the provisions of Section 9. Nothing in this subsection (b) shall limit or restrict orders or regulation from the City or other governmental agencies that would affect the rate, timing or sequence of development because of lack of water or sewer infrastructure to accommodate such development (such as water service restrictions imposed by Contra Costa Water District, or similar orders and regulations).	Compliant		
57	 15	Amendment or Cancellation.			
58	(a)	This Agreement may be amended or canceled in whole or in part, by mutual consent by the parties or their successors in interest. Notice of intention to amend or cancel any portion of this Agreement shall be given in the manner provided by section 65867 of the Government Code. All amendments to this Agreement shall be first approved by ordinance of the City Council in accordance with section 65867.5 of the Government Code.	Compliant		
59	(b)	Notwithstanding the foregoing, an amendment to this Agreement which does not relate to the term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservations of land, conditions, fees for public facilities, terms, restrictions and requirements regarding covenants relating to the use of the property does not require a public hearing before the parties may execute an amendment to this Agreement.	Compliant		
60	(c)	Any non-substantive deviation from the development plan for the Project, as determined by the Director of the Community Development Department, with respect to the location of buildings, streets and other physical facilities, shall not require an amendment to this Agreement.	Compliant		

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DA Section	Condition/Requirement	Status	Comments	Action Items
16	Annual Review. Annual Review. Each year during the term of this agreement the City shall at the first City Council meeting in September or as soon there- after as the Council agenda permits review the extent of good faith compliance by Developer with this Agreement. This periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement as provided in Government Code section 65865.1. Developer shall pay the City's administrative costs of the annual review process. The fee shall be as fixed by Resolution of City Council. At the review meeting, Developer must demonstrate good faith compliance with the terms and conditions of this Agreement under Government Code section 65865.1. At the conclusion of the meeting, City shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer or its successor in interest has complied in good faith with the terms and conditions of this Agreement. If City finds and determines that Developer has not complied with its terms and conditions, City may terminate or modify this Agreement by giving notice of its intention to do so in the manner set forth in Government Code sections 65867 and 65868. In the manner prescribed in Section 27, Notices, the City shall deposit in the mail to Developer a copy of all public staff reports, documents and related exhibits concerning Developers' performance here under at least ten (10) days before each periodic review. Developer shall be permitted an oppor- tunity to respond to the City's evaluation of its performance, either orally at a public hearing or in a written statement, at Developers' election. This response shall be made to the City Council or, if the matter has been referred to the Planning Commission, to the Planning Commission. Beginning in 2013, Developer shall pay the City a fixed sum of \$10,000 each year (adjusted by the San Francisco-Oakland-San Jose Consumer Price Index starting July 1, 2014) for the City to conduct annual review of the Development Agreement starting in 2013. Failure by the City to conduct the annual review required each year shall not be deemed a default by Developer under the Development Agreement; if the City does not conduct the review, the payment shall not be required for that year.	In Progress		
17	Enforcement. Unless amended or canceled as provided in Section 15, the Agreement is enforceable notwithstanding any change in the applicable General Plan, specific plan, zoning ordinance or regulations, subdivision design/improvement construction standards, specifications and regulations or building regulations adopted by City which alters or amends an ordinance, rule, regulation or policy governing permitted use of the Property, or governing the density and grading as provided in paragraph 3 (a), (b) and (c) of this Agreement.	Not Applicable		
18	Recordation. Not later than 10 days after execution of this Agreement by all parties, the City Clerk shall record a copy of this Agreement with the Contra Costa County Recorder. From and after the date of recordation, this Agreement imparts notice to all persons under the recording laws of the State.	Compliant		
19	Certificate of Satisfaction. After completion of the Project, City upon request of Developer, shall execute in recordable form and deliver to Developer an instrument certifying that Developer has satisfied all of Developers" obligations under this Agreement.	See Comments/Action Items	Developer may request a Certificate of Satisfaction after completion of the Project.	
20	Relationship of Parties. It is understood and agreed that the contractual relationship between City and Developer is such that the latter is an independent contractor and in no case an agent of City.	Not Applicable		
21	Hold Harmless. The Developer agrees to and shall hold the City, its officers, agents, employees and representatives harmless from, and shall defend against, liability for damage or claims for damage for personal injury including death and claims for property damage including inverse condemnation which may arise from its direct or indirect actions or those of its contractors, subcontractors, agents, employees or other persons acting on its behalf, which relate to real property covered by this Agreement, except that the foregoing does not extend to any willful acts committed by the City, its offices, agents or employees. This hold harmless agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of the actions referred to in this paragraph, regardless of whether or not City prepared, supplied or approved plans or specifications for the project.	Not Applicable		
22	Cooperation in the Event of Legal Challenge. If legal action is instituted by a third person challenging the validity of any provision of this agreement, developer shall defend that action and pay all costs, expenses and fees associated with the defense. The parties agree to cooperate in defending the action.	Not Applicable		
23	Assignment. Nothing in this Agreement prevents Developer from conveying all or part of this interest in the property to a buyer, assignee or other nominee as Developer may elect. An assignment or transfer of this agreement other than an affiliate or subsidiary of Developer is subject to City"s prior review and written approval which approval shall not be unreason- ably withheld.	Not Applicable		
24	Successors. The obligations imposed by this Agreement shall be considered covenants running with the land described in Exhibit "A", in accordance with sections 1460, et seq. of the Civil Code and shall inure to the benefit of, and be binding upon all successive owners of such lands, or parts thereof, during the term of this Agreement, as provided in Section 65868.5 of the Government Code.	Not Applicable		
25	Validity. If a covenant, condition or term of this Agreement is held by a court to be illegal or in conflict with law, the validity of the remaining portions or provisions are not affected. The parties agree to use their best efforts to defend the validity of this Agreement against the claims of third parties.	Not Applicable		
26	Attorney's Fees. If legal action is brought by either party for breach of this Agreement or to enforce its provisions, the prevailing party is entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court.Attorney's Fees. If legal action is brought by either party for breach of this Agreement or to enforce its provisions, the prevailing party is entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court.	Not Applicable		
27	Notice. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the following addresses: City of Pittsburg, 2020 Railroad Avenue, Pittsburg, CA 94565, Attn: City Clerk; Seecon Financial & Construction Co., Inc., 4300 Railroad Avenue, Pittsburg, CA 94565, Attn: Robert J. Rossi or such to other addressee(s) and at such other place as the parties may from time-to-time designate by written notice to each other. Notices, demands and requests which are served by mail in this manner are deemed served or given for all purposes five (5) calendar days after the date the notice, demand or request is mailed.	Compliant		
 28				
(a)	The headings of sections are used for convenience only and shall not affect the meaning or interpretation of the contents of this Agreement.	Not Applicable		
(b)	The laws of the State of California shall govern the inter-pretation and enforcement of this Agreement, and the conduct of the parties.	Not Applicable		
(c)	Time is expressly declared to be of the essence in this Agreement and of all terms expressed in it.	Not Applicable		

	DA Section	Condition/Requirement	Status	Comments	Action Items
77	(d)	The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any party. The parties have equally participated in the preparation of this Agreement. The term "assign" shall include the term "transfer". The plural shall include the singular, and the singular the plural. One gender shall include all genders.	Not Applicable		
78	(e)	This instrument, along with the attached Exhibits, constitutes the entire Agreement between the Parties relative to this subject matter. This Agreement may be altered, amended or revoked only by an instrument in writing signed by the Parties. No representations whatsoever have been made relative to this subject matter except as may be expressly stated in writing in this Agreement.	Not Applicable		
79	(f)	The waiver by a party of a breach of a term in this Agreement is not a waiver of that term or a subsequent breach of the same or any other term. No custom or practice which may develop between the parties during the term is a waiver of or in any way affects the right of a party to insist upon performance and observance by the other party in accordance with the terms of this Agreement.	Not Applicable		
80					

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Tuscany Meadows	)	
Development Agreement Between The	)	
City of Pittsburgh and Seecon Built	)	RESOLUTION NO. 23-
Homes, Inc. and Determination as to	)	
Compliance With Development	)	
<u>Agreement</u>	)	

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, a Development Agreement between the City of Pittsburgh and Seecon Built Homes, Inc. was executed on February 5, 2018, for the Tuscany Meadows Property; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DAs") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Tuscany Meadows Development Agreement was conducted, and on December 21, 2020, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City

Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and City Staff, as well as the information contained in the "Tuscany Meadows DA – 2022 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Tuscany Meadows Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Tuscany Meadows Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

Section 5. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 1st day of May, 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit 1 - Tuscany Meadows DA - 2022 Annual Review Summary Table



DA Section		Condition/Requirement	Status	Comments	Action Items
1	Article II - Effective Date; Term				
2		Section 2.01	Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the "Effective Date").	See Comments/Action Items	On February 5, 2018, the City Council adopted Ordinance 16-1405 approving the Development Agreement between the City of Pittsburgh and Seecon Built Homes, Inc. for the Tuscany Meadows property.
3		Section 2.02	Term. The term of this Agreement shall commence upon the Effective Date and continue for a period of twenty five (25) years (the "Term").	See Comments/Action Items	Based on the effective date of February 5, 2018, the DA will expire on February 5, 2043.
4	Article III - Obligations of Developer				
5			The parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer's agreement to perform and abide by its long term covenants and obligations, as set forth herein. The parties acknowledge that many of Developer's long term obligations set forth in this Agreement are in addition to Developer's agreement to perform all the mitigation measures identified in the Mitigation Monitoring Program. As material consideration for the long term assurances and vested rights provided by this Agreement and as a condition of approval to one or more of the Project Approvals, Developer agrees to each of the following:	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.
6		Section 3.01	Drainage Improvements. Subject to the terms of this Agreement, as a condition of approval to one or more of the Project Approvals, Developer agrees to construct and offer for dedication to the City those Project storm water drainage improvements to be located within City's boundaries and required to serve the Project Site ("Drainage Improvements"). The City shall accept the offer of dedication of the Drainage Improvements, as long as the Drainage Improvements comply with the City's standards, applicable rules and regulations, and this Agreement. The parties agree that the construction of the Drainage Improvements shall be phased according to a construction schedule determined by Developer, subject to the written approval of the City Manager. City shall not require any improvements to onsite or offsite drainage facilities to address pre-existing deficiencies provided that Developer demonstrates to City's reasonable satisfaction that impact to downstream facilities are not being exacerbated.	Not Applicable (at this time)	
7		Section 3.02	Facility Reserve Charges. Developer agrees to pay City's Facility Reserve Charges ("FRC") as set or modified by the City Council from time to time.	Not Applicable (at this time)	
8		Section 3.03	Water Infrastructure. Developer shall comply with the 2015 Water System Master Plan, as amended. Developer shall have the option, subject to the written approval by the City Manager, to provide water infrastructure facilities as specified by the City or to construct the water infrastructure facilities in phases subject to a storage requirement and site analysis study, commissioned by the City, that incorporates the water infrastructure requirements pursuant to the 2015 Water System Master Plan, as amended.	Not Applicable (at this time)	
9		Section 3.04	School Facilities Impact Mitigation. Developer shall pay in lieu school impact fees in accordance with Government Code §§ 65995 et seq. Compliance with this Section shall satisfy all of Developer's obligations required by City to mitigate school impacts resulting from the Project.	Not Applicable (at this time)	
10		Section 3.05	Applicable Fees. City may levy development fees, and charges during the term of this Agreement relative to the development of the Project Site which are in force and effect as of the Effective Date, as more particularly described and according to the payment schedule set forth on Exhibit B ("Applicable Fees"). Unless otherwise provided in this Agreement, no development fees, or charges, or categories thereof, shall be imposed on the Project other than those fees (including categories within such fees), and charges identified as Applicable Fees on Exhibit B, which exhibit shall exclusively govern the Applicable Fee payment schedule. The parties agree that any and all Project development fees, charges or exactions related to schools, fire prevention, water, sewer, stormwater, and storm drainage facilities, which are to be paid by Developer directly to third-party governmental agencies, are not subject to or within the scope of this Agreement whether such third party charges exist or are subsequently imposed by such third parties, whether directly upon Developer or through City. This provision shall not be construed to benefit any Non-Assuming Transferees, as such term is defined in herein.	Not Applicable (at this time)	
11		Section 3.06	Applicable Fee Adjustments. Developer shall pay fees and charges consistent with Section 3.05, and the applicable adjustments currently provided in such fees, and as modified from time to time by the City, whether such adjustment or modification is an increase or decrease. Developer retains the right to challenge the imposition of any new fees not referenced in this Agreement or the modification, amendment or adjustment of all Applicable Fees pursuant to Government Code § 66000 et seq., not already authorized by ordinances, resolutions or policies in place at the time of this Agreement's execution. Should the City Council approve a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Not Applicable (at this time)	
12		Section 3.07	City Local Traffic Mitigation Fee. Developer shall pay the City Local Traffic Mitigation Fee, which fee is necessary to finance unmet City traffic improvement needs in the amount in effect as of the Effective Date and subject to adjustment in accordance with Resolution No. 07-10917 with credit for certain improvements constructed by Developer per Section 4.05 below. If the City Council approves a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Not Applicable (at this time)	

DA Section	Condition/Requirement	Status	Comments	Action Items
13	Section 3.08	Regional Traffic Fee. Developer shall pay the ECCRFA regional traffic fee should it be imposed by the City in an amount equal to or less than the amount paid by projects in the Cities of Antioch, Brentwood, and Oakley or in accordance with the existing valid Memorandum of Understanding dated June 29, 2010, as amended, whichever is less.	Not Applicable (at this time)	
14	Section 3.09	Fees, Assessments and/or Taxes to be Paid by Developer. Developer agrees to pay its fair share of any levies imposed by any assessment district, geologic hazard abatement district, landscaping and lighting district, community facilities district, tax-exempt financing mechanisms, or other funding mechanisms related to public safety; traffic; sewer; water; fire; the prevention, mitigation, abatement, or control of geologic hazards; or other infrastructure improvements (including, without limitation, design, acquisition, construction and maintenance costs) (collectively, "Funding Mechanisms") within the Project Site, provided that such Funding Mechanism is referenced herein and/or was legally created pursuant to applicable law.	Not Applicable (at this time)	
15	 Section 3.10	Affordable Housing. Developer shall comply with PMC 18.86.080 and VTM Condition of Approval No. 5 by constructing at least ninety two (92) rental attached accessory units within the Project. A covenant shall be recorded limiting the amount of rent that may be charged for these secondary units, consistent with the terms and conditions set forth in the affordable housing agreement. Forty six (46) of these units shall be constructed no later than the City's issuance of the four hundred and fiftieth (450th) building permit for the Project. Prior to the City's issuance of the first certificate of occupancy Developer agrees to enter into an affordable housing agreement with the City (the "Affordable Housing Agreement") which further memorializes the provisions of this Section 3.10 and is consistent with applicable law, including Pittsburg Municipal Code Chapter 18.50. Developer agrees that the attached accessory units referenced in this Section shall not be built or otherwise allowed on adjoining lots without the prior written approval of the City Manager. City agrees that Developer shall not be required to pay any additional fees (building permit, sewer, water, traffic fees etc.) associated with any attached, affordable secondary/accessory dwelling units.	Not Applicable (at this time)	
16	a)	Timing. The Affordable Housing Agreement shall establish provisions to implement the affordable housing requirements within this Agreement and shall include, but not be limited to, implementation and monitoring provisions to ensure compliance with municipal law related to affordable housing. The agreement shall include provisions for the reasonable reimbursement of costs to the City for the administration and monitoring of the agreement.	Not Applicable (at this time)	
17	b)	Inclusionary Housing Ordinance. Notwithstanding any provision of this Agreement, in the event that the City has rescinded its respective previously adopted affordable housing ordinance and not replaced it with another affordable housing or similar ordinance, or such ordinance has been declared illegal, Developer shall not be obligated to comply with the provisions for affordable housing set forth in this Agreement. In the event, prior to or during the development of the Project, the City amends or replaces or eliminates its affordable housing ordinance which would result in a reduction in the number of secondary units Developer is obligated to construct, then the Affordable Housing Agreement shall be modified to provide for an equivalent reduction in the number of secondary units required to be constructed in the Project or elimination of the requirement.	Not Applicable (at this time)	
18	Section 3.11	Security Improvements. Developer shall install the basic home security wiring in the Project homes (defined herein as wiring for a basic home security system on the first floor windows and doors only). Developer shall offer one year of professional monitoring service to new homeowners. The monitoring service shall be at the election of the new homeowner.	Not Applicable (at this time)	
19	Section 3.12	Solar Roof System. Developer shall install a solar roof system on one of its model homes for example purposes only (which may consist of a few panels with photovoltaic compatibility or other comparable technologies) and offer solar installation as an option at the homeowner's expense.	Not Applicable (at this time)	
20	Section 3.13	C.3 Facilities. Developer shall construct C.3 facilities as provided in the Project Approvals. In accordance with the City's NPDES permit, provision C.3.e.i.and ii., developer shall have the right to construct or participate in the funding of offsite C.3 facilities as approved by the City Engineer and memorialized by separate agreement with the City. If Developer elects to participate in offsite C.3 facilities in lieu of on-site C.3 facilities, Developer will work with the City to provide an appropriate funding mechanism for the continuous maintenance of these facilities in perpetuity.	Not Applicable (at this time)	
21	 Section 3.14	Traffic Conditions. Developer shall install at its sole cost the following traffic improvements in accordance with the provisions set forth below. In the event any improvements listed below are within the City of Antioch or the City of Antioch's control, Developer, at its option, shall not be required to construct such improvements but shall only be required to pay its proportionate share of the costs of such improvements. In such event, Developer shall deposit with the City of Pittsburg the amount that Developer and the City of Pittsburg City Engineer agree in writing is the Developer's appropriate proportionate share of the cost of such improvements. Upon the deposit of such sums with the City of Pittsburg, the restriction on the issuance of building permits, if any, with respect to such improvement shall be eliminated.	Not Applicable (at this time)	
22	a)	Traffic Control Plan: Developer shall obtain an encroachment permit and submit a traffic control plan for all construction related activities affecting the public right-of-way.	Not Applicable (at this time)	
23	b)	Summit Way Extension: Subject to prior written approval from the Antioch and Pittsburg City Engineers, Summit Way shall be extended into the subdivision to provide an additional point of pedestrian and vehicular access from James Donlon Boulevard. The extended street shall consist of a 40-foot-wide roadway and sidewalks that are at least six feet wide in accordance with the City of Pittsburg's standards, and comply with all other applicable City standards.	Not Applicable (at this time)	
24	c)	Buchanan Road Dedication and Widening: Prior to the first occupancy in the Project, Developer shall dedicate Buchanan Road right-of-way along the project frontage to provide 59 feet from centerline to property line or as requested by the City Engineer in writing. This represents half the width of the City's residential arterial standard. There shall be a transition to existing roadway improvements as approved and determined by the City Engineer in writing. Developer shall also provide all frontage improvements and reconstruct Buchanan Road as necessary to City Standards for a Residential Arterial Street as determined by the City Engineer, providing a consistent two percent maximum cross slope, Class II bicycle lane, sidewalk, and repair any pavement failure areas along the south Buchanan Road project frontage, from Highlands Ranch subdivision to the Contra Costa Canal, approximately 2,870 linear feet. The City Engineer, in writing, may allow occupancy if this work is underway.	Not Applicable (at this time)	

DA Section	Condition/Requirement	Status	Comments	Action Items
25	d)	Developer shall install a fully actuated and interconnected traffic signal system at the proposed Somersville Road/Sequoia Drive intersection at the time that Sequoia Drive is connected to Somersville Road. This includes left and right turning lanes to and from Sequoia Drive on Somersville Road.	Not Applicable (at this time)	
26	 e)	Traffic Improvements: Developer shall design and construct the following improvements prior to issuance of a building permit for the 551st dwelling unit. These improvements shall be made with prior written approval of the City Engineer.	Not Applicable (at this time)	
27	1)	An additional eastbound left turn lane and an additional northbound left turn lane at the Somersville Road/Buchanan Road intersection along with appropriate traffic signal modifications. This improvement shall not be required if deemed infeasible by the City Engineer during the design process. If acquisition of additional right-of-way is required for this improvement, this improvement will be deemed infeasible. In addition, this improvement shall not be required if ECCRFFA or the City have extended James Donlon Boulevard to Kirker Pass Road or if the City of Pittsburg and TRANSPLAN have approved control point metering of traffic on Kirker Pass Road to 1,400 vehicles per hour during the afternoon peak hour in which case Developer shall design, construct, and fund implementation of such metering near City limits during the p.m. peak commute period.	Not Applicable (at this time)	
28	2)	An additional westbound through lane on Buchanan Road along the approach to and departure from Harbor Street. This improvement shall not be required if deemed infeasible by the City Engineer in writing during the design process. If acquisition of additional right-of-way is required for this improvement, this improvement will be deemed infeasible. In addition, this improvement shall not be required if ECCRFFA or the City has extended James Donlon Boulevard to Kirker Pass Road.	Not Applicable (at this time)	
29	3)	An additional westbound through lane on Buchanan Road along the approach to and departure from Loveridge Road. This improvement shall not be required if deemed infeasible by the City Engineer in writing during the design process. If acquisition of additional right-of-way is required for this improvement, this improvement will be deemed infeasible. In addition, this improvement shall not be required if ECCRFFA or the City has extended James Donlon Boulevard to Kirker Pass Road.	Not Applicable (at this time)	
30	4)	An additional eastbound through lane on Buchanan Road along the approach to and departure from Ventura Drive. This improvement shall not be required if deemed infeasible by the City Engineer in writing during the design process. If acquisition of additional right-of-way is required for this improvement, this improvement will be deemed infeasible. In addition, this improvement shall not be required if ECCRFFA or the City has extended James Donlon Boulevard to Kirker Pass Road or if the City of Pittsburg and TRANSPLAN have approved control point metering of traffic on Kirker Pass Road to 1,400 vehicles per hour during the afternoon peak hour in which case Developer shall design, construct, and fund implementation of such metering near City limits during the p.m. peak commute period.	Not Applicable (at this time)	
31	5)	An additional eastbound through lane on Buchanan Road along the approach to and departure from Tuscany Meadows Drive. This improvement shall not be required if ECCRFFA or the City has extended James Donlon Boulevard to Kirker Pass Road or if the City of Pittsburg and TRANSPLAN have approved control point metering of traffic on Kirker Pass Road to 1,400 vehicles per hour during the afternoon peak hour in which case Developer shall design, construct, and fund implementation of such metering near City limits during the p.m. peak commute period.	Not Applicable (at this time)	
32	6)	An additional eastbound through lane on Buchanan Road along the approach to and departure from the Entrance to Parcel A prior to occupancy of this Project's multifamily residential units. This improvement shall not be required if ECCRFFA or the City has extended James Donlon Boulevard to Kirker Pass Road or if the City of Pittsburg and TRANSPLAN have approved control point metering of traffic on Kirker Pass Road to 1,400 vehicles per hour during the afternoon peak hour in which case Developer shall design, construct, and fund implementation of such metering near City limits during the p.m. peak commute period.	Not Applicable (at this time)	
33	7)	Left and right turning lanes to and from Sequoia Drive on Somersville Road.	Not Applicable (at this time)	
34	 f)	Other Traffic Improvements: Developer shall design and construct the following improvements prior to the issuance of the first building permit, with prior written approval of the City Engineer:	Not Applicable (at this time)	
35	1)	A fully actuated and interconnected traffic signal system at the proposed Buchanan Road/Tuscany Meadows Drive intersection.	Not Applicable (at this time)	
36	2)	Westbound left-turn/acceleration lanes and eastbound right-turn/acceleration lanes at the proposed Buchanan Road/Tuscany Meadows Drive intersection.	Not Applicable (at this time)	
37	3)	Bus turnouts, bus shelters, and bicycle racks on both sides of Buchanan Road adjacent to Tuscany Meadows Drive. Improvements to the north side of Buchanan Road that are deemed infeasible by the City Engineer in writing shall not be required. If additional right-of-way is required for these improvements, the construction of these improvements will be deemed infeasible.	Not Applicable (at this time)	
38	4)	Provide Class II bicycle lane and sidewalk along north side of Buchanan Road. The sidewalk improvement shall not be required if deemed infeasible by the City Engineer in writing during the design process.	Not Applicable (at this time)	
39	5)	A direct multi-use pathway between the project and the Delta de Anza Regional Trail for use by pedestrians and bicyclists. The required timing of these improvements may be adjusted by the City Engineer to accommodate acquisition of necessary access rights.	Not Applicable (at this time)	
40	6)	Left and right turning lanes to and from Entrance to Parcel A on Buchanan Road prior to occupancy of this Project's multifamily residential units.	Not Applicable (at this time)	
41	g)	When Tuscany Meadows Drive is connected to James Donlon Boulevard, Developer shall redesign and reconstruct the intersection of Tuscany Meadows Drive/James Donlon Boulevard to eliminate the westbound free-right turn, including removal of a raised island to the written satisfaction of the City Engineer.	Not Applicable (at this time)	
42	h)	When Tuscany Meadows Drive is connected to James Donlon Boulevard, a physical barrier may be installed, as determined by the City Engineer in writing, to prohibit public vehicle access from James Donlon Boulevard and allowing emergency vehicle access.	Not Applicable (at this time)	

	DA Section	Condition/Requirement	Status	Comments	Action Items
43	i)	Developer shall design and construct a fully actuated and interconnected traffic signal system at the Buchanan Road/Entrance to Parcel A intersection prior to occupancy of this Project's multifamily residential units.	Not Applicable (at this time)		
44	 Article IV - Obligations of the City				
45	Section 4.01	Obligations of City Generally. The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.	Compliant		
46	Section 4.02	Processing of Annexation and Central Valley Project Inclusion. City shall promptly, in cooperation with Developer, process all documents necessary to achieve annexation of the Property to the City, CCWD, and Delta Diablo and inclusion into the Central Valley Project area.	Compliant		
47	 Section 4.03	Availability of Public Services.			
48	a)	General. To the extent permitted by law and consistent with its authority, City shall reserve such capacity for water services as may be necessary to serve the Project. This reservation of water infrastructure capacity shall be assured for the Term to the extent consistent with applicable law.	Not Applicable (at this time)		
49	b)	Construction Water. City shall make construction water available to the Project by allowing the Project access to the City's water supply infrastructure, at a location reasonably determined by the City, at Developer's cost and on those terms and conditions and charges customarily applied by City to similar projects consistent with City standards. Developer shall provide backflow prevention for all points of connection to the City's potable water supply system and the volume of water consumed shall be tracked with the use of a City-issued hydrant meter. City shall also permit Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer's use in any and all Project grading and construction operations, as long as such water is unrelated to potable use.	Not Applicable (at this time)		
50	Section 4.04	Developer's Right to Rebuild. City agrees that Developer, in Developer sole's discretion, may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, acts of God, acts of terrorism, or damage to work in progress by reason of fire, floods or other casualties. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA and this Agreement.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 4.04.	
51	 Section 4.05	Reimbursement of Infrastructure Costs.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 4.05.	
52	a)	Reimbursement. Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project's fair share obligation for such infrastructure, City shall reimburse Developer for the City's portion of such costs (including any management fees provided for in this Agreement), subject to City's prior verification through inspection of the construction that is subject to such reimbursement and upon final acceptance of the infrastructure by the City. This reimbursement shall be paid within sixty (60) days after City's final acceptance or at such other time as mutually agreed upon in writing by the parties. Developer shall be entitled to a management fee of five percent (5%) for City's share of approved infrastructure costs, including but not limited to design and special inspection costs. The management obligations of Developer hereunder shall include contracting and managing the construction of the infrastructure, retaining copies of records, photographs and "as built" for the improvement(s) as well as attending meetings and providing necessary reports as reasonably requested by City.	Not Applicable (at this time)		
53	b)	City's Authorization of Reimbursement. Notwithstanding any other provision of this Section or of this Agreement or VTM provisions, City shall not be responsible to reimburse or credit Developer for any costs, including as referenced in Section 4.05(a) herein, unless prior to Developer incurring any costs for which Developer will request reimbursement from City, Developer shall first provide written documentation as to the work to be performed, the estimated costs thereof, including a not-to-exceed cap, and such other details as reasonably requested by the City Manager and the City Manager approves the proposed costs and related work. If the City Manager fails to respond with thirty (30) days of its receipt of such estimated costs, Developer shall provide a second written notice to the City Manager and to the City Engineer, if neither responds with thirty (30) days of the City's receipt of the second request, the request shall be deemed approved. The City Manager shall have the discretion to require Developer to obtain competitive bids on any work for which Developer may request reimbursement or credit from the City where the total cost (not just the City's share) of that work is One Hundred Thousand Dollars (\$100,000) or more. City shall also have the opportunity to inspect any and all infrastructure during its construction, as well as to review any work product for which Developer requests reimbursement or credits. If mutually agreed by the parties in writing, any reimbursement due Developer pursuant to this Agreement may be satisfied by City in the form of credits, which can actually be used by Developer to offset Developer's payment of any Applicable Fees. In the event there are not enough credits to fully satisfy the reimbursement due Developer and subject to the terms of the mutual agreement between the parties referenced in the prior sentence, City shall reimburse Developer within thirty (30) days of invoicing.	Not Applicable (at this time)		
54	Section 4.06	James Donlon Extension. Developer shall be entitled to build out the Project prior to construction of the James Donlon Extension, to the extent consistent with CEQA. Developer shall not be required to provide a connection to the James Donlon Extension until the James Donlon Extension is completed and the portion of the Project contiguous to the connection is constructed.	Compliant		

DA Section	Condition/Requirement	Status	Comments	Action Items
55	Section 4.07	Parkland Dedication In Lieu Fee. Developer and City agree that the park in-lieu fee valuation is currently Ten Dollars and Twenty Seven Cents (\$10.27) per square foot (unless City adopts a lower fee in which case the lower fee shall apply), increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2019 reflecting 2018 increases. The timing of the payment of the park in-lieu fee shall be satisfied through compliance with the Municipal Code or a separate agreement between Developer and the City.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.
56	Section 4.08	The Project will provide for its fair share of the cost of the water storage, pump station, and transmission pipeline capacity required to serve the homes in the Project in accordance with the most current City Water Master Plan. The Parties shall enter into a separate agreement memorializing such mutual obligation and which agreement shall take into account the following facts, to the extent of their relevance: (i) that a portion of the Property is included in the City's Assessment District No. 1974-1; (ii) the October 2, 1997 letter from Albert D. Seeno Construction Company; (iii) subsequent City Council action January 5, 1998 (Resolution 98-8551).	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.
57	Section 4.09	Undergrounding of Electrical Lines. The developer shall underground all overhead utilities in the subdivision in accordance with Pittsburg Municipal Code 12.36.120 and 12.36.130. City shall cooperate with and assist Developer in applying for Rule 20A funds to be used towards the cost of undergrounding the electrical lines of Buchanan Road in front of the Project Site.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.
58	 Article V - Cooperation - Implementation			
59	 Section 5.01	Processing Application for Subsequent Approvals. The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions:		
60	a)	Standard of Review. By adopting 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 discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law, as defined below, and are not inconsistent with the Project Approvals as set forth above, and meet the intent and comply with any City adopted Designed Guidelines, as applicable. To the extent permitted by law, City shall not use its discretionary authority in considering these Subsequent Approval applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals. Developer agrees that development under this Agreement shall comply with provisions reflected in Uniform Codes (whether building, fire, plumbing, or other applicable uniform codes) which may adopted subsequent to the Effective Date of this Agreement.	Compliant	
61	b)	Basis for Denial. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or as is necessary to make this Subsequent Approval consistent with the Project Approvals. If City denies any application for a Subsequent Approval, City shall specify in writing the reasons for such denial and may suggest a modification which would be approved by City.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 4.05.
62	Section 5.02	Timely Submittals By Developer. Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (a) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (b) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for engineering or building permits for the project.
63	Section 5.03	Timely Processing By City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, (a) providing at Developer's expense and subject to Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (b) if legally required, providing notice and holding public hearings; and (c) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section 5.03, Developer's reimbursement to City for such services shall be made in amount equal to City's actual costs of providing such services, in accordance with standard City practice.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for engineering or building permits for the project.
64	Section 5.04	Other Government Permits. At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request of Developer, use its best efforts to ensure the timely availability of such permits and approvals. City shall cooperate with Developer to obtain any and all approvals from Contra Costa County related to the construction or operation of the Drainage Improvements. City shall also cooperate with Developer, CCWD and the Bureau of Reclamation (the "Bureau") in all matters related to CCWD's application to the Bureau to expand the place of use of Central Valley Project water to include the Project Site.	See Comments/Action Items	The City has cooperated with the Developer in finalizing the Planning Survey Report (PSR) necessary for Habitat Conservation Plan (HCP) compliance. Developer submitted the final PSR to the Bureau as part of its application for CVP inclusion.
65	 Section 5.05	Lighting and Landscaping District, Park Maintenance.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.

	DA Section	Condition/Requirement	Status	Comments	Action Items
66	a)	Developer agrees that the Project Site will be annexed into the City's existing Lighting and Landscaping District, as established pursuant to City Resolution No. 88-7324 ("LLD"), as well as City's Community Facilities District 2007-1 for park maintenance ("CFD").	Not Applicable (at this time)		
67	b)	Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of the parks.	Not Applicable (at this time)		
68	Section 5.06	Public Safety Services CFD. Developer agrees to take all steps necessary to include the Project Site into the City's existing police services Community Facilities District 2005-1, as adopted pursuant to Resolution No. 05-10342 (the "Public Safety Services") at no cost to the City, in order to provide for police and other emergency services to the Project Site. This process shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. Each legal residential lot located on the Project Site will be required to pay the levy by the Police Services District no earlier than the issuance of a building permit for such lot.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
69	Section 5.07	Fire Services CFD. Developer agrees to annex the Project Site into the City's existing Community Facilities District 2017-1 (Fire Facilities and Fire Safety and Emergency Services) as adopted pursuant to Resolution 17-13311, at no cost to the City, to provide fire protection and emergency services for the Project Site. This process shall be completed to the satisfaction of the City Manager, prior to the recordation of the first final map for the Project. Each legal residential lot located on the Project Site will be required to pay the levy for this district no earlier than the issuance of a certificate of occupancy for such lot (such levy shall not go into effect for any certificate of occupancy issued for model homes in the Project until such model home is transferred to a third party homebuyer).	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
70	Section 5.08	General Plan Maintenance Fee. Developer agrees to pay a development related fee to help fund the maintenance of the Pittsburg General Plan. The General Plan Maintenance Fee will be One Hundred Twenty-five Dollars (\$125) per building permit.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
71	 Section 5.09	Assessment Districts or Other Funding Mechanisms.			
72	a)	City understands that City's long term assurances to Developer concerning fees, taxes and assessments related to the Project are a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay the fees, taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts or other Funding Mechanisms, as defined in Section 3.09 of this Agreement, covering all or any portion of the Project site. Notwithstanding the foregoing, Developer retains all its rights to oppose the formation or proposed assessment of any new assessment district, Funding Mechanism, or any and all increases thereto, or to request or pursue assessment credits or reductions, unless otherwise provided for herein or unless such assessment, Funding Mechanism or related increases are in place and legally effective as of the date of this Agreement's Effective Date.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
73	b)	At the request of Developer, City shall cooperate in the formation of, or annexation to, those assessment districts, geologic hazard abatement district, landscaping and lighting districts, community facilities districts, tax-exempt financing mechanisms, or other Funding Mechanisms that Developer and City determine are needed to fund infrastructure improvements and to ensure the orderly development of the Project, at no cost to the City. City shall diligently and expeditiously process applications by Developer necessary to establish such Funding Mechanisms as long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City, and which will result in no commitment of City funds. City shall diligently seek to sell any bonds to be issued and secured by such assessments upon the best terms reasonably available in the marketplace. Any and all costs associated with this Section shall be borne and/or advanced by Developer.	Not Applicable (at this time)		
74	Section 5.10	Warranty Bonds. Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property or open space dedications) pursuant to this Agreement shall be accompanied by a one (1) year warranty bond in a form and in an amount, and with a surety acceptable to City or otherwise as determined in the applicable Subdivision Improvement Agreement.	Not Applicable (at this time)		
75	 Article VI - Standards, Laws and Procedures Governing the Project				
76	Section 6.01	Vested Right to Develop. Developer shall have a vested right to develop the Project on the Project Site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.	Compliant		
77	Section 6.02	Permitted Uses Vested by This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.	Compliant		

	DA Section	Condition/Requirement	Status	Comments	Action Items
78	Section 6.03	Applicable Law. “Applicable Law” shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approvals, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying any new rules, regulations, official policies, standards, and specifications that do not conflict with those rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.	Compliant		
79	Section 6.04	Uniform Codes. Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City’s then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.	Compliant		
80	Section 6.05	Moratorium And Conflicting Enactments. To the extent consistent with State Law, if any ordinance, resolution or other measure is enacted, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.	Compliant		
81	Section 6.06	Environmental Mitigation. The parties understand that the EIR for the Project is a project level CEQA document intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with the CEQA policies and requirements applicable to the EIR, City agrees to use the EIR in connection with the processing of any Subsequent Approval to the extent allowed by law. City agrees not to impose on Developer any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the Mitigation Monitoring Program described in the FEIR, specifically required by Applicable Law, or as properly required through the design or architecture review process as long as such mitigation measures or other conditions are imposed in a manner consistent with applicable design review guidelines.	Compliant		
82	Section 6.07	Life of Subdivision Maps, Development Approvals, and Permits. To the extent consistent with Applicable Law, the term of any subdivision map or any other map, permit, rezoning or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the duration of this Agreement, including any extensions. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable development moratorium (including, but not limited to, a water or sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Project. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable court order or other legal requirement prevents the processing of any Subsequent Approval or prevents any Project development activities.	Compliant		
83	Section 6.08	State and Federal Law. As provided in California Government Code § 65869.5, if any state or federal laws or regulations, enacted after this Agreement’s Effective Date prevent or preclude compliance with one or more provisions of this Agreement (“Changes in the Law”), such provision of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article V and Section 10.05. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically required by State or Federal laws and regulations.	Compliant		
84	 Section 6.09	Timing of Project Construction and Completion.			
85	a)	Project Phasing. The Project is expected to be built in phases in response to then-existing market conditions over the Term of the Agreement. Except as otherwise specifically provided by this Agreement with respect to Project infrastructure timing, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular period of time, and City shall not impose such a requirement on any Project Approval. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market demand, interest rates, competition and other similar factors.	Compliant		
86	b)	The parties agree that Developer shall be able to develop in accordance with Developer’s own time schedule as such schedule may exist from time to time, and Developer shall determine which part of the Project Site to develop first, and at Developer’s chosen schedule. In particular, and not in limitation of any of the foregoing, since 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 consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties’ agreement, it is the parties’ desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. Developer’s rights under this Section 6.09(b) shall be subject to the requirement that adequate infrastructure to serve each phase of the Project is constructed concurrently with such phase. The City Manager shall reasonably determine what infrastructure will be required to serve each phase of the Project, which determination shall be consistent with Applicable Law.	Compliant		
87	c)	Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.	Compliant		

DA Section	Condition/Requirement	Status	Comments	Action Items
88 Section 6.10	Exempting Fees, Mitigation Measures and Similar Requirements Imposed by Outside Agencies. Notwithstanding any other provision of this Agreement, the City agrees to exclude Developer from any and all discretionary collection agreements regarding fees, mitigation measures and similar requirements including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or on the Project Site after the Effective Date through the Term of this Agreement. This Section 6.10 shall not prohibit the City from imposing on Developer any fee, mitigation measure or similar requirement or obligation that is required by a local or regional agency in accordance with local, regional, State or Federal obligations and implemented by the City in cooperation with such local, regional, state or federal agency, provided such fee, mitigation measure or similar requirement or obligation is imposed in a similar manner on similarly situated properties within the City as, for example, stormwater-related C.3 requirements and increases thereto.	Compliant		
89 Section 6.11	City's Joint-Inspection Jurisdiction. Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.	Compliant		
90 - Article VII - Amendment				
91 - Section 7.01	Amendment to Project Approvals, Subsequent Approvals. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 7.01.	
92 a)	Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City Manager or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable uniform codes and State or Federal law. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire Project, consistent with this Agreement and Applicable Law, and will result in no new significant environmental impacts not addressed and mitigated in the EIR, the amendment shall be determined to be an "Administrative Project Amendment" and the City Manager or his/her designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.	Not Applicable (at this time)		
93 b)	Non-Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.	Not Applicable (at this time)		
94 - Section 7.02	Amendment of This Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, as follows:	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 7.02.	
95 a)	Administrative Agreement Amendments. The City Manager, or his/her designee, may, except to the extent otherwise required by law, enter into certain amendments of this Agreement on behalf of the City as long as any such amendment does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) monetary contributions by Developer ("Administrative Agreement Amendment"), and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. For purposes of this Section 7.02(a), the term "substantially affect" shall be evaluated in the context of the entire Project.	Not Applicable (at this time)		
96 b)	Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, whether done administratively or not, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by both parties.	Not Applicable (at this time)		
97 c)	Amendment Limitations. In consideration of the scope of the benefits to City set forth in this Agreement, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to the impacts on City directly attributable to such amendment.	Not Applicable (at this time)		
98 - Article VIII - Assignment, Transfer and Notice				
99 Section 8.01	Assignment of Interests, Rights and Obligations. Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Article VIII.	
100 - Section 8.02	Transfer Agreements.	Not Applicable (at this time)		

	DA Section	Condition/Requirement	Status	Comments	Action Items
101	a)	In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a "Non-Assuming Transferee" (as defined in Section 8.03), Developer and the transferee shall enter into a written agreement (a "Transfer Agreement") regarding the respective interests, rights and obligations of Developer and the transferee in and under the Agreement, the Project Approvals, and the Subsequent Approvals. Such Transfer Agreement may (i) release Developer from obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations, (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred and (iii) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment.	Not Applicable (at this time)		
102	b)	Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City's prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within thirty (30) days of a written request by Developer for City's consent shall be deemed City's approval of the Transfer Agreement in question. City may refuse to give its consent only if, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable determination be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent to a proposed transferee pursuant to this Section 8.02(b) if such transferee has a net worth of at least Ten Million Dollars (\$10,000,000) documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa County, Developer shall automatically be released from those obligations assumed by the transferee therein.	Not Applicable (at this time)		
103	c)	Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.	Not Applicable (at this time)		
104	Section 8.03	Non-Assuming Transferees. Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with (i) any single residential parcel conveyed to a purchaser, (ii) any property transferred as fewer than ten (10) lots to a single retail builder or (iii) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school or other nonresidential uses. The transferee in such a transaction and its successors ("Non-Assuming Transferees") shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this Section 8.03 shall exempt any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.	Not Applicable (at this time)		
105	Section 8.04	Notice of Compliance Generally. Subject to City's finding that the facts contemplated by clauses (i) through (iii) herein are true and accurate, within thirty (30) days following any written request which Developer may make from time to time, City shall execute and deliver to Developer (or to any party requested by Developer) a written "Notice of Compliance," in recordable form, duly executed and acknowledged by City, that certifies that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default, and (iii) any other information reasonably requested by Developer. City's failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.	Not Applicable (at this time)		
106	 Article IX - Cooperation in the Event of Legal Challenge				
107	 Section 9.01	Cooperation.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Article IX.	
108	a)	Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein.	Not Applicable (at this time)		
109	b)	Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.	Not Applicable (at this time)		

	DA Section	Condition/Requirement	Status	Comments	Action Items
110	c)	The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.	Not Applicable (at this time)		
111	 Section 9.02	Cure; Reapproval.	Not Applicable (at this time)		
112	 a)	If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or any portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgment (a “Judgment”) in such action or proceeding (based on procedural, substantive or other deficiencies, hereinafter “Deficiencies”), the parties agree to use their respective best efforts to sustain and reenact or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise:	Not Applicable (at this time)		
113	i)	If any Judgment requires reconsideration or consideration by City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement and the Judgment. Upon the parties cure of such Deficiencies, City shall then take steps consistent with the Judgment necessary readopt or reenact this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof.	Not Applicable (at this time)		
114	ii)	Acting in a manner consistent with the intent of this Agreement or a Judgment includes, but is not limited to, recognizing that the parties intend that Developer may develop a nine hundred seventeen (917) single-family residential unit project, and adopting such ordinances, resolutions, and other enactments, including, but not limited to, a general plan amendment, rezoning, vesting subdivision map approvals, development plan approvals, PD Plan approvals, design review, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, final development plans, development agreements, permits, resubdivisions, and any amendments to, or repealing of, any of the foregoing as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgment.	Not Applicable (at this time)		
115	b)	The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.02, which shall survive such invalidation, nullification or setting aside.	Not Applicable (at this time)		
116	 Article X - Default, Remedies, Termination				
117	Section 10.01	Defaults. Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (the “Complaining Party”) (unless such period is extended by mutual written consent), shall constitute a default under this Agreement. The Complaining Party’s notice (“Default Notice”) shall specify the nature of the alleged failure and, may specify the manner in which the failure satisfactorily may be cured By the other party (the “Defaulting Party”). Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable date following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than thirty (30) days after the Defaulting Party’s receipt of the Default Notice), the Defaulting Party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30-day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within one hundred twenty (120) days after the Notice of Default is given. Complaining Party shall not send notice to any third party, including, but not limited to, bonding and surety companies, until such time as the cure opportunities set forth above have expired unless otherwise required by applicable law. Upon the occurrence of a default under this Agreement, the Complaining Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party shall take no further action.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.01.	
118	Section 10.02	Termination. If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. As used herein, a finding of materiality shall be based on the effect of the default in relation to the size and scope of the Project. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter; provided, however, that if Developer files an action to challenge City’s termination of this Agreement within such 60-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City’s termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.02.	
119	 Section 10.03	Periodic Review	See Comments/Action Items	The City has conducted its second Annual Review of the Development Agreement. As of December 31, 2022, both parties were compliant with the DA.	

	DA Section	Condition/Requirement	Status	Comments	Action Items
120	a)	Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement. This review (the "Periodic Review") shall be conducted by the City Manager or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code § 65865.1. Developer also agrees to pay City annually the greater of Five Thousand Dollars (\$5,000) or the actual cost of Periodic Review Fee (not to exceed Ten Thousand Dollars (\$10,000)). The Five Thousand Dollars (\$5,000) shall be increased annually thereafter by the CPI for the San Francisco-Oakland Area, with the first increase implemented in January 2017 reflecting 2016 increases. Such Periodic Review Fee shall only be paid in the years in which a Periodic Review is actually conducted.	Compliant		
121	b)	Notice. At least ten (10) days prior to the Periodic Review, and in the manner prescribed in Article XII of this Agreement, City shall deposit in the mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer's performance hereunder. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Such response shall be made to the City Manager.	See Comments/Action Items	Notice of the Annual Review was given to the Developer on April 21, 2023.	
122	c)	Good Faith Compliance. During the Periodic Review, the City Manager shall review Developer's good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that Developer has not complied with such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code §§ 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally by Developer and City.	Compliant		
123	d)	Failure to Properly Conduct Periodic Review. If, after thirty (30) days following Developer's notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall be conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.	Compliant		
124	e)	Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.	See Comments/Action Items	Written Notice of Compliance will be sent to the Developer upon conclusion of the Annual Review.	
125	Section 10.04	Default by City or Developer. In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.04.	
126	Section 10.05	Excusable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are t due to Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer's actions or inactions and beyond Developer's control. Upon the properly noticed request of either party hereto, as required by Section 12.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon in writing.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.05.	
127	Section 10.06	Legal Action. 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, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.06.	
128	Section 10.07	California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Compliant		

	DA Section	Condition/Requirement	Status	Comments	Action Items
129	Section 10.08	Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provisions of this Section 10.08 may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. Nothing in this Section 10.08 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.08.	
130	Section 10.09	Attorneys' Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.	Not Applicable		
131	Article XI - No Agency, Joint Venture or Partnership				
132		It is specifically understood and agreed to by and between the parties hereto that unless otherwise expressly provided herein: (i) the subject development is a private development; (ii) City have no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer. City agrees that Developer's obligations under this Agreement related to the construction of Project water, sewer and drainage infrastructure improvements, the grading and construction of traffic improvements, and the grading and construction of any other public improvements (collectively, the "Public Improvements") are all public works of improvement City is requiring as a condition of regulatory approval of the Project and that the Project is an otherwise private development. City further agrees that it will contribute no more money, or the equivalent of money, to the overall Project than is required to construct the Public Improvements and that City maintain no proprietary interest in the overall Project.	Compliant		
133	Article XII - Miscellaneous				
134	Section 12.01	Section 12.01 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.	Not Applicable		
135	Section 12.02	Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code § 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement shall prevail.	Compliant		
136	Section 12.03	Findings. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.	Not Applicable		
137	Section 12.04	Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.	Compliant		
138	Section 12.05	Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Compliant		

	DA Section	Condition/Requirement	Status	Comments	Action Items
139	Section 12.06	Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.	Compliant		
140	Section 12.07	Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.	Not Applicable		
141	Section 12.08	Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.	Not Applicable		
142	Section 12.09	Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by fax (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by FedEx or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties.	Compliant		
143	Section 12.10	Entire Agreement, Counterparts And Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of thirty-two (32) pages and three (3) exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of any provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes: Exhibit A - Legal Description; Exhibit A-1 - Project Site Diagram; Exhibit B - Applicable Fees	Not Applicable		
144	Section 12.11	Recordation Of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.	See Comments/Action Items	The DA was recorded at the Contra Costa County Clerk-Recorder on December 26, 2018 (DOC 2018-0205803-00)	
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BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Liberty Subdivision)
Development Agreement Between The)
City of Pittsburgh and Forecast Land) RESOLUTION NO. 23-
Development, LLC and Determination)
as to Compliance With Development)
Agreement)

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, a Development Agreement between the City of Pittsburgh and Forecast Land Investment, LLC, was executed on June 28, 2018, for the Liberty Subdivision; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DAs") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Liberty Subdivision Development Agreement was conducted, and on December 21, 2020, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City

Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and City Staff, as well as the information contained in the "Liberty DA – 2022 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Liberty Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Liberty Subdivision Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

Section 5. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 1st day of May, 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit 1 - Liberty DA - 2022 Annual Review Summary Table



DA Section	Condition/Requirement	Status	Comments	Action Items
1 Article II - Effective Date; Term				
2 Section 2.01	Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the "Effective Date").	See Comments/Action Items	The ordinance approving this development agreement was introduced by City Council on June 4, 2018 and adopted on June 18, 2018.	
3 Section 2.02	Term. The term of this Agreement shall commence upon the Effective Date and continue for a period of ten (10) years (the "Term"). However, at such time as Developer has complied with all conditions in this Agreement, and upon the City Manager's written authorization, this Agreement shall terminate and be of no further effect between the parties. The termination shall not alter any of the Project Approvals and related matters as to the Project.	See Comments/Action Items	Based on the effective date of June 18, 2018, this development agreement would expire in 2028.	
4 Article III - Obligations of Developer				
5 Section 3.01	Obligations of Developer Generally. The parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer's agreement to perform and abide by its long term covenants and obligations, as set forth herein. As material consideration for the long term assurances and vested rights provided by this Agreement and as a condition of approval to one or more of the Project Approvals, Developer agrees to each of the following:	Not Applicable		
6 Section 3.02	Facility Reserve Charges. Developer agrees to pay City's Facility Reserve Charges ("FRC") as set or modified by the City Council from time to time.	Compliant	These fees were paid as part of each building permit issued for the project.	
7 Section 3.03	Water Infrastructure. Developer shall comply with the 2015 Water System Master Plan, as amended.	Compliant		
8 Section 3.04	Applicable Fees. City may levy development fees and charges during the term of this Agreement relative to the development of the Project Site which are in force and effect as of the Effective Date, or which are in effect at the time payment of those fees are due as more particularly described and according to the payment schedule set forth on Exhibit B ("Applicable Fees"). Unless otherwise provided in this Agreement, no development fees, or charges, or categories thereof, shall be imposed on the Project other than those fees (including categories within such fees), and charges identified as Applicable Fees on Exhibit B, which exhibit shall exclusively govern the Applicable Fee payment schedule. The parties agree that any and all Project development fees, charges or exactions related to schools, fire prevention, water, sewer, stormwater, and storm drainage facilities, which are to be paid by Developer directly to third-party governmental agencies, are not subject to or within the scope of this Agreement whether such third party charges exist or are subsequently imposed by such third parties, whether directly upon Developer or through City. This provision shall not be construed to benefit any Non-Assuming Transferees, as such term is defined in herein.	Compliant		
9 Section 3.05	Applicable Fee Adjustments. Developer shall pay fees and charges consistent with Section 3.04 above, and the applicable adjustments currently provided in such fees, and as modified from time to time by the City, whether such adjustment or modification is an increase or decrease. Developer retains the right to challenge the imposition of any new fees not referenced in this Agreement or the modification, amendment or adjustment of all Applicable Fees pursuant to Government Code § 66000 et seq., not already authorized by ordinances, resolutions or policies in place at the time of this Agreement's execution. Should the City Council approve a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Compliant		
10 Section 3.06	City Local Traffic Mitigation Fee. Developer shall pay the City Local Traffic Mitigation Fee, which fee is necessary to finance unmet City traffic improvement needs in the amount in effect as of the Effective Date and subject to adjustment in accordance with Resolution No. 07-10917 with credit for certain improvements constructed by Developer per Section 4.04 below. If the City Council approves a new AB 1600 fee study and/or authorizes a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Compliant	These fees were paid as part of each building permit issued for the project.	
11 Section 3.07	Regional Traffic Fee. Developer shall the ECCRFA Regional Transportation Development Impact Mitigation Fee (PMC Chapter 15.103) (the "RTDIM") amount in effect when the Developer obtains a Building Permit. The RTDIM will be automatically increased or decreased on January 1 of each year based on the percent change in the Engineering News Record Construction Costs Index-San Francisco Bay Area between September 1 and September 1 of the preceding two calendar years. Developer shall pay the fees prior to issuance of a Building Permit. If no Building Permit is required, then Developer shall pay the fees at a time consistent with PMC Section 15.103 in the amount in effect when the Project commences pursuant to PMC Section 15.103.	Compliant	These fees were paid as part of each building permit issued for the project.	
12 Section 3.08	Fees, Assessments and/or Taxes to be Paid by Developer. Developer agrees to pay its fair share of any levies imposed by any assessment district, landscaping and lighting district, community facilities district, tax-exempt financing mechanisms, or other funding mechanisms related to public safety; traffic; sewer; water; fire; the prevention, mitigation, abatement, or control of geologic hazards; or other infrastructure improvements (including, without limitation, design, acquisition, construction and maintenance costs) (collectively, "Funding Mechanisms") within the Project Site, provided that such Funding Mechanism is referenced herein and/or was legally created pursuant to applicable law.	Compliant		

	DA Section	Condition/Requirement	Status	Comments	Action Items
13	 Section 3.09	Affordable Housing. Developer shall comply with PMC 18.86.080 by constructing six (6) rental secondary dwelling units within the Project. A covenant shall be recorded limiting the amount of rent that may be charged for these secondary units, consistent with the terms and conditions set forth in the affordable housing agreement. Prior to the City's issuance of the first certificate of occupancy Developer agrees to enter into an affordable housing agreement with the City (the "Affordable Housing Agreement") attached as Exhibit C which further memorializes the provisions of this Section 3.09 and is consistent with applicable law, including Pittsburg Municipal Code Chapter 18.50. Developer agrees that the secondary dwelling units referenced in this Section shall not be built or otherwise allowed on adjoining lots without the prior written approval of the City Manager.	Compliant	Deed-restricted ADUs built on Lot Nos. 7, 11, 16, 20, 26, and 42. Staff has received copies of the Secondary Unit Regulatory Agreements for each of these ADUs.	
14	a)	Timing. The Affordable Housing Agreement shall establish provisions to implement the affordable housing requirements within this Agreement and shall include, but not be limited to, implementation and monitoring provisions to ensure compliance with municipal law related to affordable housing. The agreement shall include provisions for the reasonable reimbursement of costs to the City for the administration and monitoring of the agreement.	Compliant		
15	b)	Inclusionary Housing Ordinance. Notwithstanding any provision of this Agreement, in the event that the City has rescinded its respective previously adopted affordable housing ordinance and not replaced it with another affordable housing or similar ordinance, or such ordinance has been declared illegal, Developer shall not be obligated to comply with the provisions for affordable housing set forth in this Agreement. In the event, prior to or during the development of the Project, the City amends or replaces or eliminates its affordable housing ordinance which would result in a reduction in the number of secondary units Developer is obligated to construct, then the Affordable Housing Agreement shall be modified to provide for an equivalent reduction in the number of secondary units required to be constructed in the Project or elimination of the requirement.	Not Applicable	The City has not rescinded its affordable housing ordinance as of the time of this periodic review.	
16	 Section 3.10	Security Improvements			
17	a)	Developer shall pay to the City the actual cost incurred by the City (not to exceed Fifty Thousand Dollars (\$50,000.00) towards funding the acquisition and installation a security camera at the entrance to the Property or other location as determined by the City. The security cameras will be installed under the supervision of the City's Police Chief. Developer shall pay such costs within thirty (30) days of receipt of invoice.	In Progress		
18	b)	Developer shall install the basic home security wiring implement wireless technology in the Project homes (defined herein as wiring for a basic home security system on the first floor windows and doors only). Developer shall offer one year of professional monitoring service to new homeowners. The monitoring service shall be at the election of the new homeowner.	Compliant	Planning staff inspected each home for compliance with this requirement prior to issuance of a certificate of occupancy.	
19	Section 3.11	Solar Roof System. Developer shall install a solar roof system on one of its model homes for example purposes only (which may consist of a few panels with photovoltaic compatibility or other comparable technologies) and offer solar installation as an option at the homeowner's expense.	Compliant	The developer has installed pre-wiring for solar systems on all homes.	
20	Section 3.12	The Developer shall replace any and all trees that are removed as part of the construction of the Project with the appropriate number of new trees pursuant to the City's Tree Ordinance. Developer shall cause the Project to maintain said trees in an appropriate manner pursuant to the City's Tree Ordinance.	Compliant	To comply with the City's Tree Preservation Ordinance and the project's Tree Removal Permit, the developer has paid an in lieu fee of \$4,800. Additionally, the developer has installed twelve (12), 24" box size trees along Central Avenue which will be designated protected trees. The trees have been mapped in the City's Protected Tree layer.	
21	Section 3.13	Off-Site Improvements. Developer shall provide off-site improvements for a left turn lane from Central Avenue into the Project.	Compliant	Planning staff confirmed there is a left turn lane from Central Avenue into the Project prior to issuance of last certificates of occupancy.	
22	 Article IV - Obligations of the City				
23	Section 4.01	Obligations of City Generally. The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.	Not Applicable		
24	 Section 4.02	Availability of Public Services			
25	a)	General. To the extent permitted by law and consistent with its authority, City shall reserve such capacity for water services as may be necessary to serve the Project. This reservation of water infrastructure capacity shall be assured for the Term to the extent consistent with applicable law.	Compliant		
26	b)	Construction Water. City shall make construction water available to the Project by allowing the Project access to the City's existing water supply infrastructure, at a location reasonably determined by the City, at Developer's cost and on those terms and conditions and charges customarily applied by City to similar projects consistent with City standards. Developer shall provide backflow prevention for all points of connection to the City's potable water supply system and the volume of water consumed shall be tracked with the use of a City-issued hydrant meter. City shall also allow Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer's use in any and all Project grading and construction operations, as long as such water is unrelated to potable use.	Compliant		
27	Section 4.03	Developer's Right to Rebuild. City agrees that Developer, in Developer sole's discretion, may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, acts of God, acts of terrorism, or damage to work in progress by reason of fire, floods or other casualties. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA and this Agreement.	Compliant		
28	 Section 4.04	Reimbursement of Infrastructure Costs			

	DA Section	Condition/Requirement	Status	Comments	Action Items
29	a)	Reimbursement. Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project's fair share obligation for such infrastructure, City shall reimburse Developer for the City's portion of such costs (including any management fees provided for in this Agreement), subject to City's prior verification through inspection of the construction that is subject to such reimbursement and upon final acceptance of the infrastructure by the City. This reimbursement shall be paid within sixty (60) days after City's final acceptance or at such other time as mutually agreed upon in writing by the parties. Developer shall be entitled to a management fee of five percent (5%) for City's share of approved infrastructure costs, including but not limited to design and special inspection costs. The management obligations of Developer hereunder shall include contracting and managing the construction of the infrastructure, retaining copies of records, photographs and "as built" for the improvement(s) as well as attending meetings and providing necessary reports as reasonably requested by City.	Compliant		
30	b)	City's Authorization of Reimbursement. Notwithstanding any other provision of this Section, or of this Agreement, or of VTM provisions, City shall not be responsible to reimburse or credit Developer for any costs, including as referenced in Section 4.04(a) herein, unless prior to Developer incurring any costs for which Developer will request reimbursement from City, Developer shall first provide written documentation as to the work to be performed, the estimated costs thereof, including a not-to-exceed cap, and such other details as reasonably requested by the City Manager and the City Manager approves the proposed costs and related work. If the City Manager fails to respond within thirty (30) days of its receipt of such estimated costs, Developer shall provide a second written notice to the City Manager and to the City Engineer, if neither responds within thirty (30) days of the City's receipt of the second request, the request shall be deemed approved. The City Manager shall have the discretion to require Developer to obtain competitive bids on any work for which Developer may request reimbursement or credit from the City where the total cost (not just the City's share) of that work is One Hundred Thousand Dollars (\$100,000) or more. City shall also have the opportunity to inspect any and all infrastructure during its construction, as well as to review any work product for which Developer requests reimbursement or credits. If mutually agreed by the parties in writing, any reimbursement due Developer pursuant to this Agreement may be satisfied by City in the form of credits, which can actually be used by Developer to offset Developer's payment of any Applicable Fees. In the event there are not enough credits to fully satisfy the reimbursement due Developer and subject to the terms of the mutual agreement between the parties referenced in the prior sentence, City shall reimburse Developer within thirty (30) days of invoicing.	Compliant		
31	Section 4.05	Park In Lieu Fee. Developer and City agree that the park in-lieu fee valuation is currently Ten Dollars and Twenty Seven Cents per square foot (\$10.27/sf unless City adopts a lower fee in which case the lower fee shall apply), increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2019 reflecting 2018 increases.	Compliant		
32	 Article V - Cooperation - Implementation				
33	 Section 5.01	Processing Application for Subsequent Approvals. The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions:			
34	a)	Standard of Review. By adopting 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 discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law, as defined below, and are not inconsistent with the Project Approvals as set forth above, and meet the intent and comply with any City adopted Designed Guidelines, as applicable. To the extent permitted by law, City shall not use its discretionary authority in considering these Subsequent Approval applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals. Developer agrees that development under this Agreement shall comply with provisions reflected in Uniform Codes (whether building, fire, plumbing, or other applicable uniform codes) which may adopted subsequent to the Effective Date of this Agreement.	Compliant		
35	b)	Basis for Denial. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or as is necessary to make this Subsequent Approval consistent with the Project Approvals. If City denies any application for a Subsequent Approval, City shall specify in writing the reasons for such denial and may suggest a modification which would be approved by City.	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
36	Section 5.02	Timely Submittals by Developer. Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.	Compliant		

	DA Section	Condition/Requirement	Status	Comments	Action Items
37	Section 5.03	Timely Processing by City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, (i) providing at Developer's expense and subject to Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section 5.03, Developer's reimbursement to City for such services shall be made in amount equal to City's actual costs of providing such services, in accordance with standard City practice.	Compliant		
38	Section 5.04	Other Government Permits. At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request of Developer, use its best efforts to ensure the timely availability of such permits and approvals.	Compliant		
39	 Section 5.05	Landscaping and Lighting District, Park Maintenance, C.3 Facilities.			
40	a)	Developer agrees that the Project Site will be annexed into the City's existing Community Facilities District 2007-1 (Park Maintenance Services), and the City's Community Facilities District 2016-1 (Maintenance of Project Facilities) for maintenance of off-site C.3 facilities. This process shall be completed to the satisfaction of the City Manager and City Attorney prior to the recordation of the first final map for the project. Each legal residential lot located within the Project Site will be required to pay the levy by the CFD no earlier than the issuance of a building permit for such lot. Developer understands that the project Site is included in the City's existing Citywide Landscaping and Lighting Assessment District, as established pursuant to City Resolution No. 88-7324 ("LLD")., To the extent permitted by law, that the Project shall be assessed in a manner consistent with the provisions herein.	Compliant		
41	b)	Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of the parks.	Compliant		
42	Section 5.06	Police Services CFD. Developer agrees to take all steps necessary to include the Project Site into the City's existing police services Community Facilities District 2005-1, as adopted pursuant to Resolution No. 05-10342 (Public Safety Services) at no cost to the City, to provide for police services for the Project Site. This process shall be completed to the satisfaction of the City Manager and the City Attorney, before recordation of the first final map for the Project. Each legal residential lot located on the Project Site will be required to pay the levy by the Police Services District no earlier than the issuance of a building permit for such lot.	Compliant		
43	Section 5.07	Fire Services CFD. Developer agrees to annex the Project Site into the City's existing Community Facilities District 2017-1 (Fire Facilities and Fire Safety and Emergency Services), as adopted pursuant to Resolution No. 17-13311, at no cost to the City, to provide fire protection and emergency services for the Project Site. This process shall be completed to the satisfaction of the City Manager, prior to the recordation of the first final map for the Project. Each legal residential lot located on the Project Site will be required to pay the levy by the CFD no earlier than the issuance of a building permit for such lot.	Compliant		
44	Section 5.08	Parkland Dedication In-Lieu Fee. The Developer shall pay an In-Lieu Parkland Dedication Fee on a per permit basis to the Engineering Department prior to the issuance of a building permit for the project per PMC section 17.32.020.D.2. Developer shall receive a fee credit for fifty percent of the acreage of the private tot lot provided for the project. The park in-lieu fee valuation is currently ten dollars and twenty seven Cents per square foot (\$10.27/sf), increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2019 reflecting 2018 increases. With the applied credit, Developer shall pay an in-lieu fee of \$7,917 per dwelling unit.	Compliant	These fees were paid as part of each building permit issued for the project.	
45	 Section 5.10	Assessment Districts or Other Funding Mechanisms.			
46	a)	City understands that City's long term assurances to Developer concerning fees, taxes and assessments related to the Project are a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay the fees, taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts or other Funding Mechanisms, as defined in Section 3.08 of this Agreement, covering all or any portion of the Project site. Notwithstanding the foregoing, Developer retains all its rights to oppose the formation or proposed assessment of any new assessment district, Funding Mechanism, or any and all increases thereto, or to request or pursue assessment credits or reductions, unless otherwise provided for herein or unless such assessment, Funding Mechanism or related increases are in place and legally effective as of the date of this Agreement's Effective Date.	Compliant		
47	b)	At the request of Developer, City shall cooperate in the formation of, or annexation to, those assessment districts, landscaping and lighting districts, community facilities districts, tax-exempt financing mechanisms, or other Funding Mechanisms that Developer and City determine are needed to fund infrastructure improvements and to ensure the orderly development of the Project, at no cost to the City. City shall diligently and expeditiously process applications by Developer necessary to establish such Funding Mechanisms as long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City, and which will result in no commitment of City. City shall diligently seek to sell any bonds to be issued and secured by such assessments upon the best terms reasonably available in the marketplace. Any and all costs associated with this Section shall be borne and/or advanced by Developer.	Compliant		

DA Section	Condition/Requirement	Status	Comments	Action Items
48	Section 5.11	Warranty Bonds. Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property or open space dedications) pursuant to this Agreement shall be accompanied by a one (1) year warranty bond in a form and in an amount, and with a surety acceptable to City, or otherwise as determined in the applicable Subdivision Improvement Agreement.	Compliant	
49	Section 5.12	General Plan Maintenance Fee. Developer agrees to pay a development related fee to help fund the maintenance of the Pittsburg General Plan. The General Plan Maintenance Fee will be \$125.00 per building permit.	In Progress	These fees were paid as part of each building permit issued for the project.
50	Section 5.13	Refuse Management Plan. Prior to issuance of the first building permit, Developer shall submit to, and receive written approval from, the City Planning Manager of a proposed refuse management plan addressing, among other matters, the routes for the solid waste company servicing the Project to access and otherwise provide service to the Project.	Compliant	
51	 Article VI - Standards, Laws and Procedures Governing the Project			
52	Section 6.01	Vested Right to Develop. Developer shall have a vested right to develop the Project on the Project Site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.	Compliant	
53	Section 6.02	Permitted Uses Vested by This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.	Compliant	
54	Section 6.03	Applicable Law. “Applicable Law” shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approvals, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying any new rules, regulations, official policies, standards, and specifications that do not conflict with those rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.	Compliant	
55	Section 6.04	Uniform Codes. Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City’s then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.	Compliant	
56	Section 6.05	Moratorium and Conflicting Enactments. To the extent consistent with State Law, if any ordinance, resolution or other measure is enacted, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.
57	Section 6.06	Life of Subdivision Maps, Development Approvals, and Permits. To the extent consistent with Applicable Law, the term of any subdivision map or any other map, permit, rezoning or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the duration of this Agreement, including any extensions. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable development moratorium (including, but not limited to, a water or sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Project. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable court order or other legal requirement prevents the processing of any Subsequent Approval or prevents any Project development activities	Compliant	
58	Section 6.07	State and Federal Law. As provided in California Government Code § 65869.5, if any state or federal laws or regulations, enacted after this Agreement’s Effective Date prevent or preclude compliance with one or more provisions of this Agreement (“Changes in the Law”), such provision of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article V and Section 10.05. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically required by State or Federal laws and regulations.	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.
59	 Section 6.08	Timing of Project Construction and Completion.		

DA Section	Condition/Requirement	Status	Comments	Action Items
60	a) Project Phasing. The Project may be built in phases in response to then-existing market conditions over the Term of the Agreement. Except as otherwise specifically provided by this Agreement with respect to Project infrastructure timing, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular period of time, and City shall not impose such a requirement on any Project Approval. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market demand, interest rates, competition and other similar factors.	Compliant	The project is completely built-out.	
61	b) The parties agree that Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time, and Developer shall determine which part of the Project Site to develop first, and at Developer's chosen schedule. In particular, and not in limitation of any of the foregoing, since 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 consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. Developer's rights under this Section 6.08(b) shall be subject to the requirement that adequate infrastructure to serve each phase of the Project is constructed concurrently with such phase. The City Manager shall reasonably determine what infrastructure will be required to serve each phase of the Project, which determination shall be consistent with Applicable Law.	Compliant		
62	c) Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.	Compliant		
63	Section 6.09 Exempting Fees, Mitigation Measures and Similar Requirements Imposed by Outside Agencies. Notwithstanding any other provision of this Agreement, the City agrees to exclude Developer from any and all discretionary collection agreements regarding fees, mitigation measures and similar requirements including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or on the Project Site after the Effective Date through the Term of this Agreement. This Section 6.09 shall not prohibit the City from imposing on Developer any fee, mitigation measure or similar requirement or obligation that is required by a local or regional agency in accordance with local, regional, State or Federal obligations and implemented by the City in cooperation with such local, regional, state or federal agency, provided such fee, mitigation measure or similar requirement or obligation is imposed in a similar manner on similarly situated properties within the City as, for example, stormwater-related C.3 requirements and increases thereto.	Compliant		
64	Section 6.10 City's Joint-Inspection Jurisdiction. Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.	Compliant		
65	 Article VII - Amendment			
66	 Section 7.01 Amendment to Project Approvals, Subsequent Approvals. To the extent permitted by State and Federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
67	a) Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City Manager or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable uniform codes and State or Federal law. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire Project, consistent with this Agreement and Applicable Law, and will result in no new significant environmental impacts not addressed and mitigated in the EIR, the amendment shall be determined to be an "Administrative Project Amendment" and the City Manager or his/her designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.	Not Applicable		
68	b) Non-Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.	Not Applicable		
69	 Section 7.02 Amendment of this Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, as follows:	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
70	a) Administrative Agreement Amendments. The City Manager, or his/her designee, may, except to the extent otherwise required by law, enter into certain amendments of this Agreement on behalf of the City as long as any such amendment does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) monetary contributions by Developer ("Administrative Agreement Amendment"), and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. For purposes of this Section 7.02(a), the term "substantially affect" shall be evaluated in the context of the entire Project.	Not Applicable		

	DA Section	Condition/Requirement	Status	Comments	Action Items
71	b)	Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, whether done administratively or not, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by both parties.	Not Applicable		
72	c)	Amendment Limitations. In consideration of the scope of the benefits to City set forth in this Agreement, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to the impacts on City directly attributable to such amendment.	Not Applicable		
73	 Article VIII - Assignment, Transfer and Notice				
74	Section 8.01	Assignment of Interests, Rights and Obligations. Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
75	 Section 8.02	Transfer Agreements	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
76	a)	In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a "Non-Assuming Transferee" (as defined in Section 8.03), Developer and the transferee shall enter into a written agreement (a "Transfer Agreement") regarding the respective interests, rights and obligations of Developer and the transferee in and under the Agreement, the Project Approvals, and the Subsequent Approvals. Such Transfer Agreement may (i) release Developer from obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations, (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred and (iii) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment.	Not Applicable		
77	b)	Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City's prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within thirty (30) days of a written request by Developer for City's consent shall be deemed City's approval of the Transfer Agreement in question. City may refuse to give its consent only if, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable determination be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent to a proposed transferee pursuant to this Section 8.02(b) if such transferee has a net worth of at least Ten Million Dollars (\$10,000,000) documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa County, Developer shall automatically be released from those obligations assumed by the transferee therein.	Not Applicable		
78	c)	Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.	Not Applicable		
79	Section 8.03	Non-Assuming Transferees. Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with (i) any single residential parcel conveyed to a purchaser, (ii) any property transferred as fewer than ten (10) lots to a single retail builder or (iii) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school or other nonresidential uses. The transferee in such a transaction and its successors ("Non-Assuming Transferees") shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this Section 8.03 shall exempt any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
80	Section 8.04	Notice of Compliance Generally. Subject to City's finding that the facts contemplated by clauses (i) through (iii) herein are true and accurate, within thirty (30) days following any written request which Developer may make from time to time, City shall execute and deliver to Developer (or to any party requested by Developer) a written "Notice of Compliance," in recordable form, duly executed and acknowledged by City, that certifies that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default, and (iii) any other information reasonably requested by Developer. City's failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.	See Comments/Action Items	As of December 31, 2022 there was no need to exercise the provisions of this subsection.	
81	 Article IX - Cooperation in the Event of Legal Challenge				
82	 Section 9.01	Cooperation			

DA Section	Condition/Requirement	Status	Comments	Action Items
83	a) Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein.	Compliant		
84	b) Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.	Compliant		
85	c) The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.	Compliant		
86	 Section 9.02 Cure; Reapproval			
87	 a) If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or any portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgment (a "Judgment") in such action or proceeding (based on procedural, substantive or other deficiencies, hereinafter "Deficiencies"), the parties agree to use their respective best efforts to sustain and reenact or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise:	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
88	i) If any Judgment requires reconsideration or consideration by City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement and the Judgment. Upon the parties cure of such Deficiencies, City shall then take steps consistent with the Judgment necessary readopt or reenact this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof.	Not Applicable		
89	ii) Acting in a manner consistent with the intent of this Agreement or a Judgment includes, but is not limited to, recognizing that the parties intend that Developer may develop a fifty seven (57) single-family residential unit project, and adopting such ordinances, resolutions, and other enactments, including but not limited to a general plan amendment, rezoning, vesting subdivision map approvals, development plan approvals, PD Plan approvals, design review, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, final development plans, development agreements, permits, resubdivisions, and any amendments to, or repealing of, any of the foregoing as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgment.	Not Applicable		
90	b) The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.02, which shall survive such invalidation, nullification or setting aside.	Not Applicable		
91	 Article X - Default, Remedies, Termination			

DA Section	Condition/Requirement	Status	Comments	Action Items
92 Section 10.01	Defaults. Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (the "Complaining Party") (unless such period is extended by mutual written consent), shall constitute a default under this Agreement. The Complaining Party's notice ("Default Notice") shall specify the nature of the alleged failure and, may specify the manner in which the failure satisfactorily may be cured By the other party (the "Defaulting Party"). Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable date following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than thirty (30) days after the Defaulting Party's receipt of the Default Notice), the Defaulting Party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30-day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within one hundred twenty (120) days after the Notice of Default is given. Complaining Party shall not send notice to any third party, including, but not limited to, bonding and surety companies, until such time as the cure opportunities set forth above have expired unless otherwise required by applicable law. Upon the occurrence of a default under this Agreement, the Complaining Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party shall take no further action.	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
93 Section 10.02	Termination. If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. As used herein, a finding of materiality shall be based on the effect of the default in relation to the size and scope of the Project. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter; provided, however, that if Developer files an action to challenge City's termination of this Agreement within such 60-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
94  Section 10.03	Periodic Review			
95 a)	Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement. This review (the "Periodic Review") shall be conducted by the City Manager or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code § 65865.1. Developer also agrees to pay City annually the greater of Five Thousand Dollars (\$5,000) or the actual cost of Periodic Review Fee (not to exceed Ten Thousand Dollars (\$10,000)). The Five Thousand Dollars (\$5,000) shall be increased annually thereafter by the CPI for the San Francisco Oakland Area, with the first increase implemented in January 2019 reflecting 2018 increases. Such Periodic Review Fee shall only be paid in the years in which a Periodic Review is actually conducted.	In Progress		
96 b)	Notice. At least ten (10) days prior to the Periodic Review, and in the manner prescribed in Article XII of this Agreement, City shall deposit in the mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer's performance hereunder. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Such response shall be made to the City Manager.	Compliant	Notice of the Annual Review was given to the Developer on March 17, 2023.	
97 c)	Good Faith Compliance. During the Periodic Review, the City Manager shall review Developer's good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that Developer has not complied with such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code §§ 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally by Developer and City.	Compliant		
98 d)	Failure to Properly Conduct Periodic Review. If, after thirty (30) days following Developer's notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall be conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.	Not Applicable		
99 e)	Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.	In Progress		

DA Section		Condition/Requirement	Status	Comments	Action Items
100	Section 10.04	Excusable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are t due to Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer's actions or inactions and beyond Developer's control. Upon the properly noticed request of either party hereto, as required by Section 12.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon in writing.	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
101	Section 10.05	Legal Action. 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, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
102	Section 10.06	California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Compliant		
103	Section 10.07	Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provisions of this Section 10.07 may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. Nothing in this Section 10.07 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
104	Section 10.08	Attorneys' Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
105	Section 10.09	Default by City or Developer. In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law.	See Comments/Action Items	As of December 31, 2022, there was no need to exercise the provisions of this subsection.	
106	 Article XI - No Agency, Joint Venture or Partnership				
107		It is specifically understood and agreed to by and between the parties hereto that unless otherwise expressly provided herein (i) the subject development is a private development; (ii) City have no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer. The City agrees that Developer's obligations under this Agreement related to the construction of Project water, sewer and drainage infrastructure improvements, the grading and construction of traffic improvements, and the grading and construction of any other public improvements (collectively, the "Public Improvements") are all public works of improvement the City is requiring as a condition of regulatory approval of the Project and that the Project is an otherwise private development. The City further agrees that it will contribute no more money, or the equivalent of money, to the overall Project than is required to construct the Public Improvements and that City maintain no proprietary interest in the overall Project.	Compliant		
108	 Article XII - Miscellaneous				
109	Section 12.01	Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.	Not Applicable		

	DA Section	Condition/Requirement	Status	Comments	Action Items
110	Section 12.02	Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code § 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement shall prevail.	Compliant		
111	Section 12.03	Findings. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.	Not Applicable		
112	Section 12.04	Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.	Compliant		
113	Section 12.05	Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Compliant		
114	Section 12.06	Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.	Not Applicable		
115	Section 12.07	Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.	Not Applicable		
116	Section 12.08	Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.	Not Applicable		
117	Section 12.09	Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by fax (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties.	Compliant		
118	Section 12.10	Entire Agreement, Counterparts and Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of 27 pages and four exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of any provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes: Exhibit A - Legal Description; Exhibit A-1 - Project Site Diagram; Exhibit B - Applicable Fees; Exhibit C - Affordable Housing Agreement	Not Applicable		
119	Section 12.11	Recordation of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.	Compliant		
120					
121					
122					

123

DA Section	Condition/Requirement	Status	Comments	Action Items

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Trans Bay Cable)
Development Agreement Between The)
City of Pittsburg and Trans Bay Cable) RESOLUTION NO. 23-
LLC and Determination as to)
With Development Agreement)

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, a Development Agreement between the City of Pittsburg and Trans Bay Cable, LLC, was executed on November 27, 2006, for the Trans Bay Cable Project; and

WHEREAS, a 1st Amendment to the Development Agreement was executed on August 31, 2007; and

WHEREAS, a 2nd Amendment to the Development Agreement was executed on November 15, 2010; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DAs") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Trans Bay Cable Development Agreement was conducted, and on December 21, 2020, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and City Staff, as well as the information contained in the "Trans Bay Cable DA – 2022 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Trans Bay Cable Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Trans Bay Cable Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

Section 5. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 1st day of May, 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit 1 - Trans Bay Cable DA - 2022 Annual Review Summary Table



DA Section	Condition/Requirement	Status	Comments
1 Section 1 - General Acknowledgements			
2	The parties acknowledge that: (a) the City has entered into this Agreement pursuant to the Development Agreement Statutes and its police power in order to address public health and safety and general welfare concerns including those relating to the amount, density, intensity and timing of development on the Project Site and the need for public facilities and infrastructure in connection with the Project Site and other property in the area; (b) there is a certain authority under the police power to address public health and safety concerns that cannot be legally relinquished or restricted by this Agreement and that such authority intended to be reserved and hereby is reserved to City hereunder; and (c) nothing herein shall be construed to limit or restrict the exercise by the City of its power of eminent domain.	Not Applicable	
3 Section 2 - General Provisions			
4	2.01 Property Description. The legal description of the Project Site is specifically set forth on Exhibit A, attached hereto and made a part hereof.	Not Applicable	
5	2.02 Location of Project Site. The Project Site is located in the City and consists of a total of approximately 7.72 acres.	Not Applicable	
6	2.03 Effective Date. This Agreement shall be binding as to TBC upon TBC's execution hereof, with an effective date ("Effective Date") as of the effective date of the ordinance adopting the Agreement.	See Comments/Action Items	Ordinance No. 06-1278 approving the DA was adopted on November 27, 2006. 1st Amendment allowing a reduction in the size of the converter station and use of HVDC Plus Technology was entered into on August 21, 2007. 2nd Amendment extending the term of the DA to November 27, 2036 was entered into on November 15, 2010.
7	2.04 Term. The term of this Agreement shall commence upon the Effective Date and shall extend thirty (30) years thereafter, unless the term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual, written consent of the parties.	Not Applicable	This text is from the 2nd Amendment to the DA
8	2.05 Expiration of Term. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect.	Not Applicable	
9	2.06 Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.	Not Applicable	
10	2.07 Enforceability of Agreement. City and TBC agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, the Existing Rules or any other land use ordinances or building ordinances, resolutions or ordinances or other regulations adopted by the City which changes, alters or amends the Existing Rules applicable to the development of the Project Site at the time of the approval of this Agreement as provided by Government Code Sections 65866 and 65867.5. This Agreement shall not prevent City from denying or conditionally approving any subsequent development project application by a third party not a successor-in-interest hereto on the basis of such existing or new rules, regulations and policies.	Not Applicable	
11	2.08 Further Assurances. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Not Applicable	
12	2.09 Enforcement of Covenants. All of the provisions of this 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.	Not Applicable	
13	2.10 Covenants Run With The Land. Except as otherwise specified herein, all of the terms, provisions, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors, and assigns, and all other persons or entities acquiring all or any portion of the Project Site, or any interest therein, whether by operation of law or in any manner whatsoever, and the rights thereof shall inure to the benefit of such parties and their respective heirs, successors and assigns.	Not Applicable	
14	2.11 Constructive Notice. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Project Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Project Site.	Not Applicable	
15 Section 3 - Definitions			
16	Reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.	Not Applicable	
17	3.01 Approvals. Any and all permits or approvals of any kind or character required under the terms of this Agreement to develop the Project Site in the manner as described herein.	Not Applicable	
18	3.02 Building Ordinances. Those building standards, of general application and not imposed solely with respect to the Project Site, in effect from time to time that govern building and construction standards, including, without limitation, the City's building, plumbing, electrical, mechanical, grading, swimming, pool, sign, and fire codes.	Not Applicable	
19	3.03 CEQA. CEQA means the California Environmental Quality Act, California Public Resources Code section 21000, et seq., and the State CEQA Guidelines, (California Code of Regulations, title 14, section 15000, et seq.), as each is amended from time to time.	Not Applicable	

	DA Section	Condition/Requirement	Status	Comments
20	3.04	City. City of Pittsburg, County of Contra Costa, State of California.	Not Applicable	
21	3.05	Comprehensive Payment In Lieu of Fees. The comprehensive payment in lieu of fees ("CPIF") means a payment to City or PPC that represents the liquidated value of all application, processing and development impact fees and other monetary exactions on development of any form or description that exist as of August 2, 2004, or could thereafter be adopted or increased, as established by City, PPC, or any City entity, and which further represents payment in lieu of any other compensation of any kind or description to which City, Agency, PPC or any City entity could claim or be entitled to for having facilitated the Project as it exists as of November 15, 2010, and as described in this Agreement. The parties expressly acknowledge that, by virtue of the adoption of this Agreement, City is waiving any constitutional or statutory authority that may now exist or hereafter be established to levy and assess any application, processing or development impact fee as to the Project, or any general or special tax that is not generally applicable to all commercial property situated within the City, an is accepting the CPIF as full compensation and satisfaction thereof. The CPIF does not include and is not intended to replace (a) generally assessed property taxes, (b) generally assessed sales and use taxes, (c) generally assessed franchise fees, (d) lease payments to PPC for the real property located at 590 West Tenth Street, Pittsburg, (e) any fees, assessments, taxes or other levies of any type or nature which the City may validly impose on new applications for Project approvals submitted by TBC after November 15, 2010, or (f) any financial benefit to City, Agency or PPC from the Project received on or before the effective date of the Second Amendment hereto, or received thereafter under the Settlement Agreement.	Not Applicable	This text is from the 2nd Amendment to the DA
22	3.06	Development. The improvement of the Project Site for purposes of constructing the structures, improvements and facilities comprising the Project including, without limitation: grading, the construction and installation of infrastructure and public facilities related to the Project whether located within or outside the Project Site; the construction of structures and building; and the installation of landscaping; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof.	Not Applicable	
23	3.07	Development Agreement Statutes. Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.	Not Applicable	
24	3.08	Development Approval(s). Site-specific permits and other entitlements to use of every kind and nature approved or granted by the City in connection with the Development.	Not Applicable	
25	3.09	Enacting Ordinance. Ordinance No. 06-1278 enacted by the City Council on November 27, 2006, approving this Agreement.	Not Applicable	
26	3.10	Existing Land Use Ordinances. The Land Use Ordinances in effect as of the Effective Date of this Agreement.	Not Applicable	
27	3.12	General Plan. The City of Pittsburg General Plan as adopted by the City Council.	Not Applicable	
28	3.13	Land Use Ordinances. The ordinances, resolutions, codes, rules, regulations and official policies of City, governing the development of the Project Site, including but not limited to, the permitted uses of land, the density and intensity of use of land, exactions, and the timing of development, all as applicable to the development of the Project Site. Specifically, but without limiting the generality of the foregoing, Land Use Ordinances shall include the City's General Plan, the Development Plan, the City's Zoning Code, and the City's Design Review standards. The term Land Use Ordinances does not include Regulations relating to the following: the conduct of business, professions and occupations generally; taxes and assessments; the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests that provide for the use of or entry upon public property; and any exercise of the power of eminent domain.	Not Applicable	
29	3.14	Manager. City Manager for the City of Pittsburg.	Not Applicable	
30	3.15	Persons. As used herein, any reference to or use of the word "person" shall mean, in addition to a natural person, any governmental entity and any partnership, corporation, joint venture or any other form of business entity.	Not Applicable	
31	3.16	Project. The Trans Bay Cable Project ("Project") shall consist of a converter station located in Pittsburg, California, a converter station located in San Francisco, California, and a submerged cable connecting the two converter stations as more particularly described in Exhibit B.	Not Applicable	
32	3.17	Project Site. That real property described in Exhibit A, attached hereto and incorporated herein.	Not Applicable	
33	3.18	Regulations. Constitutions, statutes, City ordinances, and codes, City resolutions and official policies of the City.	Not Applicable	
34	3.19	Certain Other Terms. Certain other terms shall have the meanings set forth for such terms in this Agreement.	Not Applicable	
35	 Section 4 - General Development of the Property			
36	4.01	Project. The Project is further defined and described in the Project Description, attached hereto as Exhibit B, which specifies several Project requirements, including but not limited to: (i) proposed uses of the Project Site, (ii) height, size and location of buildings to be constructed on the Project Site, (iii) density and intensity of use of the property, and (iv) requirements for reservation or dedication of portions of the Project Site for public purposes. The Parties recognize that any changes or modifications to the Project, as set forth in the Project Description, may trigger legal requirements mandating City review and/or approval relating to, but not limited to, environmental, design, mitigation measures, building standards, or similar factors. Prior to implementing such changes or modifications that trigger such legal requirements, TBC shall timely seek and obtain City review and approval.	Compliant	
37	4.02	General Development. Any development of the Project on the Project Site shall be conducted in accordance with the terms and conditions of this Agreement, the Project Agreements and the Project Description. TBC's development of the Project Site, including the converter station, shall be subject to City's building standards, Design Review process, and applicable rules and regulations.	Compliant	

DA Section	Condition/Requirement	Status	Comments
38	4.03 Permitted Uses. The permitted uses of the Project Site, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes and location of public improvements, and other terms and conditions of development applicable to the Project Site shall include a transformer, a converter station, and related facilities, subject to the following: (a) Final Environmental Impact Report ("FEIR"), and related Mitigation Monitoring Plan, (b) A landscaping buffer between Tenth Street and the actual facility, and (c) Such other uses permitted by this Agreement, insofar as this Agreement so provides or as otherwise set forth in applicable laws, ordinances, rules or regulations.	Compliant	
39	4.04 Future Approvals. The City hereby agrees that land uses sought by TBC for the Project Site are approved or will be approved pursuant to the terms of this Agreement, provided that TBC satisfactorily complies with all preliminary procedures, actions, payments and criteria applicable as of the effective date of this Agreement and generally required of Developers by the City for processing applications for developments at such time. City agrees to grant and implement the necessary land use, zoning, or site plan approvals and to grant other approvals and permits, including the Ministerial Approvals, that will accomplish or facilitate development of the Project Site for the uses and to the density or intensity of development described and shown in this Agreement pursuant to those rules, regulation policies and conditions in force on the effective date of this Agreement. Future approvals may relate to design review, parcel map(s), and building permits.	Compliant	
40	4.05 Vested Right to Develop; Applicable Rules, Regulations and Official Policies. Except as otherwise provided in this Agreement, the rules, regulations, official policies, and conditions of approval governing the permitted uses of the Project Site, the density or intensity of use, and the design, improvement, construction, building and occupancy standards and specifications applicable to the Project and the Project Site shall be those in force on the effective date of this Agreement ("Existing Rules"). The City shall have the right to impose reasonable conditions in connection with such subsequent discretionary permit actions which are not deemed Ministerial Approvals, but such conditions and actions shall not prevent development of the Project as contemplated by this Agreement and the Development Permits. TBC shall have the right to build and implement the Project on the Project Site consistent with the terms of this and other applicable Agreements, rules and regulations.	Compliant	
41	4.06 Amendment to Applicable Ordinances. In the event the City Zoning Code is amended by the City in a manner which provides more favorable site development standards than those in effect as of the Effective Date, TBC shall have the right to notify City in writing of TBC's desire to be subject to the new standards for the remaining term of this Agreement. If City agrees, by resolution of the City Council or by action of a City official whom the City Council may designate, such new standards shall become applicable to the Project Site.	Not Applicable	
42	4.07 Application of New Rules, Regulations and Policies. This Agreement shall not prevent City in subsequent actions applicable to the Project Site from applying new rules, regulations and policies which do not conflict with those rules, regulations, and policies applicable to the Project Site and set forth herein; nor shall this Agreement prevent City from denying or conditionally approving any subsequent development application on the basis of such existing or new rules, regulations, and policies.	Not Applicable	
43	4.08 Changes in State and Federal Rules and Regulations. Nothing in this Agreement shall preclude the application to the development of the Project Site or changes in the City's laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations as provided in Government Code Section 65869.5.	Not Applicable	
44	 Section 5 - Periodic Review		
45	City shall conduct a review of this Agreement as set forth in the following subsections. However, the City's failure to timely conduct such review shall not constitute default under this Agreement.		
46	5.01 Annual Review. City shall review the extent of good faith compliance by TBC with the terms of this Agreement at least once every 12-month period from the Effective Date of this Agreement.	Compliant	
47	5.02 Procedure. Such annual review shall be conducted in accordance with the City's duly adopted Development Agreement Procedures.	Compliant	
48	5.03 Notice. City shall notify TBC in writing of the date of review at least thirty (30) days prior thereto.	Compliant	Notice of the Annual Review was given to the Developer on April 21, 2022.
49	5.04 Good-faith Compliance. During each annual review, TBC is required to demonstrate good faith compliance with the terms of this Agreement.	Not Applicable	
50	5.05 Production of Documents and Other Evidence. TBC agrees to furnish such reasonable evidence and adequate documentation of good faith compliance as the City, in the exercise of its reasonable discretion, may require.	Not Applicable	
51	5.06 Cost of Annual Review. The costs incurred by City in connection with the annual review shall be borne by TBC, up to a maximum of \$10,000 per review. Upon written request by the City, TBC shall deposit with the City up to \$10,000 per review to cover the City's costs. At the completion of the review, City shall refund any unused deposit to TBC. Failure, if any, by TBC to deposit the monies shall be grounds for declaring TBC to be in default of this Agreement and/or in noncompliance thereof, and for the City to take such action as provided herein.	In Progress	On December 21, 2022, the City sent a request to the developer to pay the cost of the annual review.
52	 Section 6 - Obligations of TBC		
53	6.01 General Obligations. In consideration of City entering into this Agreement, TBC has agreed to comply with the applicable provisions of the PDA and Project Description in developing the Project and to perform certain obligations and provide certain contributions set forth therein, which City acknowledges will have an overall benefit to the public and surrounding area.	Compliant	
54	6.02 Nexus/Reasonable Relationship Challenges. TBC consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies or programs required by the Existing Land Use Ordinances, Existing Rules or this Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.	Not Applicable	

DA Section	Condition/Requirement	Status	Comments
55 6.03	Cooperation By TBC. TBC will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder, and cause TBC's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefore.	Compliant	
56 6.04	Other Governmental Permits. TBC shall apply in a timely manner for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project Site as may be required for the development of, or provision of services to, the Project.	Compliant	
57  6.05	Fees and Taxes		This section (6.05) of the DA was deleted as a result of the 2nd Amendment to the DA
65 6.06	Mitigation and Monitoring Plan. TBC shall fully comply with the Mitigation and Monitoring Plan, adopted by the City Council on November 6, 2006.	Compliant	
66 6.07	Continuing Obligations. Notwithstanding any other provision of this Agreement, TBC's obligations under Section 6.05.1- 6.05.3, inclusive, shall constitute a continuing obligation and bind TBC, its successors and/or assigns, but shall not transfer to the City, PPC, or the City's and/or PPC's successors and assigns, upon TBC's transfer of its interest(s) in the Project Site and/or Project Assets to the City and/or TBC. TBC's obligations under Section 6 shall survive this Agreement's termination.	Not Applicable	This section (6.07) of the DA was deleted as a result of the 2nd Amendment to the DA
67  Section 7 - Obligations of City			
68 	In consideration of TBC entering into this Agreement, City has agreed to the following with respect to the development of the Project Site:		
69 7.01	Processing. Upon satisfactory completion by TBC of all required preliminary actions to the satisfaction of City, City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by TBC of the Project Site in accordance with the provisions of this Agreement including, but not limited to, the following: (a) the holding of all required public hearings; and (b) the processing and approval of all Ministerial Approvals and related matters as necessary for the completion of the development of the Project. In this regard, TBC will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder as required by the Existing Rules and shall cause TBC's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefore as required by the Existing Rules.	Compliant	
70 7.02	Standard of Review. The rules, regulations and policies that apply to any Ministerial Approvals which must be secured prior to the construction of any portion of the Project shall be the Existing Rules. Any Ministerial Approval, including without limitation a building permit, shall be approved by the City within a reasonable period of time after application is made therefore.	Compliant	
71  Section 8 - Amendments			
72 8.01	Major Amendments. A "Major Amendment" shall be any modification that makes a substantive change, modification or deviation in the terms of this Agreement or any Exhibits or Schedules attached hereto including the terms of the Project Description attached hereto as Exhibit B and related maps and attachments, as referenced in Recital F. Approval of any Major Amendment shall require a noticed hearing and must be authorized by formal action of the Planning Commission and the City Council.	Compliant	
73 8.02	Minor Amendments. A "Minor Amendment" shall be any modification that does not make a substantive change, modification or deviation in the terms of this Agreement or any Exhibits or Schedules attached hereto, including the terms of the Project Description attached hereto as Exhibit B and related maps and attachments, as referenced in Recital F. Minor Amendments shall include, but are not limited to, the size of the proposed converter station. Minor Amendments may be approved by the prior written consent of the Manager.	Compliant	
74 8.03	Discretion of Manager. The Manager has the sole discretion to determine whether any proposed change, modification, or deviation is a Major Amendment or Minor Amendment for purposes of this Agreement, or is neither and thus not requiring the Manager's or the City Council's review and approval. The Manager's determination as to the status of any Major or Minor Amendment is final. The Manager also may, at his/her discretion, determine that a Minor Amendment shall be reviewed and acted upon by the City Council and not by the Manager.	Compliant	
75  Section 9 - Transfers and Assignments			
76 9.01	City's Intent. TBC has demonstrated, and the City finds that TBC possesses, the experience, reputation and financial resources to develop and maintain the Project Site in the manner contemplated by this Agreement. It is because of such qualifications, which assure the development of the Project Site to a high quality standard contemplated by the General Plan that the City is entering into this Agreement. Accordingly, restrictions on the right of TBC to assign or transfer the rights and privileges contained in this Agreement are necessary in order to assure the achievement of the objectives of the City's General Plan and this Agreement.	Not Applicable	
77 9.02	TBC's Right to Assign or Transfer. TBC may assign or transfer any of its rights or interests under this Agreement subject to the prior written consent of City, which shall not be unreasonably withheld.	Not Applicable	
78 9.03	Restriction on Assignment Does Not Constitute an Unreasonable Restraint on Alienation. TBC agrees that the restriction on its right to transfer any of its rights or interests under this Agreement is not repugnant or unreasonable in that such a restriction is a material inducement to the City to enter into this Agreement since the restriction reserves for the City the power to prevent the transfer of any of the rights and obligations hereunder to an unreliable third party.	Not Applicable	
79 9.04	Restriction on Assignment Shall Not Prevent TBC From Conveying the Project Site. The parties agree that the restriction on assignment is limited solely to those certain vested rights created under this Agreement and such restriction shall not affect TBC's right to convey the Project Site itself.	Not Applicable	
80 9.05	Request Procedure. City shall administer the provisions of this Section through its City Manager. TBC shall notify the Manager in writing of its request for City's consent to an assignment or transfer under this Section.	Not Applicable	

	DA Section	Condition/Requirement	Status	Comments
81	9.06	Additional Information. Upon receipt of a request for an assignment or transfer under this Section, the City Manager shall have the authority to require the production of additional information relating to the qualifications of the proposed assignee or transferee from TBC. TBC shall promptly furnish any and all information required under this Section as the City considers TBC's request for consent to the proposed assignment or transfer.	Not Applicable	
82	9.07	Approval of Assignment. The City Manager may, at his or her reasonable discretion, approve of the assignment or transfer in writing, deny the assignment or transfer, or refer the matter to the City Council for approval. In the event the City Manager determines that the assignment or transfer should be acted upon by the City Council, the City Manager shall notify TBC in writing of the need for City Council authorization. The City Council shall thereafter consider the proposed assignment or transfer. The proposed assignment or transfer may be approved or denied by formal action of the City Council.	Not Applicable	
83	9.08	Notice of Proposed Assignment. TBC must provide City with adequate evidence that the proposed assignee, buyer or transferee is qualified using the standards and conditions described in this Section, and ability to comply with these standards and conditions will be the test of reasonableness.	Not Applicable	
84	 9.09	Conditions and Standards. The conditions and standards referred to above are as follows:		
85	(a)	Such assignee or transferee possesses the experience, reputation and financial resources to cause the Project Site to be developed and maintained in the manner contemplated by the City's General Plan and this Agreement;	Not Applicable	
86	(b)	Such assignee or transferee enters into a written assumption agreement, in form and content satisfactory to the City Attorney, expressly assuming and agreeing to be bound by the provisions of this Agreement;	Not Applicable	
87	(c)	Such assignment or transfer will not impair the ability of City to achieve the objectives of its general Plan and this Agreement;	Not Applicable	
88	9.10	Financing Exemption. Mortgages, deeds of trust, sales and lease- backs, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the Project Site are permitted without the consent of the City, provided the City receives prior notice of such financing (including the name and address of the lender and the person or entities acquiring any such secured interest) and TBC retains over fifty percent of the legal or equitable interest in the Project Site and remains fully responsible hereunder. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.	Not Applicable	
89	9.11	Notice of Assignment. Upon receiving approval of an assignment, TBC shall provide City with written notice of such assignment and as part of such notice the assignee must execute and deliver to City an assumption agreement in which the name and address of the assignee is set forth and the assignee expressly and unconditionally assumes the obligations of all the provisions set forth in the Agreement.	Not Applicable	
90	9.12	Unapproved Assignments. If City makes the determination not to consent to the assignment or transfer of the rights and privileges contained in this Agreement, and TBC conveys the Project Site to a third party, in whole or in part, TBC shall remain liable and responsible for all of the duties and obligations of this Agreement. Notwithstanding any other provision of this Agreement, TBC may assign this Agreement to PPC without City's prior consent in connection with PPC's acquisition of the Project Assets.	Not Applicable	
91	 Section 10 - Delays in Performance			
92	10.01	Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, TBC and City shall be excused for performance of their obligations hereunder during any period of delay caused by acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws of the United States of America or the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder.	Not Applicable	
93	10.02	Third Party Actions. Any court action or proceeding brought by any third party to challenge this Agreement, or any other permit or approval required from City or any other governmental entity for development or construction of all or any portion of the Project, whether or not TBC is a party to or real party in interest in such action or proceeding, shall constitute a Permitted Delay under this Section.	Not Applicable	
94	10.03	Notice of Permitted Delays. If written notice of such delay is given to either party within (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.	Not Applicable	
95	 Section 11 - Default			
96	11.01	Events of Default. Subject to any extensions of time by mutual consent in writing, and subject to the provisions of the Section regarding Permitted Delays, the failure or unreasonable delay by either party to perform any material term or provision of this Agreement for a period of thirty (30) days after the dispatch of a written notice of default from the other party shall constitute a default under this Agreement. If the nature of the alleged default is such that it cannot reasonably be cured within such 30- day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. The nonperformance of a material provision of the Mitigation Monitoring Program shall constitute an event of default under this Agreement; provided, however, that the City shall have given TBC notice of such event and a prospective opportunity to cure, within the cure period described herein. The nonperformance of a provision of the Mitigation Monitoring Program that would not otherwise be considered material, as reasonably determined by the City, may become material if such provision is consistently repeated or ignored after several requests to address such matter from the City or representative thereof.	Not Applicable	
97	11.02	Notice of Default. Any Notice of Default given hereunder shall specify in detail the nature of the alleged Event of Default and the manner in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.	Not Applicable	

	DA Section	Condition/Requirement	Status	Comments
98	11.03	Cure Period. During the time periods herein specified for cure of an Event of Default, the party charged therewith shall not be considered to be in default for purposes of termination of this Agreement, institution of legal proceedings with respect thereto, or issuance of any building permit with respect to the Project.	Not Applicable	
99	11.04	General Default Remedies. After notice and expiration of the 30-day period without cure, the non-defaulting party shall have such rights and remedies against the defaulting party as it may have at law or in equity, including, but not limited to, the right to terminate this Agreement pursuant to Government Code Section 65868 or seek mandamus, specific performance, injunctive or declaratory relief.	Not Applicable	
100	11.05	Remedies Cumulative. Any rights or remedies available to non- defaulting party under this Agreement and any other rights or remedies that such party may have at law or in equity upon a default by the other party under this Agreement shall be distinct, separate and cumulative rights and remedies available to such non- defaulting party and none of such rights or remedies, whether or not exercised by the non-defaulting party, shall be deemed to exclude any other rights or remedies available to the non-defaulting party. The non-defaulting party may, in its discretion, exercise any and all of its rights and remedies, at once or in succession, at such time or times as the non-defaulting party considers appropriate.	Not Applicable	
101	11.06	Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy a default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto.	Not Applicable	
102	11.07	No Damages Relief Against City. The parties acknowledge that City would not have entered into this Agreement had it been exposed to damage claims from TBC for any breach thereof. As such, the parties agree that in no event shall TBC be entitled to recover damages against City for breach of this Agreement. However, should a court issue a final judgment or other final determination that the City has adopted a tax or assessment, or increase thereof, in violation of Section 4.08 and TBC has paid such tax or assessment, or increase thereof, TBC shall be entitled a refund of such monies it has paid. Additionally, during the period of time that TBC is a party to this Agreement, should the City voluntarily change the zoning on the Project Site, such that the Project may no longer be built on the Project Site, then the limitation under this section shall not apply to the extent of monies actually received by the City and paid by TBC.	Not Applicable	
103	11.08	Effect of TBC Default. No building permit shall be issued or building permit application accepted for any structure on the Project Site after TBC is determined by City to be in default of the terms and conditions of this Agreement, and until such default thereafter is cured by the TBC or is waived by City.	Not Applicable	
104	11.09	Waiver. All waivers must be in writing to be effective or binding upon the waiving party, and no waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party shall not constitute waiver of such party's right to demand strict compliance by such other party in the future.	Not Applicable	
105	11.10	Scope of Waiver. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time specified in such express waiver.	Not Applicable	
106	11.11	Attorneys' Fees. Should legal action be brought by either party for breach of this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court.	Not Applicable	
107	11.12	Venue. In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State courts of the County of Contra Costa or where appropriate, or in the United States District Court for the Northern District of California, as consistent with applicable law.	Not Applicable	
108	 Section 12 - Termination			
109	12.1	Effect of Termination. Upon termination of this Agreement, the rights, duties and obligations of the parties hereunder shall, subject to the following provisions, cease as of the date of such termination.	Not Applicable	
110	12.2	Termination by City. If City terminates this Agreement because of TBC's default, then City shall retain any and all benefits, including money or land received by City hereunder.	Not Applicable	
111	12.3	Termination by TBC. TBC shall have the right to terminate this Agreement at any time, prior to Commercial Operation, as defined in the PSA. Should TBC terminate this Agreement, prior to Commercial Operation, TBC agrees, at TBC's sole cost, to restore the Project Site to its condition prior to TBC asserting control over the Project Site or in such condition as may otherwise be approved in writing by the Manager. Such restoration shall be consistent with applicable federal, state, and local statutes, rules and regulations and shall also comply with the following: Promptly following the demolition and removal of structures, foundations and paving on the Project Site, and the cleaning, grubbing, and grading thereof. TBC shall create, at its sole expense, a visual record of the then-condition of the Project Site, in coordination with the City, which record shall include comprehensive photographic and videographic documentation ("the Record"). Both parties shall have copies of the Record. If TBC commences construction activities, but terminates the Agreement before the Project achieves Commercial Operation, TBC shall restore at its sole expense the Project Site to a rough graded and clean condition, with all aboveground structures, foundations and paving on the Project Site demolished and removed so that the Project Site is in substantially similar condition to that depicted in the Record, or in such condition as may be mutually agreed to in writing between TBC and the Manager.	Not Applicable	
112	 Section 13 - Relationship of Parties			
113	13.01	Independent Contractors. The parties agree that the Project is a private development and that neither party is acting as the agent of the other in any respect hereunder.	Not Applicable	
114	13.02	No Joint Venture or Partnership. City and TBC hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and TBC joint venturers or partners.	Not Applicable	
115	13.03	No Third Party Beneficiaries. The only parties to this Agreement are TBC and City. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.	Not Applicable	

	DA Section	Condition/Requirement	Status	Comments
116	13.04	Ambiguities or Uncertainties. The parties hereto have mutually negotiated the terms and conditions of this Development Agreement and this has resulted in a product of the joint drafting efforts of both parties. Neither party is solely or independently responsible for the preparation or form of this agreement. Therefore, any ambiguities or uncertainties are not to be construed against or in favor of either party.	Not Applicable	
117	 Section 14 - Applicable Law			
118		This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Not Applicable	
119	 Section 15 - Supersedure of Subsequent Laws of Judicial Action			
120		The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new law or decision issued by a court of competent jurisdiction, enacted or made after the effective date which prevents or precludes compliance with one or more provisions of this Agreement. Immediately after enactment of any such new law, or issuance of such decision, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement.	Not Applicable	
121	 Section 16 - Cooperation in the Event of Legal Challenge			
122		In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action or proceeding.	Not Applicable	
123	 Section 17 - Hold Harmless Agreement			
124		TBC hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from, any and all claims, costs and liability for any damages, personal injury or death, which may arise, directly or indirectly, from TBC's or TBC's contractors', subcontractors', agents or employees' operations under this Agreement, whether such negligent operations be by TBC or by any of TBC's contractors, subcontractors, agents or employees.	Not Applicable	
125	 Section 18 - Indemnification			
126	A.	TBC agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any action arising out of or stemming from this Agreement. TBC may select its own legal counsel to represent TBC's interests at TBC's sole cost and expense. The parties shall cooperate in defending such action or proceeding. TBC shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorney's fees expended by City in defense of any such action or other proceeding, plus staff and attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees and time referenced herein.	Compliant	
127	B.	TBC also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages, or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations of TBC, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. TBC may select its own legal counsel to represent TBC's interests at TBC's sole cost and expense.	Compliant	
128	C.	The parties agree that this Section 18 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 18, which shall survive such invalidation, nullification, or setting aside.	Compliant	
129	 Section 19 - Liability Insurance			
130	A.	TBC shall maintain, or cause to be maintained, in force during the construction of the Project, pursuant to this Agreement, public liability and property damage insurance, including personal injury, contractual, and owned and non-owned vehicles and equipment, with such coverage and limits as may be reasonably requested by City from time to time, but in no event for less than the sum of one million dollars per occurrence and two million dollars in the aggregate.	Compliant	
131	B.	Public liability insurance policy or policies shall name City as an additional insured, and any policy or policies shall contain cross-liability endorsements. An endorsement shall be provided which states the coverage is primary insurance and that no other insurance affected by City will be called upon to contribute to a loss under this coverage.	Compliant	
132	C.	TBC shall provide the City with a certificate and endorsement, in forms satisfactory to the City, evidencing such insurance coverage or coverages shall be filed with City prior to construction of the Project, and the certificate and endorsement shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days' prior written notice to City.	Compliant	
133	D.	If such coverage is canceled or reduced, TBC shall, within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at TBC's expense, and TBC shall promptly reimburse City for such expense upon receipt of billing from City.	Compliant	

DA Section	Condition/Requirement	Status	Comments
134E.	The insurance required under this Section shall neither supersede nor replace the insurance required under the terms of the PSA and the PM. The insurance policies required under this Section shall be in addition to the insurance requirements of the PSA and the PM; however, insurance obtained by TBC under the PSA or PM that affords the same or greater coverage than described in this Section shall satisfy these requirements.	Compliant	
135	 Section 20 - Notices		
136	 Any notice or communication required hereunder between City or TBC shall be in writing, and may be given either personally or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses designated below as the party to whom notices are to be sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:	Not Applicable	
137	(a) City of Pittsburg, Marc Grisham, 65 Civic Avenue, Pittsburg, CA 94565		
138	(b) With copies to: Meyers Nave, Attn: Ruthann G. Ziegler, 555 Capitol Mall, Suite 1200, Sacramento, CA 95814		
139	(c) And: Russ Townsend 440 Fifth Street West, Suite B, Sonoma, CA 95476		
140	(d) Notices to TBC shall be addressed to: David J. Parquet, Trans Bay Cable LLC, c/o/ Babcock & Brown, Power Operating Partners LLC, 2 Harrison Street, Sixth Floor, San Francisco, CA 94105, Phone: (415) 512-1515, Fax: (415) 267-1500		
141	(e) With a copy to: General Counsel, Trans Bay Cable LLC, c/o Babcock & Brown, Power Operating Partners LLC, 2 Harrison Street, Sixth Floor, San Francisco, CA 94105, Phone: (415) 512-1515, Fax: (415) 267-1500		
142	 Section 21 - Exhibits		
143	 21.01 Designation of Exhibits. The reference to a specified Exhibit in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation.	Not Applicable	
144	Exhibit A: Project Site		
145	Exhibit B: Project Description		
146	21.02 Incorporation by Reference. All exhibits are deemed incorporated by reference into this Agreement	Not Applicable	
147	 Section 22 - Severability		
148	If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.	Not Applicable	
149	 Section 23 - Entire Agreement		
150	This Agreement and the Exhibits attached hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as set forth in the PDA and certain confidentiality agreements or as otherwise specified in this Agreement and the Exhibits hereto, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits hereto.	Not Applicable	
151	 Section 24 - Counterparts		
152	This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.	Not Applicable	

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Edgewater	)	
Apartments Development Agreement	)	
Between The City of Pittsburgh and	)	RESOLUTION NO. 23-
Sunnyside Pittsburgh, LLC. and	)	
Determination as to Compliance	)	
<u>With Development Agreement</u>	)	

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, a Development Agreement between the City of Pittsburgh and Sunnyside Pittsburgh, LLC, was executed on April 18, 2018, for the Edgewater Apartments project; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DAs") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Edgewater Development Agreement was conducted, and on December 21, 2020, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City

Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and City Staff, as well as the information contained in the "Edgewater DA – 2022 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Edgewater Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

Section 5. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 1st day of May, 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit 1 - Edgewater DA - 2022 Annual Review Summary Table



	Section and Title	Terms	Status	Notes
1	DA Term			
2	2.01 - Effective Date			
3	2.01 - End Date			
4	2.02 - Term			
5	Obligations of Developer (ARTICLE IV)			
6	3.01 - Obligations of Developer		In Compliance	
7	3.02 - Facility Reserve Charges	Developer agrees to pay City's Facility Reserve Charges ("FRC") as set or modified by the City Council from time to time		
8	3.03 - Water Infrastructure	Developer shall comply with the 2015 Water System Master Plan, as amended.	In Compliance	
9	3.04 - Applicable Fees	City may levy development fees and charges	In Compliance	
10	3.05 - Applicable Fee Adjustments	Developer shall pay fees and charges consistent with Section 3.04 above, and the applicable adjustments currently provided in such fees, and as modified from time to time by the City, whether such adjustment or modification is an increase or decrease.		
11	3.06 - City TIF	Developer shall pay the City Local Traffic Mitigation Fee, which fee is necessary to finance unmet City traffic improvement needs in the amount in effect as of the Effective Date		
12	3.07 - Regional TIF	Developer shall the ECCRFA Regional Transportation Development Impact Mitigation Fee (PMC Chapter 15.103) (the "RTDIM") amount in effect when the Developer obtains a Building Permit.		
13	3.08 - Fees, Assessments, Taxes	Developer pay listed fees, assessments, taxes	In Compliance	
14	3.09 - C.3 Facilities	Developer to construct biorention (C.3) facility offsite	In Compliance	
15	3.10 - Landscaping in C.3	Developer shall provide a Central Irrigation System that is compatible with Rainmaster DX 2 Evolution, or as specified in the City's most current Standard Specifications, with a remote controller included with the package. The installation of this system shall be certified by a John Deere Landscapes United Greentech representative prior to the City's acceptance of the installation.		
16	3.11 - Security Improvements	Developer install security cameras with Chief of Police. Developer to pay costs within 30 days of receipt of invoice	In Compliance	
17	3.12 - Bike Share Station	Developer shall pay to the City \$9,000 per year, for five years, beginning with the effective date of this Agreement. The City shall use these funds to develop a bike share station which, at the City's discretion, may be located on the same parcel as the C.3 facilities serving the Project. In the event the City does not maintain a bike share program, the developer shall not be required to provide these funds.	Delete	City Currently does not maintain a Bike Share Facility Contract
18	3.13 - Sidewalk Relating to Bus Stop	Developer to install 8ft sidewalk west of Loverridge; Curb ramp at the eastern side of driveway; two full trash capture devices	In Compliance	Work completed in 2020.
19	3.14 - Offsite Recreational Amenities	Developer to install improvements to Assessor's Parcel Number 073-190-012: 1) a six-foot wide multiuse trail, at least one-quarter mile in length; 2) two benches along the trail; 3) solar-powered trail lighting; 4) a six-foot wide sidewalk, and all necessary curb ramps, crosswalks, or other required safety and accessibility improvements	In Progress	
20	3.15 - Disclosure of Sourrounding Industrial Uses	Developer to provide disclosure of industrial uses	In Compliance	
21	3.16 - Crime Free Multifamily Housing Program	Developer to participate in the Police Crime Free MF Housing Program	In Compliance	
22	OBLIGATIONS OF CITY (ARTICLE IV)			
23	4.01 - Obligations of City	The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long-term covenants and obligations of City, as set forth herein.	In Compliance	
24	4.02 (a) - Availability of Public Services (General)	Capacity for Water Services	In Compliance	
25	4.02 (b) - Construction Water	City shall make construction water available to the Project by allowing the Project access to City's existing water supply infrastructure, at a location reasonably determined by the City, at Developer's cost and on those terms and conditions and charges customarily applied by City to similar projects consistent with City standards. Developer shall provide backflow prevention for all points of connection to the City's potable water supply system and the volume of water consumed shall be tracked with the use of a City-issued hydrant meter. City shall also permit Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer's use in any and all Project grading and construction operations, as long as such water is unrelated to potable use.	In Compliance	
26	4.03 - Developer's Right to Rebuild	City agrees that Developer, in Developer sole's discretion, may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, acts of God, acts of terrorism, or damage to work in progress by reason of fire, floods or other casualties.	Not Applicable	

Section and Title		Terms	Status	Notes
27	4.04 - Reimbursement of Infrastructure Costs (a) (b)	Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, , sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project's fair share obligation for such infrastructure, City shall reimburse Developer for the City's portion of such costs (including any management fees provided for in this Agreement), subject to City's prior verification through inspection of the construction that is subject to such reimbursement and upon final acceptance of the infrastructure by the City.	Not Applicable	
28	4.05 - Park Fee Credit	Developer and City agree that the park in-lieu fee valuation is currently Ten Dollars and Twenty-Seven Cents per square foot (\$10.27/sf foot unless City adopts a lower fee in which case the lower fee shall apply), increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2019 reflecting 2018 increases. Developer and City agree that Developer shall receive partial park fee credit for the on-site recreational improvements in the Project.	In Compliance	
29	COOPERATION - IMPLEMENTATION (ARTICLE V)			
30	5.01 - Processing Application for Subsequent Approvals	The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions.(a)Standard of Review. By adopting 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 discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law, as defined below, and are not inconsistent with the Project Approvals as set forth above and meet the intent and comply with any City adopted Designed Guidelines, as applicable. To the extent permitted by law, City shall not use its discretionary authority in considering these Subsequent Approval applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals. Developer agrees that development under this Agreement shall comply with provisions reflected in Uniform Codes (whether building, fire, plumbing, or other applicable uniform codes) which may be adopted subsequent to the Effective Date of this Agreement. (b)Basis for Denial. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or as is necessary to make this Subsequent Approval consistent with the Project Approvals. If City denies any application for a Subsequent Approval, City shall specify in writing the reasons for such denial and may suggest a modification which would be approved by City.	Compliant	
31	5.02- Timely Submittals by Developer	Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (a) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (b) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.	Compliant	
32	5.03- Timely Processing by City	Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, (a) providing at Developer's expense and subject to Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (b) if legally required, providing notice and holding public hearings; and (c) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section 5.03, Developer's reimbursement to City for such services shall be made in amount equal to City's actual costs of providing such services, in accordance with standard City practice.	Compliant	
33	5.04-Other Government Permits	At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request of Developer, use its best efforts to ensure the timely availability of such permits and approvals.	Compliant	
34	5.05 - Lighting and Landscaping District, Park Maintenance, C.3 Facilities	Developer understands that the Project Site is included in the City's existing Citywide Landscaping and Lighting Assessment District, as established pursuant to City Resolution No. 88 7324 ("LLD"). Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of the parks.	Compliant	

	Section and Title	Terms	Status	Notes
35	5.06- Park Maintenance CFD 2007	Developer agrees that the Project Site will be annexed into the City's existing Community Facilities District 2007-1 for Park Maintenance (CFD 2007-1). The rate of the CFD 2007-1 fee is subject to City Council Resolution No. 07-10698. Developer shall complete annexation of the subject property into the CFD 2007-01 prior to the issuance of any building permits.	Compliant	
36	5.07- Maintenance of Project. Facilities CFD 2016-1	Developer agrees that the Project Site will be annexed into the City's existing Community Facilities District 2016-1 for maintenance of stormwater treatment facilities (CFD 2016-1), such as the bioretention basin as described in Section 3.09. Developer shall complete annexation of the property into the CFD 2016-01 prior to the issuance of any building permits.	Compliant	
37	5.08 - Public Safety Services CFD 2005-1	Developer agrees that the Project Site will be annexed into the City's existing Community Facilities District 2017-1 for Fire Facilities and Fire Safety and Emergency Services (CFD 2017-1). The rate of the CFD 2017-1 fee is subject to City Council Resolution No. 17-13311. Developer shall complete annexation of the property into the CFD 2017-01 prior to the issuance of any building permits.	Compliant	
38	5.09 - Fire Facilities/Safety and Emergency Services CFD 2017-1	Developer agrees that the Project Site will be annexed into the City's existing Community Facilities District 2017-1 for Fire Facilities and Fire Safety and Emergency Services (CFD 2017-1). The rate of the CFD 2017-1 fee is subject to City Council Resolution No. 17-13311. Developer shall complete annexation	Compliant	
39	5.10 - Parkland Dedication In Lieu Fee	Developer shall pay an In-Lieu Parkland Dedication Fee to the Engineering Department prior to the issuance of a building permit for the Project per PMC Section 17.32.020.D.2. The park in-lieu fee amount shall be calculated using the rate in place at the time of issuance of a building permit, which is increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2018 reflecting 2017 increases.	Compliant	
40	5.11- Assessment Districts or Other Funding Mechanisms	Developer understands that the Project Site is included in the City's existing Citywide Landscaping and Lighting Assessment District, as established pursuant to City Resolution No. 88 7324 ("LLD"). Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of the parks.	Compliant	
41	5.12 - Warranty Bonds	Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property or open space dedications) pursuant to this Agreement shall be accompanied by a one (1) year warranty bond in a form and in an amount, and with a surety acceptable to City, or otherwise as determined in the applicable Subdivision Improvement Agreement.	Complaint	
42	5.13 General Plan Maintenance Fee	Developer agrees to pay a development related fee to help fund the maintenance of the Pittsburg General Plan. The General Plan Maintenance Fee will be One Hundred Twenty-Five Dollars (\$125) per dwelling unit.	Compliant	
43	Standards, Laws, and Procedures Governing the Project (ARTICLE VI)			
44	6.01-Vested Right to Develop	Developer shall have a vested right to develop the Project on the Project Site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.	Not applicable	
45	6.02-Permitted Uses Vested by this Agreement	The permitted uses of the Project Site; the density and intensity of use of the Project Site; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.	Not applicable	
46	6.03- Applicable Law	"Applicable Law" shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approvals, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying any new rules, regulations, official policies, standards, and specifications that do not conflict with those rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.	Not applicable	
47	6.04-Uniform Codes	Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City's then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.	Not applicable	

Section and Title		Terms	Status	Notes
48	6.05-Moratorium and Conflicting Enactments	To the extent consistent with State Law, if any ordinance, resolution or other measure is enacted, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.	Not applicable	
49	6.07-State and Federal Law	As provided in California Government Code § 65869.5, if any state or federal laws or regulations, enacted after this Agreement's Effective Date prevent or preclude compliance with one or more provisions of this Agreement ("Changes in the Law"), such provision of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article V and Section 10.05. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically required by State or Federal laws and regulations.	Not applicable	
50	6.08-Timing of Project Construction and Completion	(a)Project Phasing. The Project may be built in phases in response to then-existing market conditions over the Term of the Agreement. Except as otherwise specifically provided by this Agreement with respect to Project infrastructure timing, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular period of time, and City shall not impose such a requirement on any Project Approval. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market demand, interest rates, competition and other similar factors. (b)Project Time Schedule. The parties agree that Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time, and Developer shall determine which part of the Project Site to develop first, and at Developer's chosen schedule. In particular, and not in limitation of any of the foregoing, since 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 consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. Developer's rights under this Section 6.08(b) shall be subject to the requirement that adequate infrastructure to serve each phase of the Project is constructed concurrently with such phase. The City Manager shall reasonably determine what infrastructure will be required to serve each phase of the Project, which determination shall be consistent with Applicable Law. (c)Developer Agreements. Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement, or similar agreement in accordance with the terms thereof.	Not applicable	
51	6.09-Exempting Fees, Mitigation Measures,...	Notwithstanding any other provision of this Agreement, the City agrees to exclude Developer from any and all discretionary collection agreements regarding fees, mitigation measures and similar requirements including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or on the Project Site after the Effective Date through the Term of this Agreement. This Section 6.09 shall not prohibit the City from imposing on Developer any fee, mitigation measure or similar requirement or obligation that is required by a local or regional agency in accordance with local, regional, State or Federal obligations and implemented by the City in cooperation with such local, regional, state or federal agency, provided such fee, mitigation measure or similar requirement or obligation is imposed in a similar manner on similarly situated properties within the City as, for example, stormwater-related C.3 requirements and increases thereto.	Not applicable	
52	6.10-City's Joint-Inspection Jurisdiction	Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.	Not applicable	
53	AMENDMENT (ARTICLE VII)			
54	7.01- Amendment to Project Approvals, Subsequent Approvals	Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.	Not applicable	

Section and Title		Terms	Status	Notes
55	7.02- Amendment of this Agreement	To the extent permitted by State and Federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner: (a)Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City Manager or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable uniform codes and State or Federal law. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire Project, consistent with this Agreement and Applicable Law, and will result in no new significant environmental impacts, the amendment shall be determined to be an "Administrative Project Amendment" and the City Manager or his/her designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments. (b)Non-Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.	Not applicable	
56	ASSIGNMENT, TRANSFER AND NOTICE (ARTICLE VIII)			
57	8.01-Assignment of Interests, Rights/Obligations	Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.	Not applicable	
58	8.02-Transfer Agreements	(a)In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a "Non-Assuming Transferee" (as defined in Section 8.03), Developer and the transferee shall enter into a written agreement (a "Transfer Agreement") regarding the respective interests, rights and obligations of Developer and the transferee in and under the Agreement, the Project Approvals, and the Subsequent Approvals. Such Transfer Agreement may (i) release Developer from obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations, (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred and (iii) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment. (b)Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City's prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within thirty (30) days of a written request by Developer for City's consent shall be deemed City's approval of the Transfer Agreement in question. City may refuse to give its consent only if, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable determination be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent to a proposed transferee pursuant to this Section 8.02(b) if such transferee has a net worth of at least Ten Million Dollars (\$10,000,000) documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa County, Developer shall automatically be released from those obligations assumed by the transferee therein. (c)Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.	Not applicable	
59	8.03-Non-Assuming Transferees	Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with (a) any single residential parcel conveyed to a purchaser, (b) any property transferred as fewer than ten (10) lots to a single retail builder or (c) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school or other nonresidential uses. The transferee in such a transaction and its successors ("Non-Assuming Transferees") shall be deemed to have no obligations under this Agreement but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this Section 8.03 shall exempt any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.	Not applicable	

	Section and Title	Terms	Status	Notes
60	8.04-Notice of Compliance Generally	Subject to City's finding that the facts contemplated by clauses (a) through (c) herein are true and accurate, within thirty (30) days following any written request which Developer may make from time to time, City shall execute and deliver to Developer (or to any party requested by Developer) a written "Notice of Compliance," in recordable form, duly executed and acknowledged by City, that certifies that (a) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (b) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default, and (c) any other information reasonably requested by Developer. City's failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.	Not applicable	
61	Cooperation in the Event of Legal Challenge			
62	9.01-Cooperation	(a)Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein. (b)Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. (c)The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.	Not applicable	
63	9.02-Cure,Reapproval	(a)If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or any portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgment (a "Judgment") in such action or proceeding (based on procedural, substantive or other deficiencies, hereinafter "Deficiencies"), the parties agree to use their respective best efforts to sustain and reenact or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise: (i)If any Judgment requires reconsideration or consideration by City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement and the Judgment. Upon the parties cure of such Deficiencies, City shall then take steps consistent with the Judgment necessary readopt or reenact this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof. (ii)Acting in a manner consistent with the intent of this Agreement or a Judgment includes, but is not limited to, recognizing that the parties intend that Developer may develop a sixty-two (62) unit multi-family residential project, and adopting such ordinances, resolutions, and other enactments, including but not limited to a general plan amendment, rezoning, vesting subdivision map approvals, development plan approvals, PD Plan approvals, design review, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, final development plans, development agreements, permits, resubdivisions, and any amendments to, or repealing of, any of the foregoing as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgment. (b)The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.02, which shall survive such invalidation, nullification or setting aside.	Not applicable	
64	DEFAULT; REMEDIES;TERMINATION			

Section and Title		Terms	Status	Notes
65	10.01-Defaults	Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (the "Complaining Party") (unless such period is extended by mutual written consent), shall constitute a default under this Agreement. The Complaining Party's notice ("Default Notice") shall specify the nature of the alleged failure and, may specify the manner in which the failure satisfactorily may be cured by the other party (the "Defaulting Party"). Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable date following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than thirty (30) days after the Defaulting Party's receipt of the Default Notice), the Defaulting Party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30-day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within one hundred twenty (120) days after the Notice of Default is given. Complaining Party shall not send notice to any third party, including, but not limited to, bonding and surety companies, until such time as the cure opportunities set forth above have expired unless otherwise required by applicable law. Upon the occurrence of a default under this Agreement, the Complaining Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist, and the Complaining Party shall take no further action.	Not applicable	
66	10.02-Termination	If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. As used herein, a finding of materiality shall be based on the effect of the default in relation to the size and scope of the Project. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter; provided, however, that if Developer files an action to challenge City's termination of this Agreement within such 60-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).	Not applicable	
67	10.03-Periodic Review	(a)Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement. This review (the "Periodic Review") shall be conducted by the City Manager or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code § 65865.1. Developer also agrees to pay City annually the greater of Two Thousand Five Hundred Dollars (\$2,500) or the actual cost of Periodic Review Fee (not to exceed Ten Thousand Dollars (\$10,000)) for the first annual review and, for subsequent reviews, the Developer's obligation to pay annually shall be the greater of Two Thousand Five Hundred Dollars (\$2,500) or the actual cost of Periodic Review Fee (not to exceed Five Thousand Dollars (\$5,000)). The Two Thousand Five Hundred Dollars (\$2,500) shall be increased annually thereafter by the CPI for the San Francisco Oakland Area, with the first increase implemented in January 2019 reflecting 2018 increases. Such Periodic Review Fee shall only be paid in the years in which a Periodic Review is actually conducted. (b)Notice. At least ten (10) days prior to the Periodic Review, and in the manner prescribed in Article XII of this Agreement, City shall deposit in the mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer's performance hereunder. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Such response shall be made to the City Manager. (c)Good Faith Compliance. During the Periodic Review, the City Manager shall review Developer's good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that Developer has not complied with such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code §§ 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally by Developer and City. (d)Failure to Properly Conduct Periodic Review. If, after thirty (30) days following Developer's notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall be conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement. (e)Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.	Compliant	

Section and Title		Terms	Status	Notes
68	10.04-Extension of Time of Performance	In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer's actions or inactions and beyond Developer's control. Upon the properly noticed request of either party hereto, as required by Section 12.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon in writing.	Not applicable	
69	10.05-Legal Action	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, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.	Not applicable	
70	10.06-California Law	This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Not applicable	
71	10.07-Resolution of Disputes	With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provisions of this Section 10.07 may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. Nothing in this Section 10.07 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.	Not applicable	
72	10.08-Attorneys' Fees	In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.	Not applicable	
73	10.09-Default by City of Developer	In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law.	Not applicable	
74	NO AGENCY, JOINT VENTURE, PARTNERSHIP			
75	MISCELLANEOUS			
76	12.01-Incorporation of Recitals and Introductory	The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.	Not applicable	
77	12.02-Enforceability	City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code § 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement shall prevail.	Not applicable	
78	12.03-Findings	City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.	Not applicable	

Section and Title		Terms	Status	Notes
79	12.04-Severability	If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.	Not applicable	
80	12-05-Other Necessary Acts	Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Not applicable	
81	12.06-Construction	Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.	Not applicable	
82	12.07- Other Miscellaneous Terms	The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.	Not applicable	
83	12.08-Covenants Running with the Land	All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.	Not applicable	
84	12.09- Notices	Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by fax (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below: If to City, to:City Manager City of Pittsburg Civic Center 65 Civic Avenue Pittsburg, CA 94565-2830 With Copies to:Ruthann G. Ziegler City Attorney Meyers Nave 555 Capitol Mall, Suite 1200 Sacramento, CA 95814 If to Developer, to:Albert D. Seeno, III Sunnyside Pittsburg, LLC 4061 Port Chicago Hwy., Ste. H Concord, CA 94520 With Copies to: Sunnyside Pittsburg, LLC Attn: Legal Department 4021 Port Chicago Hwy. Concord, CA 94520	Not applicable	
85	12.10 Entire Agreement, Counterparts and Exhibits	This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of twenty-seven (27) pages and four (4) exhibits, which constitute in full the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of any provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes: EXHIBIT A -Legal Description EXHIBIT A-1 -Project Site Diagram EXHIBIT B -Applicable Fees	Not applicable	

	Section and Title	Terms	Status	Notes
86	12.11 Recordation of Development Agreement	Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.	Not applicable	
87				
88				
89				

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Belle Harbor	)	
Development Agreement and	)	RESOLUTION NO. 23-
Determination as to Compliance	)	
<u>With Development Agreement</u>	)	

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, a Development Agreement between the City of Pittsburgh and Discovery Homes, Inc., was executed on July 22, 2016, for the Belle Harbor (Waterstone) Subdivision; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DAs") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Belle Harbor Development Agreement was conducted, and on December 21, 2020, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Recitals

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and City Staff, as well as the information contained in the "Belle Harbor DA – 2022 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Belle Harbor Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Belle Harbor in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

Section 5. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 1st day of May, 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit 1 - Belle Harbor (Waterstone) DA - 2022 Annual Review Summary Table



DA Section	Condition/Requirement	Status	Comments	Action Items
1 ▢ Article II - Effective Date; Term				
2 Section 2.01	Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the "Effective Date").	Compliant	Ordinance No. 16-1409 approving the DA was adopted on June 20, 2016, with an effective date of July 22, 2016.	
3 Section 2.02	Term. The term of this Agreement shall commence upon the Effective Date and continue for a period of ten (10) years (the "Term").	Compliant	Based on the effective date of July 22, 2016, the DA will expire on July 22, 2026	
4 ▢ Article III - Obligations of Developer				
5 Section 3.01	Obligations of Developer Generally. The parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer's agreement to perform and abide by its long term covenants and obligations, as set forth herein. As material consideration for the long term assurances and vested rights provided by this Agreement and as a condition of approval to one or more of the Project Approvals, Developer agrees to each of the following:	Compliant to date.		
6 Section 3.02	Facility Reserve Charges. Developer agrees to pay City's Facility Reserve Charges ("FRC") as set or modified by the City Council from time to time.	Compliant to date.	Fees have been collected upon issuance of all building permits issued thus far, in accordance with those fee rates set forth in Exhibit B of the DA.	
7 Section 3.03	Water Infrastructure. Developer shall comply with the 2015 Water System Master Plan, as amended.	Compliant to date.	Fees have been collected upon issuance of all building permits issued thus far, in accordance with those fee rates set forth in Exhibit B of the DA.	
8 Section 3.04	Applicable Fees. City may levy development fees and charges during the term of this Agreement relative to the development of the Project Site which are in force and effect as of the Effective Date, as more particularly described and according to the payment schedule set forth on Exhibit B ("Applicable Fees"). Unless otherwise provided in this Agreement, no development fees, or charges, or categories thereof, shall be imposed on the Project other than those fees (including categories within such fees), and charges identified as Applicable Fees on Exhibit B, which exhibit shall exclusively govern the Applicable Fee payment schedule. The parties agree that any and all Project development fees, charges or exactions related to schools, fire prevention, water, sewer, stormwater, and storm drainage facilities, which are to be paid by Developer directly to third-party governmental agencies, are not subject to or within the scope of this Agreement whether such third party charges exist or are subsequently imposed by such third parties, whether directly upon Developer or through City. This provision shall not be construed to benefit any Non-Assuming Transferees, as such term is defined in herein.	Compliant to date.	Fees have been collected upon issuance of all building permits issued thus far, in accordance with those fee rates set forth in Exhibit B of the DA.	
9 Section 3.05	Applicable Fee Adjustments. Developer shall pay fees and charges consistent with Section 3.04 above, and the applicable adjustments currently provided in such fees, and as modified from time to time by the City, whether such adjustment or modification is an increase or decrease. Developer retains the right to challenge the imposition of any new fees not referenced in this Agreement or the modification, amendment or adjustment of all Applicable Fees pursuant to Government Code § 66000 et seq., not already authorized by ordinances, resolutions or policies in place at the time of this Agreement's execution. Should the City Council approve a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Compliant to date.	Fees have been collected upon issuance of all building permits issued thus far, in accordance with those fee rates set forth in Exhibit B of the DA.	
10 Section 3.06	City Local Traffic Mitigation Fee. Developer shall pay the City Local Traffic Mitigation Fee, which fee is necessary to finance unmet City traffic improvement needs in the amount in effect as of the Effective Date and subject to adjustment in accordance with Resolution No. 07 10917 with credit for certain improvements constructed by Developer per Section 4.04 below. If the City Council approves a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Compliant to date.	Fees have been collected upon issuance of all building permits issued thus far, in accordance with those fee rates set forth in Exhibit B of the DA.	
11 Section 3.07	Regional Traffic Fee. Developer shall pay the ECCRFA regional traffic fee should it be imposed by the City in an amount equal to or less than the amount paid by projects in the Cities of Antioch, Brentwood, and Oakley or in accordance with the existing valid Memorandum of Understanding dated June 29, 2010, as amended, whichever is less.	Compliant to date.	Fees have been collected upon issuance of all building permits issued thus far, in accordance with those fee rates set forth in Exhibit B of the DA.	
12 Section 3.08	Fees, Assessments and/or Taxes to be Paid by Developer. Developer agrees to pay its fair share of any levies imposed by any assessment district, landscaping and lighting district, community facilities district, tax-exempt financing mechanisms, or other funding mechanisms related to public safety; traffic; sewer; water; fire; the prevention, mitigation, abatement, or control of geologic hazards; or other infrastructure improvements (including, without limitation, design, acquisition, construction and maintenance costs) (collectively, "Funding Mechanisms") within the Project Site, provided that such Funding Mechanism is referenced herein and/or was legally created pursuant to applicable law.	Compliant to date.	Fees have been collected upon issuance of all building permits issued thus far, in accordance with those fee rates set forth in Exhibit B of the DA.	

DA Section	Condition/Requirement	Status	Comments	Action Items
13	 Section 3.09	Affordable Housing. Developer shall comply with PMC 18.86.080 and City Council Resolution No. 16-13210 Condition of Approval No. 5, by constructing at least eight (8) rental secondary dwelling units within the Project. A covenant shall be recorded limiting the amount of rent that may be charged for these secondary units, consistent with the terms and conditions set forth in the affordable housing agreement. Prior to the City's issuance of the first certificate of occupancy Developer agrees to enter into an affordable housing agreement with the City (the "Affordable Housing Agreement") attached as Exhibit C which further memorializes the provisions of this Section 3.09 and is consistent with applicable law, including Pittsburgh Municipal Code Chapter 18.50. Developer agrees that the secondary dwelling units referenced in this Section shall not be built or otherwise allowed on adjoining lots without the prior written approval of the City Manager. City agrees that Developer shall not be required to pay any additional fees (building permit, sewer, water, traffic fees, etc.) associated with any attached, affordable secondary/accessory dwelling units.	Compliant	Affordable Housing Agreements were recorded for lots 11, 16, 22, 27, 32, 37, 43, and 48.
14	(a)	Timing. The Affordable Housing Agreement shall establish provisions to implement the affordable housing requirements within this Agreement and shall include, but not be limited to, implementation and monitoring provisions to ensure compliance with municipal law related to affordable housing. The agreement shall include provisions for the reasonable reimbursement of costs to the City for the administration and monitoring of the agreement.	Compliant	
15	(b)	Inclusionary Housing Ordinance. Notwithstanding any provision of this Agreement, in the event that the City has rescinded its respective previously adopted affordable housing ordinance and not replaced it with another affordable housing or similar ordinance, or such ordinance has been declared illegal, Developer shall not be obligated to comply with the provisions for affordable housing set forth in this Agreement. In the event, prior to or during the development of the Project, the City amends or replaces or eliminates its affordable housing ordinance which would result in a reduction in the number of secondary units Developer is obligated to construct, then the Affordable Housing Agreement shall be modified to provide for an equivalent reduction in the number of secondary units required to be constructed in the Project or elimination of the requirement.	Compliant	
16	Section 3.10	C.3 Facilities. Developer shall construct C.3 facilities as provided in the Project Approvals. In accordance with the City's NPDES permit, provision C.3.e.i.and ii., developer shall have the right to construct or participate in the funding of offsite C.3 facilities as approved by the City Engineer and memorialized by separate agreement with the City. Developer to provide appropriate funding mechanism for the continuous maintenance of these facilities in perpetuity.	Compliant	Developer has annexed into 2016-1 CFD to meet requirements for alternate compliance and long term maintenance
17	Section 3.11	Security Improvements. (a) Developer shall pay to the City the actual cost incurred by the City (not to exceed Fifty Thousand Dollars (\$50,000)) towards funding the acquisition and installation of security camera(s) at the entrance to the Property. The security cameras will be installed under the supervision of the City's Police Chief. Developer shall pay such costs within thirty (30) days of receipt of invoice. (b) Developer shall install the basic home security wiring in the Project homes (defined herein as wiring for a basic home security system on the first floor windows and doors only). Developer shall offer one year of professional monitoring service to new homeowners. The monitoring service shall be at the election of the new homeowner.	In Progress	The Police Department has secured a camera project design and estimate for installations near the entrance, and the City's Finance Department will issue a purchase order shortly. Once the installations have been completed, the City will be reimbursed by the Developer.
18	Section 3.12	Solar Roof System. Developer shall install a solar roof system on one of its model homes for example purposes only (which may consist of a few panels with photovoltaic compatibility or other comparable technologies) and offer solar installation as an option at the homeowner's expense.	Compliant	
19	Section 3.13	Tree Preservation. Developer shall replace any and all trees that are removed as part of the construction of the Project with the appropriate number of new trees pursuant to the City's Tree Ordinance. Developer shall cause the Project to maintain said trees in an appropriate manner pursuant to the City's Tree Ordinance. Developer shall not be required to mitigate for trees that need to be removed that are on City property.	Compliant to date.	As a condition of the approved tree removal permit, the developer is required to plant 60 new trees throughout the development as part of the approved landscaping plan. All required trees shall be planted prior to final acceptance of the subdivision.
20	 Article IV - Obligations of the City			
21	Section 4.01	Obligations of City Generally. The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.	Not Applicable	
22	 Section 4.02	Availability of Public Services.		
23	(a)	General. To the extent permitted by law and consistent with its authority, City shall reserve such capacity for water services as may be necessary to serve the Project. This reservation of water infrastructure capacity shall be assured for the Term to the extent consistent with applicable law.	Compliant to date.	
24	(b)	Construction Water. City shall make construction water available to the Project by permitting the Project to hook up to existing City water supply infrastructure, at a location reasonably determined by the City, at Developer's cost and on those terms and conditions and charges customarily applied by City to similar projects consistent with City standards. City shall also permit Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer's use in any and all Project grading and construction operations, as long as such water is unrelated to potable use.	Compliant to date.	
25	Section 4.03	Developer's Right to Rebuild. City agrees that Developer, in Developer sole's discretion, may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, acts of God, acts of terrorism, or damage to work in progress by reason of fire, floods or other casualties. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA and this Agreement.	Compliant to date.	There has been no need to exercise this provision of the agreement.
26	 Section 4.04	Reimbursement of Infrastructure Costs.		

DA Section	Condition/Requirement	Status	Comments	Action Items
27	(a) Reimbursement. Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, the off-site water tank, pump station, sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project's fair share obligation for such infrastructure, City shall reimburse Developer for the City's portion of such costs (including any management fees provided for in this Agreement), subject to City's prior verification through inspection of the construction that is subject to such reimbursement and upon final acceptance of the infrastructure by the City. This reimbursement shall be paid within sixty (60) days after City's final acceptance or at such other time as mutually agreed upon in writing by the parties. Developer shall be entitled to a management fee of five percent (5%) for City's share of approved infrastructure costs, including but not limited to design and special inspection costs. The management obligations of Developer hereunder shall include contracting and managing the construction of the infrastructure, retaining copies of records, photographs and "as built" for the improvement(s) as well as attending meetings and providing necessary reports as reasonably requested by City.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
28	(b) City's Authorization of Reimbursement. Notwithstanding any other provision of this Section, or of this Agreement, or of VTM provisions, City shall not be responsible to reimburse or credit Developer for any costs, including as referenced in Section 4.04(a) herein, unless prior to Developer incurring any costs for which Developer will request reimbursement from City, Developer shall first provide written documentation as to the work to be performed, the estimated costs thereof, including a not-to-exceed cap, and such other details as reasonably requested by the City Manager and the City Manager approves the proposed costs and related work. If the City Manager fails to respond within thirty (30) days of its receipt of such estimated costs, Developer shall provide a second written notice to the City Manager and to the City Engineer, if neither responds within thirty (30) days of the City's receipt of the second request, the request shall be deemed approved. The City Manager shall have the discretion to require Developer to obtain competitive bids on any work for which Developer may request reimbursement or credit from the City where the total cost (not just the City's share) of that work is One Hundred Thousand Dollars (\$100,000) or more. City shall also have the opportunity to inspect any and all infrastructure during its construction, as well as to review any work product for which Developer requests reimbursement or credits. If mutually agreed by the parties in writing, any reimbursement due Developer pursuant to this Agreement may be satisfied by City in the form of credits, which can actually be used by Developer to offset Developer's payment of any Applicable Fees. In the event there are not enough credits to fully satisfy the reimbursement due Developer and subject to the terms of the mutual agreement between the parties referenced in the prior sentence, City shall reimburse Developer within thirty (30) days of invoicing.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
29	Section 4.05 Park Fee Credit. Developer and City agree that the park in-lieu fee amount will be Nine and 40/100ths Dollars (\$9.40) per square foot (unless City adopts a lower fee in which case the lower fee shall apply), increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2017 reflecting 2016 increases. Developer is eligible for partial park fee credit of thirty five percent (35%) of the land area devoted to private recreational area on site.	Compliant		
30	 Article V - Cooperation - Implementation			
31	 Section 5.01 Processing Application for Subsequent Approvals. The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions:			
32	(a) Standard of Review. By adopting 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 discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law, as defined below, and are not inconsistent with the Project Approvals as set forth above, and meet the intent and comply with any City adopted Designed Guidelines, as applicable. To the extent permitted by law, City shall not use its discretionary authority in considering these Subsequent Approval applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals. Developer agrees that development under this Agreement shall comply with provisions reflected in Uniform Codes (whether building, fire, plumbing, or other applicable uniform codes) which may adopted subsequent to the Effective Date of this Agreement.	Compliant to date.		
33	(b) Basis for Denial. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or as is necessary to make this Subsequent Approval consistent with the Project Approvals. If City denies any application for a Subsequent Approval, City shall specify in writing the reasons for such denial and may suggest a modification which would be approved by City.	Compliant to date.	The City has not denied any application for subsequent approvals as of 12/31/22.	
34	Section 5.02 Timely Submittals by Developer. Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.	Compliant to date.	Developer has not submitted any applications for subsequent approvals for the project.	

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DA Section	Condition/Requirement	Status	Comments	Action Items
Section 5.03	Timely Processing by City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, (i) providing at Developer's expense and subject to Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section 5.03, Developer's reimbursement to City for such services shall be made in amount equal to City's actual costs of providing such services, in accordance with standard City practice.	Compliant to date.	Developer has not submitted any applications for subsequent approvals for the project.	
Section 5.04	Other Government Permits. At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request of Developer, use its best efforts to ensure the timely availability of such permits and approvals.	Compliant to date.	Developer has applied for and received all necessary permits for construction.	
 Section 5.05	Lighting and Landscaping District, Park Maintenance, C.3 Facilities.			
(a)	Developer agrees that the Project Site will be annexed into the City's existing Lighting and Landscaping District, as established pursuant to City Resolution No. 88 7324 ("LLD"), as well as the City's Community Facilities District 2007 1 for park maintenance and the City's Community Facilities District 2016-1 for maintenance of C.3 facilities and, to the extent permitted by law, that the Project shall be assessed in a manner consistent with the provisions herein.	Compliant	Annexation completed.	
(b)	Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of the parks.	Compliant	Project is already in LLD	
Section 5.06	Police Services CFD. Developer agrees to take all steps necessary to include the Project Site into the City's existing police services Community Facilities District 2004 1, as adopted pursuant to Resolution No. 04 10071 (the "Police Services District") at no cost to the City, in order to provide for police and other emergency services to the Project Site. This process shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. Each legal residential lot located on the Project Site will be required to pay the levy by the Police Services District no earlier than the issuance of a building permit for such lot.	Compliant	Annexation completed.	
Section 5.07	Fire Services CFD. In the event the City forms a City Community Facilities District to provide for fire protection services in the City for the Contra Costa Fire Protection District and acquisition or replacement of equipment primarily situated in the fire stations located in the City, Developer agrees to take all steps necessary to include the Project Site into the district. This inclusion of the Project into the district shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. City agrees that the levy to be assessed on each legal residential lot in the Project shall be no greater than Seventy-five Dollars (\$75) and increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2016 reflecting 2015 increases. Each legal residential lot located on the Project Site will be required to pay the levy by for this district no earlier than the issuance of a certificate of occupancy for such lot (such levy shall not go into effect for any certificate of occupancy issued for model homes in the Project until such model home is transferred to a third party homebuyers).	Compliant	Annexation completed.	
Section 5.08	Railroad Avenue Specific Plan CFD. The subject property has been previously annexed into the Railroad Avenue Specific Plan (RASP) Community Facilities District 2014-1, and requires the developer pay a one-time special tax to finance the construction and/or acquisition of public facilities. Each legal residential lot located on the Project Site will be required to pay the levy by CFD 2014-1 upon the issuance of a building permit for such lot. The rate of the CFD is subject to City Council Ordinance No. 14-1383.	Compliant to date.	Fees have been collected upon issuance of all building permits issued thus far, in accordance with those fee rates set forth in Exhibit B of the DA.	
Section 5.09	Parkland Dedication In-Lieu Fee. The Developer shall pay an In-Lieu Parkland Dedication Fee to the Engineering Department per PMC section 17.32.020.D.2.The park in-lieu fee amount is nine dollars and forty cents (\$9.40) per square foot, increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2017 reflecting 2016 increases.	Compliant		
 Section 5.10	Assessment Districts or Other Funding Mechanisms.			
(a)	City understands that City's long term assurances to Developer concerning fees, taxes and assessments related to the Project are a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay the fees, taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts or other Funding Mechanisms, as defined in Section 3.08 of this Agreement, covering all or any portion of the Project site. Notwithstanding the foregoing, Developer retains all its rights to oppose the formation or proposed assessment of any new assessment district, Funding Mechanism, or any and all increases thereto, or to request or pursue assessment credits or reductions, unless otherwise provided for herein or unless such assessment, Funding Mechanism or related increases are in place and legally effective as of the date of this Agreement's Effective Date.	Compliant to date.	The City has not proposed forming any new assessment districts.	

DA Section	Condition/Requirement	Status	Comments	Action Items
46	(b) At the request of Developer, City shall cooperate in the formation of, or annexation to, those assessment districts, landscaping and lighting districts, community facilities districts, tax-exempt financing mechanisms, or other Funding Mechanisms that Developer and City determine are needed to fund infrastructure improvements and to ensure the orderly development of the Project, at no cost to the City. City shall diligently and expeditiously process applications by Developer necessary to establish such Funding Mechanisms as long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City, and which will result in no commitment of City. City shall diligently seek to sell any bonds to be issued and secured by such assessments upon the best terms reasonably available in the marketplace. Any and all costs associated with this Section shall be borne and/or advanced by Developer.	Compliant to date.		
47	Section 5.11 Warranty Bonds. Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property or open space dedications) pursuant to this Agreement shall be accompanied by a one (1) year warranty bond in a form and in an amount, and with a surety acceptable to City, or otherwise as determined in the applicable Subdivision Improvement Agreement.	Compliant	City accepted the public improvements for continuous maintenance in 2017, warrant bonds have since expired	
48	Section 5.12 General Plan Maintenance Fee. Developer agrees to pay a development related fee to help fund the maintenance of the Pittsburg General Plan. The General Plan Maintenance Fee will be \$125.00 per building permit.	Compliant to date.	The Developer has paid the General Plan Maintenance Fee upon issuance of each building permit.	
49	 Article VI - Standards, Laws and Proceedings Governing the Project			
50	Section 6.01 Vested Right to Develop. Developer shall have a vested right to develop the Project on the Project Site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.	Compliant to date.		
51	Section 6.02 Permitted Uses Vested by This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.	Compliant to date.		
52	Section 6.03 Applicable Law. "Applicable Law" shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approvals, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying any new rules, regulations, official policies, standards, and specifications that do not conflict with those rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.	Compliant to date.		
53	Section 6.04 Uniform Codes. Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City's then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.	Compliant to date.		
54	Section 6.05 Moratorium and Conflicting Enactments. To the extent consistent with State Law, if any ordinance, resolution or other measure is enacted, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.	Compliant to date.	No moratoria or conflicting enactments were adopted during this review period.	
55	Section 6.06 Life of Subdivision Maps, Development Approvals, and Permits. To the extent consistent with Applicable Law, the term of any subdivision map or any other map, permit, rezoning or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the duration of this Agreement, including any extensions. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable development moratorium (including, but not limited to, a water or sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Project. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable court order or other legal requirement prevents the processing of any Subsequent Approval or prevents any Project development activities.	Compliant	Construction of project is scheduled to be completed prior to the expiration of all approvals.	

DA Section	Condition/Requirement	Status	Comments	Action Items
56	Section 6.07	Compliant	There has been no need to exercise this provision of the agreement.	
57	 Section 6.08			
58	(a)	Compliant to date.	Construction of project is scheduled to be completed in multiple phases.	
59	(b)	Compliant to date.		
60	(c)	Compliant to date.		
61	Section 6.09	Compliant to date.		
62	Section 6.10	Compliant to date.		
63	 Article VII - Amendment			
64	 Section 7.01			
65	(a)	Compliant to date.	The developer has worked with staff to implement a revised refuse pickup plan.	
66	(b)	Compliant to date	The developer has worked with staff to request non-administrative project amendments to date, including changes to proposed subdivision signage.	
67	 Section 7.02			

DA Section	Condition/Requirement	Status	Comments	Action Items
68	(a)	Administrative Agreement Amendments. The City Manager, or his/her designee, may, except to the extent otherwise required by law, enter into certain amendments of this Agreement on behalf of the City as long as any such amendment does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) monetary contributions by Developer ("Administrative Agreement Amendment"), and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. For purposes of this Section 7.02(a), the term "substantially affect" shall be evaluated in the context of the entire Project.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.
69	(b)	Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, whether done administratively or not, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by both parties.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.
70	(c)	Amendment Limitations. In consideration of the scope of the benefits to City set forth in this Agreement, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to the impacts on City directly attributable to such amendment.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.
71	 Article VIII - Assignment, Transfer and Notice			
72	Section 8.01	Assignment of Interests, Rights and Obligations. Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.
73	 Section 8.02	Transfer Agreements.		
74	(a)	In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a "Non-Assuming Transferee" (as defined in Section 8.03), Developer and the transferee shall enter into a written agreement (a "Transfer Agreement") regarding the respective interests, rights and obligations of Developer and the transferee in and under the Agreement, the Project Approvals, and the Subsequent Approvals. Such Transfer Agreement may (i) release Developer from obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations, (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred and (iii) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.
75	(b)	Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City's prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within thirty (30) days of a written request by Developer for City's consent shall be deemed City's approval of the Transfer Agreement in question. City may refuse to give its consent only if, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable determination be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent to a proposed transferee pursuant to this Section 8.02(b) if such transferee has a net worth of at least Ten Million Dollars (\$10,000,000) documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa County, Developer shall automatically be released from those obligations assumed by the transferee therein.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.
76	(c)	Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.
77	Section 8.03	Non-Assuming Transferees. Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with (i) any single residential parcel conveyed to a purchaser, (ii) any property transferred as fewer than ten (10) lots to a single retail builder or (iii) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school or other nonresidential uses. The transferee in such a transaction and its successors ("Non-Assuming Transferees") shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this Section 8.03 shall exempt any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.
78	Section 8.04	Notice of Compliance Generally. Subject to City's finding that the facts contemplated by clauses (i) through (iii) herein are true and accurate, within thirty (30) days following any written request which Developer may make from time to time, City shall execute and deliver to Developer (or to any party requested by Developer) a written "Notice of Compliance," in recordable form, duly executed and acknowledged by City, that certifies that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default, and (iii) any other information reasonably requested by Developer. City's failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.

	DA Section	Condition/Requirement	Status	Comments	Action Items
79	 Article IX - Cooperation in the Event of Legal Challenge				
80	 Section 9.01	Cooperation.			
81	(a)	Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
82	(b)	Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
83	(c)	The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
84	 Section 9.02	Cure; Reapproval.			
85	 (a)	If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or any portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgment (a "Judgment") in such action or proceeding (based on procedural, substantive or other deficiencies, hereinafter "Deficiencies"), the parties agree to use their respective best efforts to sustain and reenact or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise:	Compliant to date.	There has been no need to exercise this provision of the agreement.	
86	(i)	If any Judgment requires reconsideration or consideration by City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement and the Judgment. Upon the parties cure of such Deficiencies, City shall then take steps consistent with the Judgment necessary readopt or reenact this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
87	(ii)	Acting in a manner consistent with the intent of this Agreement or a Judgment includes, but is not limited to, recognizing that the parties intend that Developer may develop a eighty two (82) single-family residential unit project, and adopting such ordinances, resolutions, and other enactments, including but not limited to a general plan amendment, rezoning, vesting subdivision map approvals, development plan approvals, PD Plan approvals, design review, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, final development plans, development agreements, permits, resubdivisions, and any amendments to, or repealing of, any of the foregoing as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgment.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
88	(b)	The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.02, which shall survive such invalidation, nullification or setting aside.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
89	 Article X - Default, Remedies, Termination				

DA Section	Condition/Requirement	Status	Comments	Action Items
90 Section 10.01	Defaults. Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (the "Complaining Party") (unless such period is extended by mutual written consent), shall constitute a default under this Agreement. The Complaining Party's notice ("Default Notice") shall specify the nature of the alleged failure and, may specify the manner in which the failure satisfactorily may be cured By the other party (the "Defaulting Party"). Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable date following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than thirty (30) days after the Defaulting Party's receipt of the Default Notice), the Defaulting Party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30-day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within one hundred twenty (120) days after the Notice of Default is given. Complaining Party shall not send notice to any third party, including, but not limited to, bonding and surety companies, until such time as the cure opportunities set forth above have expired unless otherwise required by applicable law. Upon the occurrence of a default under this Agreement, the Complaining Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party shall take no further action.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise this provision of the agreement.	
91 Section 10.02	Termination. If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. As used herein, a finding of materiality shall be based on the effect of the default in relation to the size and scope of the Project. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter; provided, however, that if Developer files an action to challenge City's termination of this Agreement within such 60-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise this provision of the agreement.	
92  Section 10.03	Periodic Review.			
93 (a)	Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement. This review (the "Periodic Review") shall be conducted by the City Manager or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code § 65865.1. Developer also agrees to pay City annually the greater of Five Thousand Dollars (\$5,000) or the actual cost of Periodic Review Fee (not to exceed Ten Thousand Dollars (\$10,000)). The Five Thousand Dollars (\$5,000) shall be increased annually thereafter by the CPI for the San Francisco Oakland Area, with the first increase implemented in January 2017 reflecting 2016 increases. Such Periodic Review Fee shall only be paid in the years in which a Periodic Review is actually conducted.	Compliant to date.		
94 (b)	Notice. At least ten (10) days prior to the Periodic Review, and in the manner prescribed in Article XII of this Agreement, City shall deposit in the mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer's performance hereunder. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Such response shall be made to the City Manager.	See Comments/Action Items	Notice of the Annual Review will be given to the Developer on/or before April 21, 2023.	
95 (c)	Good Faith Compliance. During the Periodic Review, the City Manager shall review Developer's good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that Developer has not complied with such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code §§ 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally by Developer and City.	Compliant to date.		
96 (d)	Failure to Properly Conduct Periodic Review. If, after thirty (30) days following Developer's notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall be conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.	Compliant to date.		
97 (e)	Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.	Complaint to date.	Written Notice of Compliance will be sent to the Developer upon conclusion of the Annual Review.	

DA Section	Condition/Requirement	Status	Comments	Action Items
98	Section 10.04	Excusable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are t due to Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer's actions or inactions and beyond Developer's control. Upon the properly noticed request of either party hereto, as required by Section 12.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon in writing.	Compliant to date.	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.04.
99	Section 10.05	Legal Action. 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, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.	Compliant to date.	There has been no need to exercise this provision of the agreement.
100	Section 10.06	California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Compliant to date.	
101	Section 10.07	Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provisions of this Section 10.07 may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. Nothing in this Section 10.07 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.	Compliant to date.	There has been no need to exercise this provision of the agreement.
102	Section 10.08	Attorneys' Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.	Compliant to date.	There has been no need to exercise this provision of the agreement.
103	Section 10.09	Default by City or Developer. In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law.	Compliant to date.	There has been no need to exercise this provision of the agreement.
104	 Article XI - No Agency, Joint Venture or Partnership			
105		It is specifically understood and agreed to by and between the parties hereto that unless otherwise expressly provided herein (i) the subject development is a private development; (ii) City have no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer. The City agrees that Developer's obligations under this Agreement related to the construction of Project water, sewer and drainage infrastructure improvements, the grading and construction of traffic improvements, and the grading and construction of any other public improvements (collectively, the "Public Improvements") are all public works of improvement the City is requiring as a condition of regulatory approval of the Project and that the Project is an otherwise private development. The City further agrees that it will contribute no more money, or the equivalent of money, to the overall Project than is required to construct the Public Improvements and that City maintain no proprietary interest in the overall Project.	Compliant to date.	
106	 Article XII - Miscellaneous			
107	Section 12.01	Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.	Not Applicable	

	DA Section	Condition/Requirement	Status	Comments	Action Items
108	Section 12.02	Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code § 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement shall prevail.	Not Applicable		
109	Section 12.03	Findings. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.	Not Applicable		
110	Section 12.04	Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.	Not Applicable		
111	Section 12.05	Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Not Applicable		
112	Section 12.06	Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.	Not Applicable		
113	Section 12.07	Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.	Not Applicable		
114	Section 12.08	Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.	Not Applicable		
115	Section 12.09	Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by fax (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below...	Not Applicable		
116	 Section 12.10	Entire Agreement, Counterparts and Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of 27 pages and four exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of any provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:	Not Applicable		
117	EXHIBIT A	Legal Description	Not Applicable		
118	EXHIBIT A-1	Project Site Diagram	Not Applicable		
119	EXHIBIT B	Applicable Fees	Not Applicable		
120	EXHIBIT C	Affordable Housing Agreement	Not Applicable		
121	Section 12.11	Recordation of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.	See Comments/Action Items	The DA was recorded at the Contra Costa County Clerk-Recorder on August 30, 2016 (DOC 2017-0176165)	

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of the Sky Ranch II	)	
Development Agreement and	)	RESOLUTION NO. 23-
Determination as to Compliance	)	
<u>With Development Agreement</u>	)	

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, a Development Agreement between the City of Pittsburg and SkyRanch Land Investors, LLC, was executed on July 21, 2017, for the Sky Ranch II Property; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DAs") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Sky Ranch II Development Agreement was conducted, and on December 21, 2020, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Recitals

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and City Staff, as well as the information contained in the "Sky Ranch II DA – 2022 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Sky Ranch II Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Sky Ranch II in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

Section 5. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 1st day of May, 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit -1 Sky Ranch DA - 2022 Annual Review Summary Table



	Primary Column	Column2	Status	Notes	Action Items?
1	Article II: Effective Date; Term				
2	2.01	Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the "Effective Date").	See Comments/Action Items	Ordinance No. 17-1431 approving the DA was adopted on June 5, 2017, with an effective date of July 21, 2017	
3	2.02	Term. The term of this agreement shall commence upon the date the ordinance approving this agreement and continue for a period of twenty (20) years (the "Term")	See Comments/Action Items	Based on the effective date of July 21, 2017, the DA will expire on July 21, 2037	
4	Article III: Obligations of Developer				
5	3.01	Drainage Improvements. Subject to the terms of this Agreement, as a condition of approval to one or more of the Project Approvals, Developer agrees to construct and offer dedication to the City those Project storm water drainage improvements to be located within City's boundaries and required to serve the Project Site ("Drainage Improvements"). The City shall accept the offer of dedication of the Drainage Improvements, as long as the Drainage Improvements comply with the City's standards, applicable rules and regulations, and this Agreement. The parties agree that the construction of the Drainage Improvements shall be phased according to a construction schedule determined by Developer, subject to the written approval of the City Manager. City shall not require any improvements to onsite or offsite drainage facilities to address pre-existing deficiencies provided that Developer demonstrates to City's reasonable satisfaction that impact to downstream facilities are not being exacerbated.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for engineering or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
6	3.02	Facility Reserve Charges. Developer agrees to pay City's Facility Reserve Charges ("FRC" as set or modified by the City Council from time to time.	Not Applicable (at this time)		
7	3.03	Water Infrastructure. (1) Developer shall comply with the 2016 Water System Master Plan, as amended. Developer shall have the option subject to the written approval by the City Manager to provide water infrastructure facilities in phases subject to a storage requirement pursuant to the 2016 Water System Master Plan, as amended. (2) Developer shall have the right to obtain a certain number of building permits for homes on lots which are in the Zone II water service, even if the new Zone II water reservoir and appurtenant improvements have not yet been constructed at such time. [financing information...] (3) Developer shall design and construct a Zone IV water reservoir and all appurtenant improvements relating to the reservoir on the 1.23 acre parcel in accordance with the most current Water Master Plan. [financing information...] (4) The City's 2016 Water Master Plan requires the Segment 1E pipeline to be constructed prior to the issuance of the 807th equivalent single family dwelling unit in the Zone II infill and SE Hills service areas. The pipeline segment shall be designed, constructed, and managed by the City in accordance with the most current Water Master Plan. [payment....]	Not Applicable (at this time)		
8	3.04	School Facilities Impact Mitigation. Developer shall pay in lieu school impact fees in accordance with Government Code 65995 et seq. Compliance with this Section shall satisfy all of Developer's obligations required by City to mitigate school impacts resulting from the Project.	Not Applicable (at this time)		
9	3.05	Applicable Fees. City may levy development fees, and charges during the term of this Agreement relative to the development of the Project Site which are in force and effect as of the Effective Date, as more particularly described and according to the payment schedule set forth on Exhibit B "Applicable Fees". Unless otherwise provided in this Agreement, no development fees or charges or categories shall be imposed on the project other than those fees. All fees related to third-party government agencies that are paid directly to third-party government agencies are not within the scope of this Agreement.	Not Applicable (at this time)		
10	3.06	Applicable Fee Adjustments. Developer shall pay fees consistent with Section 3.05 and the applicable adjustments currently provided in such fees, and as modified from time to time by the City, whether such adjustment or modification is an increase or decrease. Developer retains the right to challenge the imposition of any new fees not referenced in this Agreement or the modification, amendment or adjustment of all Applicable Fees pursuant to Government Code 66000 et seq., not already authorized by ordinances, resolutions, or policies in place at the time of the Agreement's execution. Should the City Council approve a new AB 1600 fee study and/or authorize a decrease in any Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower free, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Not Applicable (at this time)		
11	3.07	City Local Traffic Mitigation Fee. Developer shall pay the City Local Traffic Mitigation Fee, in the amount in effect as of the Effective Date and subject to adjustments in accordance with Resolution No. 07-10917 with credit for certain improvements constructed by Developer per Section 4.04 below. If the City Council approved a new AB 1600 fee study and/or authorizes a decrease in any of the applicable fees during the term of this Agreement by ordinance or resolution, Developer shall have the option at its sole discretion to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees. Developer agrees that City may use the Local Traffic Mitigation Fee paid by Developer pursuant to this Section for the City's share of the James Donlon Expressway. This use by the City shall not decrease or otherwise modify Developer's other obligations under this Agreement, including/not limited to Section 3.13.	Not Applicable (at this time)		

	Primary Column	Column2	Status	Notes	Action Items?
12	3.08	Regional Traffic Fee. Developer shall pay the ECCRFA regional traffic fee should it be imposed by the City in an amount equal to or less than the amount paid by projects in the Cities of Antioch, Brentwood, and Oakley or in accordance with the existing valid Memorandum of Understanding dated June 29, 2010, as amended, whichever is less.	Not Applicable (at this time)		
13	3.09	Fees, Assessment and/or Taxes to be Paid by Developer. Developer agrees to pay its fair share of any levies imposed by any assessment district, geologic hazard abatement district, landscaping and lighting district, community facilities district, tax-exempt financing mechanisms or other funding mechanisms related to public safety; traffic; sewer; water; fire; the prevention, mitigation, abatement, or control of geological hazards; or other infrastructure improvements (including, without limitation, design, acquisition, construction and maintenance cost) within the Project Site, provided that such Funding Mechanism is referenced herein or was legally created pursuant to applicable law.	Not Applicable (at this time)		
14	3.10.	Affordable Housing. Developer shall comply with PMC 18.86.080 and VTM Condition of Approval No. 12 by constructing 42 rental accessory dwelling units within the Project. A covenant shall be recorded limiting the amount of rent that may be charged for these accessory dwelling units, consistent with the terms and conditions set forth in the affordable housing agreement. Prior to the City's issuance of the first certificate of occupancy Developer agrees to enter into an affordable housing agreement with the City... attached as Affordable Housing Agreement... which further memorializes the provisions of this Section 3.10 and is consistent with applicable law, including PMC 18.50. Developer agrees that the accessory dwelling units referenced in this section shall not be built or otherwise allowed on adjoining lots without the prior written approval of the City Manager. City agrees that Developer shall not be required to pay any additional City fees associated with the ADUs except for those fees the City is required to charge by the State or other governmental entities with jurisdiction over the Project. (a) Timing. (b) Inclusionary Housing Ordinance.	Not Applicable (at this time)		
15	3.11	Security Improvements. (a) Developer shall pay to the City the actual cost incurred by City (=<\$60000) towards funding the acquisition and installation of security camera(s) at 2 intersections identified by the City. The security Cameras will be installed under supervision of City's Police Chief. Developer shall pay such costs within 30 days of receipt of invoice. (b) Developer shall install the basic home security wiring in the Project homes (first floor windows and doors). Shall offer 1 year of professional monitoring service to new homeowners. The monitoring service shall be at the election of the new homeowner.	Not Applicable (at this time)		
16	3.12	Solar Roof System. Developer shall install a solar roof system on on of its model homes for example purposes only and offer solar installation as an option at the homeowner's expense.	Not Applicable (at this time)		
17	3.13	Construction of James Donlon Expressway within the Limits of the Project Site. Developer shall construct a portion of the James Donlon Expressway in accordance with VTM Condition of Approval No. 59 and MM-H7. Should the median and inside lanes not be installed at the time Developer constructs its required improvement, then Developer shall grade the median and inside lanes and receive credits for such work from City if such credits are not provided by East Contra Costa Regional Fee & Finance Authority.	Not Applicable (at this time)		
18	3.14	In Lieu Fees or Dedication of Park Site. At the written discretion of the City Manager, Developer shall pay an in lieu park fee, or dedicate park land, or perform a combination of both, equivalent to 7.18 acres as required by the project approval. The dedicated Park Site shall be rough graded in accordance with City specifications with no more than a 3% slope, adjacent curb, gutter, sidewalk and utility stubs shall have been installed by Developer and the Park Site shall be free and clear of all liens, bonds, taxes, assessments, and other charges, which costs shall be assumed by Developer. Developer agrees to make its offer of dedication of the Park Site to City at the same time it constructs the phase of the project in which the Park Site is located. City agrees that it shall accept the offer of dedication of the Park Site within 180 days of Developer's offer of dedication o the Park site, provided that (a) the park is in compliance with the requirements of this Section (ii) all necessary actions have been completed to include the Park Site within a new or existing lighting or landscaping district (see 5.05).	Not Applicable (at this time)		
19	3.15	Park Improvements. Prior to the offer of dedication of the Park Site pursuant to Section 3.14 above, Developer shall install park improvements identified by the City at a cost not to exceed \$250,000 not including frontage improvements. This amount shall be increased annually by the CPI for the SF-Oakland area with the first increase implemented in January 2018 reflecting 2017. Such costs shall not be credited against Developer's park obligations set forth in Section 3.14 above.	Not Applicable (at this time)		
20	3.16	Electric Vehicle Charge. Developer shall install, in the garage of each home, conduit from the electric panel in order for homeowners, at their election and cost, to install an electric vehicle charging system.	Not Applicable (at this time)		
21	 Article IV: Obligations of City				
22	4.01	Obligations of City Generally. The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City as set forth herein.	Compliant		
23	 4.02	Availability of Public Services.			
24	a	General. To the extend permitted by law and consistent with its authority, City shall reserve such capacity for water services as may be necessary to serve the Project. This reservation of water infrastructure capacity shall be assured for the Term to the extent consistent with applicable law.	Not Applicable (at this time)		

	Primary Column	Column2	Status	Notes	Action Items?
25	b	Construction Water. City shall make construction water available to the Project by permitting the Project to hook up to existing City water supply infrastructure at a location reasonable determined by the City, at Developer's cost and on those terms and conditions and charges customarily applied by City to similar project consistent with City standards. City shall also permit Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer's use in any and all Project grading and construction operations as long as such water is unrelated to potable use.	Not Applicable (at this time)		
26	4.03	Developer's Right to Rebuild. City agrees that Developer, in Developer sole's discretion may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, change in seismic requirements, acts of God, acts of terrorism, or damage to work in progress by reason of fire, floods, or other casualties. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA and this agreement.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
27	 4.04	Reimbursement of Infrastructure Costs			
28	a	Reimbursement. Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, the off-site water tank, pump station, sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project's fair share obligation for such infrastructure, City shall reimburse Developer for the City's portion of such costs (including any management fees provided for in this Agreement), subject to the City's prior verification through inspection of the construction that is subject to such reimbursement and upon final acceptance of the infrastructure by the City. This reimbursement shall be paid within 60 days after the City's final acceptance or at such other time as mutually agreed upon in writing by the parties. Developer shall be entitled to a management fee of 5% for City's share of approved infrastructure costs, including but not limited to design and special inspection costs. The management obligations of the Developer hereunder shall include contracting and managing the construction of the infrastructure , retaining copies of records, photographs and as built for the improvements as well as attending meetings and providing necessary reports as reasonably requested by City.	Compliant	There has been no need to exercise this provision of the agreement.	
29	b	City's Authorization of Reimbursement. Notwithstanding any other provision of this Section, or of this Agreement, or of VTM provisions, City shall not be responsible to reimburse or credit Developer for any costs, including as referenced in Section 4.04(a) herein, unless prior to Developer incurring any costs for which Developer will request reimbursement from City, Developer shall first provide written documentation as to the work to be performed, the estimated costs thereof, including a not-to-exceed cap, and such other details as reasonably requested by the City Manager and the City Manager approves the proposed costs and related work. If the City Manager fails to respond within thirty (30) days of its receipt of such estimated costs, Developer shall provide a second written notice to the City Manager and to the City Engineer, if neither responds within thirty (30) days of the City's receipt of the second request, the request shall be deemed approved. The City Manager shall have the discretion to require Developer to obtain competitive bids on any work for which Developer may request reimbursement or credit from the City where the total cost (not just the City's share) of that work is One Hundred Thousand Dollars (\$100,000) or more. City shall also have the opportunity to inspect any and all infrastructure during its construction, as well as to review any work product for which Developer requests reimbursement or credits. If mutually agreed by the parties in writing, any reimbursement due Developer pursuant to this Agreement may be satisfied by City in the form of credits, which can actually be used by Developer to offset Developer's payment of any Applicable Fees. In the event there are not enough credits to fully satisfy the reimbursement due Developer and subject to the terms of the mutual agreement between the parties referenced in the prior sentence, City shall reimburse Developer within thirty (30) days of invoicing.	Compliant	There has been no need to exercise this provision of the agreement.	
30	4.05	Park Fee Credit. Developer and City agree that the park in-lieu fee amount will be Nine and 40/100ths dollars (\$9.40) per square foot (unless City adopts a lower fee in which case the lower fee shall apply), increased annually by the CPI for the SF-Oakland area, with the first increase implemented in January 2017 reflecting 2016 increases. The timing of the payment of th e park in lieu fee shall be satisfied as set forth in Section 3.14 above.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for engineering or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
31	 Article V: Cooperation--Implementation				
32	 5.01	Processing Application for Subsequent Approvals. The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions:			

Primary Column	Column2	Status	Notes	Action Items?
33	a	Standard of Review. By adopting 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 discretionary decisions reflected by the Project Approvals or otherwise prevent or delay development of the Project as set forth in the Project Approvals. Instead the Subsequent Approvals shall be deemed tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law, as defined below, and are not Inconsistent with the Project Approvals as set forth above, and meet the intent and comply with any City adopted Design Guidelines, as applicable. To the extent permitted by law, City shall not use its discretionary authority in considering these Subsequent Approvals applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals. Developer agrees that development under this Agreement shall comply with provisions reflected in Uniform Codes which may be adopted subsequent to the Effective Date of the Agreement.		
34	b	Basis for Denial. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or as is necessary to make this Subsequent Approval consistent with Project Approvals. If City denies any application for a Subsequent Approval, City shall specify in writing the reasons for such denial and may suggest a modification which would be approved by City.		
35	5.02	Timely Submittals by Developer. Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to 1) provide to city in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and b) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.		
36	5.03	Timely Processing by City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, a) providing at Developer's expense and subject to Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; b) if legally required, providing notice and holding public hearings; and c) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section. Developer's reimbursement to City for such services shall be made in amount equal to City's actual costs of providing such services, in accordance with standard City practice.		
37	5.04	Other Government Permits. At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request of Developer, use its best efforts to ensure timely availability of such permits and approvals. City shall cooperate with Developer to obtain any and all approvals from Contra Costa County related to the construction or operation of the Drainage Improvements. City shall also cooperate with Developer, CCWD, and Bureau of reclamation in all matters related to CCWD's application to the Bureau to expand the place of use of Central Valley Project water to include the Project Site.		
38	 5.05	Lighting and Landscaping District, Park Maintenance.		
39	a	Developer agrees that the Project Site will be annexed into City's existing Lighting and Landscaping District, as established pursuant to City Reso No. 88-7324 as well as City's Community Facilities District 2007-1 for park maintenance, City's Community Facilities District for the maintenance of C.3 facilities as, to the extent permitted by law, that the Project shall be assessed in a manner consistent with the provisions herein.		
40	b	Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of parks.		
41	5.06	GHAD. GHAD. Developer agrees to take all steps necessary to either expand the existing Southwest Pittsburg Geologic Hazard Abatement District or to establish a new GHAD, at no cost to the City or to the GHAD, to provide for, among other things, geologic hazard abatement, maintenance of detention basins, grassland maintenance, fire protection, and erosion control within portions of Project Site. Unless otherwise required by law, the parties intend that the Project Site will be assessed by the SW Pittsburg GHAD or a new GHAD upon the respective GHAD's acceptance of the GHAD Area identified in the Project Approvals (which GHAD Area shall include the detention basins).		

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Primary Column	Column2	Status	Notes	Action Items?
5.07	Police Services CFD. Developer agrees to take all steps necessary to include the Project Site into the City's existing police services Community Facilities District 2004-1, as adopted pursuant to Reso No. 04-10071 ("The Police Services District") at no cost to the City, in order to provide for police and other emergency services to the Project site. This process shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. Each legal residential lot located on the Project Site will be required to pay the levy by the Police Services District no earlier than the issuance of a building permit for such lot.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for engineering or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
5.08	Fire Services CFD. Developer agrees to annex the Project site into the City's Fire Safety and Emergency Services Community Facilities District 2017-1, as adopted pursuant to Resolution No. 17-13311 at no cost to the City, in order to provide for fire safety and emergency services for the project. This process shall be completed, to the reasonable satisfaction of the City manager and City Attorney, before filing the first final map on the project.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for engineering or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
5.09	General Plan Maintenance Fee. Developer agrees to pay a development related fee to help fund the maintenance of the Pittsburg General Plan. The General Plan Maintenance Fee will be One Hundred Twenty-five Dollars per building permit (unless City adopts a lower fee in which case the lower fee shall apply), increased annually by the CPI for the SF-Oakland area, with the first increase implemented in January 2018 reflecting 2017 increases.	See Comments/Action Items	As of December 31, 2022, the Developer has not submitted applications for engineering or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
 5.10.	Assessment Districts or Other Funding Mechanisms.			
a	City understands that City's long term assurances to Developer concerning fee, taxes, and assessments related to Project are a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay the fees, the taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts or other Funding Mechanisms, as defined in Section 3.09 of this agreement, covering all or any portion of the Project site. Notwithstanding the foregoing, Developer retains all its rights to oppose the formation or proposed assessment of any new assessment district, Funding Mechanism, or any and all increases thereto, or to request or pursue assessment credits or reductions, unless otherwise provided for herein or unless such assessment, Funding Mechanism, or related increases are in place and legally effective as of the date of this Agreement's Effective Date.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 5.09.	
b	At the request of Developer, City shall cooperate in the formation of, or annexation to, those assessment districts, geologic hazard abatement district, landscaping and lighting districts, community facilities district, tax-exempt financing mechanisms, or other Funding Mechanisms that Developer and City determine are needed to fund infrastructure improvements and to ensure the orderly development of the Project, at no cost to the City. City shall diligently and expeditiously process applications by Developer necessary to establish such Funding Mechanisms as long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City and which will result in no commitment of City funds. City shall diligently seek to sell any bonds to be issues and secured by such assessments upon the best terms reasonably available in the marketplace. Any and all costs associated with this Section shall be borne and/or advanced by Developer.	Not Applicable (at this time)		
5.11	Warranty Bonds. Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property, or open space dedications) pursuant to this Agreement shall be accompanied by a one year warranty bond in a form and in an amount, and with a surety acceptable to City or otherwise as determined in the applicable Subdivision Improvement Agreement.	Not Applicable (at this time)		
 Article VI: Standards, Laws and Procedures Governing the Project				
6.01	Vested Right to Develop. Developer shall have a vested right to develop the Project on the Project site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.	Compliant to date.		
6.02	Permitted Uses Vested by This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the max height, bulk, and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.	Compliant to date.		
6.03	Applicable Law. Applicable Law shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approval, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying new rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.	Compliant to date.		

	Primary Column	Column2	Status	Notes	Action Items?
53	6.04	Uniform Codes. Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City's then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limited construction of all or any part of the Project.	Compliant to date.		
54	6.05	Moratorium And Conflicting Enactments. To the extent consistent with State Law, if any ordinance, resolution, or other measure in enacted, whether by action of the City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution, or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.	Compliant to date.	No moratoria or conflicting enactments were adopted during this review period.	
55	6.06	Environmental Mitigation. The parties understand that the EIR for the Project is a project level CEQA document intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with the CEQA policies and requirements applicable to the EIR, City agrees to use the EIR in connection with the processing of any Subsequent Approval to the extend allowed by law. City agrees not to impose on Developer any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the Mitigation Monitoring Program described in the FEIR, specifically required by Applicable Law, or as properly required through the design or architecture review process as long as such mitigation measures or other conditions are imposed in a manner consistent with applicable design review guidelines.	Compliant		
56	6.07	Life of Subdivision Maps, Development Approvals, and Permits. To the extend consistent with Applicable Law, the term of any subdivision map or any other map, permit, rezoning, or other land use entitlement approved as a Project Approval or a Subsequent Approval shall not include any period of time during which any applicable development moratorium (including, but not limited to, a water or sewer moratorium) or the actions of other public agencies hat regulate land use, development or the provision of services to the land, prevents, prohibits, or delays the construction of the Project. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable court order or other legal requirement prevents the processing of any Subsequent Approval or any Project development activities.	Compliant	Construction of project is scheduled to be completed prior to the expiration of all approvals.	
57	6.08	State and Federal Law. As provided in California government Code 65869.5, if any state or federal laws or regulations, enacted after this Agreement's Effective Date prevent or preclude compliance with one or more provisions of this Agreement ("Changes in the Law"), such provision of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article V and Section 10.05. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically required by State or Federal laws and regulations.	Compliant	There has been no need to exercise this provision of the agreement.	
58	 6.09	Timing of Project Construction and Completion.			
59	a	Project Phasing. The Project is expected to be built in phases in response to then-existing market conditions over the Term of the Agreement. Except as otherwise specifically provided by this Agreement with respect to Project infrastructure timing, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular time period, and City shall not impose such a requirement on any Project Approval. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market demand, interest rates, competition, and other similar factors.	Compliant to date.		
60	b	The parties agree that the Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time and Developer shall determine which part of the Project Site to develop first and at Developer's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in Pardee Construction Co v City of Camarillo, that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgement. Developer's rights under this Section 6.09b shall be subject to the requirement that adequate infrastructure to service each phase of the Project is constructed concurrently with such phase. the City Manager shall reasonably determine what infrastructure will be required to serve each phase of the Project, which determination shall be consistent with Applicable law.	Compliant to date.		
61	c	Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.	Compliant to date.		

Primary Column	Column2	Status	Notes	Action Items?
62 6.10.	Exempting Fees, Mitigation Measures and Similar Requirements Imposed by Outside Agencies. Notwithstanding any other provision of this Agreement, the City agrees to exclude Developer from any and all discretionary collection agreements regarding fees, mitigation measures and similar requirements including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or on the Project Site after the Effective Date through the Term of this Agreement. This Section shall not prohibit the City from imposing on Developer any fee, mitigation measure, or similar requirement or obligation that is required by a local or regional agency in accordance with local, regional, State, or Federal obligations and implemented by the City in cooperation with such local, regional, state, federal agencies, provided such fee, mitigation measure, or similar requirement or obligation is imposed in a similar manner on similarly situated properties within the City.	Compliant to date.		
63 6.11	City's Joint-Inspection Jurisdiction. Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.	Compliant to date.		
64  Article VII: Amendment				
65  7.01	Amendment to Project Approvals, Subsequent Approvals. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:			
66 a	Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City Manager or his/her designee shall determine (i) whether the requested amendment or modification is minor when considered in light of the project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable uniform codes, and State or Federal Law. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire project, consistent with this Agreement and Applicable Law, and will result in no new significant environmental impacts not addressed and mitigated in the EIR, the amendment shall be determined to be an Administrative Project Amendment and the City Manager or his/her designee may, except to the extend otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale, or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, minor variations in lot layout, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.	Not Applicable (at this time)		
67 b	Non Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.	Not Applicable (at this time)		
68 7.02	Amendment of this Agreement. Amendment may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, as follows:			
69 a	Admin Agreement Amendments. The City Manager, or his/her designee, may, except to the extent otherwise required by law enter into certain amendments of this Agreement on behalf of the City as long as any such amendment does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions, or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) monetary contributions by Developer, and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. For purposes of this Section, the term substantially affect shall be evaluated in context of the entire project.	Not Applicable (at this time)		
70 b	Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, whether done administratively or not, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by both parties.	Not Applicable (at this time)		
71 c	Amendment Limitations. In consideration of the cope of the benefits to City set forth in this Agreement, any amendment to this Agreement shall only be subject to such new terms and conditions including new exactions or other obligations as are reasonably related to the impacts on City directly attributable to such amendment,	Not Applicable (at this time)		
72  Article VII: Assignment, Transfer, and Notice				
73 8.01	Assignment of Interests, Rights and Obligations. Developer may transfer or assign all or any portion of its interests, rights, or obligations under this Agreement, the Project Approvals, or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including without limitation, purchasers or ground lessees of lots, parcels, or facilities.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.	
74  8.02	Transfer Agreements.			

	Primary Column	Column2	Status	Notes	Action Items?
75	a	In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a "Non-Assuming Transferee", Developer and the transferee shall enter into a written agreement regarding the respective interests rights, and obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations (ii) transfer to the transferee vested rights to improve that portion of the Project beign transferred and (iii) address ant other matter deemed by developer to be necessary or appropriate in connection with the transfer or assignment.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.	
76	b	Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City's prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within 30 days of a written request by Developer for City's consent shall be deemed City's approval of the Transfer Agreement in question. City may refuse to give its consent only id, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable determination be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent to a proposed transferee pursuant to this Section 8.02b if such transferee has a net worth of at least Ten Million Dollars documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa County, Developer shall automatically be released from those obligations assumed by the transferee therein.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.	
77	c	Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.	
78	8.03	Non-Assuming Transferees. Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with (i) any single residential parcel conveyed to a purchaser, (ii) any property transferred as fewer than 10 lots to a single retail builder, or (iii) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school, or other nonresidential uses. The transferee in such a transaction and its successors shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this section shall exempt any property transferred to Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.	
79	8.04	Notice of Compliance Generally. Subject to the City's finding that the facts contemplated by clauses (i) through (iii) herein are true and accurate, within 30 days following any written request which Developer may make from time to time, City shall execute and deliver to Developer a written "Notice of Compliance" in recordable form, duly executed and acknowledged by the City, that certifies that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default and (iii) any other information reasonably requested by Developer. City's failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.	
80	 Article IX: Cooperation in the Event of Legal Challenge				
81	 9.01	Cooperation.			
82	a	Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorney's fees expended by city in defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein.	Compliant to date	There has been no need to exercise this provision of the agreement.	
83	b	Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.	Compliant to date.	There has been no need to exercise this provision of the agreement.	

	Primary Column	Column2	Status	Notes	Action Items?
84	c	The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any provision of this Agreement, or the Agreement as a whole, is invalidated rendered null, or set aside by a court of competent jurisdiction, the parties agree to the bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
85	 9.02	Cure; Reapproval			
86	 a	If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgement in such action or proceeding, the parties agree to use their respective best efforts to sustain or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise:	Compliant to date.	There has been no need to exercise this provision of the agreement	
87	i	If any Judgement requires reconsideration or consideration by the City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgement invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgement or upon which the Judgement is based in a manner consistent with the intent of this Agreement and the Judgement. Upon the parties cure of such Deficiencies, City shall then take steps consistent with the Judgement necessary readopt or reenact this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof.	Compliant to date.	There has been no need to exercise this provision of the agreement	
88	ii	Acting in a manner consistent with the intent of this Agreement or a Judgement includes, but is not limited to, recognizing that the parties intent hat Developer may develop a 415 single-family residential unit project, and adopting such ordinances, resolutions, and other enactments, including by not limited to, a general plan amendment, rezoning, vesting subdivision map approvals development plan approvals, PD plan approvals, design review, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificate of occupancy, final development plans, development agreements, permits, resubdivisions, and ant amendments to, or repealing of, any of the foregoing as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgement.	Compliant to date.	There has been no need to exercise this provision of the agreement	
89	b	The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.02, which shall survive such invalidation, nullification or setting aside.	Compliant to date.	There has been no need to exercise this provision of the agreement	
90	 Article X: Defaults; Remedies; Termination				
91	10.01	Defaults. Defaults. Any failure by either party to perform any term or provision of this Agreement, which failure continued uncured for a period of 30 days following written notice of such failure from the other party, shall constitute a default under this Agreement. The Complaining Party's notice shall specify the nature of the alleged failure and, may specify the manner in which the failure and, may specify the manner in which the failure satisfactorily may be cured By the other party. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot be reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than 30 days after the Defaulting Party's receipt of the Default Notice), the Defaulting party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30-day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within 120 days after the Notice of Default is given. Complaining Party shall not send notice to any third party, including, but not limited to, bonding and surety companies, until such time as the cure opportunities set forth above have expired unless otherwise required by applicable law. Upon the occurrence of a default under this Agreement, the Complaining Party may institute legal proceedings to enforce the terms of this Agreement, or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party shall take no further action.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.01.	

	Primary Column	Column2	Status	Notes	Action Items?
92	10.02	Termination. If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. As used herein, a finding of materiality shall be based on the effect of the default in relation to the size and scope of the Project. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated 60 days thereafter; provided, however, that if Developer files an action to challenge City's termination of this Agreement within such 60-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.02.	
93	 10.03	Periodic Review.	See Comments/Action Items	The City has conducted its first Annual Review of the Development Agreement. As of December 31, 2022, both parties were compliant with the DA.	
94	a	Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every 12 months following the execution of this Agreement , City shall review the extend of good-faith compliance by Developer with the terms of this Agreement. This review shall be conducted by the City Manager or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code 65865.1. Developer also agrees to pay City annually the greater of \$5000 or the actual cost of Periodic Review Fee (not to exceed \$10,000). The \$5,000 shall be increased annually thereafter by the CPI for the San Francisco-Oakland Area, with the first increase implemented in January 2017 reflecting 2016 increases. Such Periodic Review Fee shall only be paid in the years in which a Periodic Review is actually conducted.	Compliant to date.		
95	b	Notice. At least 10 days prior to the Periodic Review, and in the manner prescribed in Article 12 of this Agreement, City shall deposit in the mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer's performance hereunder. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Such response shall be made to the City Manager.	See Comments/Action Items	Notice of the Annual Review will be given to the Developer on/or before April 21, 2022.	
96	c	Good Faith Compliance. During the Periodic Review, the City Manager shall review Developer's good faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that the Developer has not complied wit such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally Developer and City.	Compliant to date.		
97	d	Failure to Properly Conduct Periodic Review. If, after 30 days following Developer's notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.	Compliant to date.		
98	e	Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within 30 days, following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.	See Comments/Action Items	Written Notice of Compliance will be sent to the Developer upon conclusion of the Annual Review.	
99	10.04	Default by City or Developer. In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law.	See Comments/Action Items	As of December 31, 2022 there has been no need to exercise the provisions of Section 10.04.	
100	10.05	Excusable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer's actions or inactions and beyond Developer's control. Upon the properly noticed request of either party hereto, as required by Section 12.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay or longer, as may be mutually agreed upon in writing.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.05.	

	Primary Column	Column2	Status	Notes	Action Items?
101	10.06	Legal Action. 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, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.06.	
102	10.07	California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Compliant		
103	10.08	Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of the process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session or 90 days of filing the written request of mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provision of this Section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees, and expenses to be paid by the party against whom enforcement is ordered. Nothing in this Section shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters begin addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.08.	
104	10.09	Attorney's Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorney's fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.	Not Applicable		
105	Article XI: No Agency, Joint Venture or Partnerships				
106		It is specifically understood and agreed to by and between the parties hereto unless otherwise expressly provided herein (i) the subject development is a private development; (ii) City have no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document between City and Developer. City agrees that nothing herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer. City agrees that Developer's obligations under this Agreement related to the construction of Project water, sewer, and drainage infrastructure improvements, the grading and construction of traffic improvements and the grading and construction of any other public improvements are all public works of improvement City is requiring as a condition of regulatory approval of the Project and that the Project is otherwise private development. The City further agrees that it will contribute no more money, or the equivalent of money, to the overall Project than is required to construct the Public Improvements and that City maintain no proprietary interest in the overall Project.	Compliant to date.		
107	Article XII: Miscellaneous				
108	12.01	Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.	Not Applicable		
109	12.02	Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this agreement shall be enforceable by party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or an other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by the City that changes, alters, or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement shall prevail.	Not Applicable		
110	12.03	Finding. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.	Not Applicable		

	Primary Column	Column2	Status	Notes	Action Items?
111	12.04	Severability. If any term or provision of this Agreement or the application of any term or provision of this Agreement to a particular situation, is held by a competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination the other party.	Not Applicable		
112	12.05	Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Not Applicable		
113	12.06	Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval, or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.	Not Applicable		
114	12.07	Other Misc Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.	Not Applicable		
115	12.08	Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil code 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.	Not Applicable		
116	12.09	Notices. Any notice or communication required hereunder between City or Developer must be in writing and may be given either personally, by fax (with original forwarded by regular US mail), by registered or certified mail (return receipt requested), or by FedEx or or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday or Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or b) 5 days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the US mail. If given by Federal Express or a similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving 10 days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below.....	Not Applicable		
117	12.10.	Entire Agreement, Counterparts, and Exhibits. This Agreement is executed in two duplicate counterparts, each of which is deemed to be an original. This Agreement consists of 29 pages and 3 exhibits which constitute in full, the final and exclusive understanding and agreement of the parties supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of any provisions of the Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes: Exhibit A - Legal Description; Exhibit A-1 - Project Site Diagram; Exhibit B - Applicable Fees; Exhibit C - Form of Affordable Housing Agreement.	Not Applicable		
118	12.11	Recordation of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.	See Comments/Action Items	The DA was recorded at the Contra Costa County Clerk-Recorder on July 26, 2017 (DOC 2017-0133911-00)	

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Montreux Subdivision)
Development Agreement)
Between The City of Pittsburg and)
Altec Homes Inc. and Determination as)
To Compliance With Development)
Agreement)

RESOLUTION NO. 23-

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, a Development Agreement between the City of Pittsburg and Altec Homes, Inc., was executed on December 15, 2015, for the Montreux Property; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DAs") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Montreux Development Agreement was conducted, and on December 21, 2020, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and City Staff, as well as the information contained in the "Montreux DA – 2022 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Montreux Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Montreux Subdivision Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

Section 5. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 1st day of May, 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit 1 - Montreux DA - 2022 Annual Review Summary Table



DA Section	Condition/Requirement	Status	Comments	Action Items
1 Article II: Effective Date; Term				
2 2.01	This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective.	Per the Development Agreement, the effective date is December 16, 2015.		No action.
3 2.02	Term. The term of this Agreement shall commence upon the Effective Date and continue for a period of 16 years.	Based on the effective date of December 16, 2015, this development agreement would expire in 2031.		No action.
4 Article III: Obligations of Developer				
5 3.01	Obligations of Developer Generally. The parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer's agreement to perform and abide by its long term covenants and obligations, as set forth herein. The parties acknowledge that many of Developer's long term obligations set forth in this Agreement are in addition to Developer's agreement to perform all the mitigation measures identified in the Mitigation Monitoring Program. As material consideration for the long term assurances and vested rights provided by this Agreement and as a condition of approval to one or more of the Project Approvals, Developer agrees to each of the following:	Compliant to date.		No action.
6 3.02	Drainage Improvements. Subject to the terms of this Agreement, as a condition of approval to one or more of the Project Approvals, Developer agrees to construct and offer for dedication to the City those Project storm water drainage improvements to be located within City's boundaries and required to serve the Project Site ("Drainage Improvements"). The City shall accept the offer of dedication of the Drainage Improvements, as long as the Drainage Improvements comply with the City's standards, applicable rules and regulations, and this Agreement. The parties agree that the construction of the Drainage Improvements shall be phased according to a construction schedule determined by Developer, subject to the written approval of the City Manager. City shall not require any improvements to onsite or offsite drainage facilities to address pre-existing deficiencies provided that Developer demonstrates to City's reasonable satisfaction that impact to downstream facilities are not being exacerbated.	Not applicable at this time.	Not yet submitted.	Construct and offer for dedication stormwater drainage improvements in compliance w City standards.
7 3.03	Facility Reserve Charges. Developer agrees to pay City's Facility Reserve Charges ("FRC") as set or modified by the City Council from time to time.	Not applicable at this time.	FRC's may be impacted based on final outcome of water & sewer. Due when submitting to Building.	Pay FRCs.
8 3.04	Water Infrastructure. Developer shall comply with the 2015 Water System Master Plan, as amended. Developer shall have the option, subject to the written approval by the City Manager, to provide water infrastructure facilities as specified by the City or to construct the water infrastructure facilities in phases subject to a storage requirement and site analysis study, commissioned by the City, that incorporates the water infrastructure requirements pursuant to the 2015 Water System Master Plan, as amended.	Not applicable at this time.	Not yet submitted. The City already provided them our consultant's options for the waterline tie in. Discovery doesn't think it's possible to install the waterline north of the Kirker Creek Apartments. So we told them to pothole on Buchanan Road and figure out an alternate design, so we're waiting on their response. They also still have to submit plans for the pump station and water reservoir, and complete supplemental geotechnical analyses.	Provide water infrastructure facilities, or construct them in phases.
9 3.05	School Facilities Impact Mitigation. Developer shall pay in lieu school impact fees in accordance with Government Code 65995 et seq. Compliance with this section shall satisfy all of Developer's obligations required by City to mitigate school impacts resulting from the Project.	Not applicable at this time.	Due when submitting to Building.	Pay in lieu school impact fees.
10 3.06	Applicable Fees. City may levy development fees, and charges during this term of this Agreement relative to the development of the Project Site which are in force and effect as of the Effective Date as more particularly described and according to the payment schedule set force on Exhibit B ("Applicable Fees") and the adjustments and/or modifications referenced in Section 3.07. Unless otherwise provided in this Agreement, no development fees, or charges, or categories thereof, shall be imposed on Project other than those fees, and charges identified as Applicable Fees on Exhibit B, which exhibit shall exclusively govern the Applicable Fee payment schedule. The parties agree that any and all Project development fees, charges or exaction related to schools, fire prevention, water, sewer, stormwater, and storm drainage facilities, which are to be paid by Developer directly or indirectly to third party governmental agencies, are not subject to or within the scope of this Agreement whether such third party charges exist or are subsequently imposed by such third parties, whether directly upon Developer or through City. This provision shall not be construed to benefit any Non-Assuming Transferees, as such term is defined in herein.	Not Applicable at this time.		

DA Section	Condition/Requirement	Status	Comments	Action Items
3.07	Applicable Fee Adjustments. Developer shall pay fees and charges consistent with Section 3.06, and the applicable adjustments currently provided in such fees and as modified from time to time by the City, whether such adjustment or modification is an increase or a decrease. City retains the right to modify, amend, or adjust the Applicable Fees by more than that authorized by ordinances, resolutions, or policies in place at the time of this Agreement's Effective Date, and Developer retains the right to challenge the imposition of any new fees not referenced in this Agreement or the modification, amendment, or adjustment of all Applicable Fees pursuant to Government Code 66000 et seq., not already authorized by ordinances, resolutions, or policies in place at the time of this Agreement's Effective Date. Should the City Council approve a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option at its sole discretion to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Not Applicable at this time.		
3.08	City Local Traffic Mitigation Fee. Developer shall pay the City Local Traffic Mitigation Fee, which fee is necessary to finance unmet City traffic improvement needs in the amount in effect as of the Effective Date and subject to adjustments in accordance with Resolution 07-10917 with credit for certain improvements constructed by Developer per Section 4.05 below. If the City Council approves a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Not Applicable at this time.	Due when submitting to Building.	Pay local Traffic Mitigation Fee.
3.09	Regional Traffic Fee. Developer shall pay the ECCRFA regional traffic fee should it be imposed by the City in an amount equal to or less than the amount paid by projects in the Cities of Antioch, Brentwood, and Oakley or in accordance with the existing valid MOU dated June 29, 2010 as amended, whichever is less.	Not Applicable at this time.	Due when submitting to Building.	Pay ECCRFA regional traffic fee.
3.10.	Fees, Assessments, and/or Taxes to be Paid by Developer. Developer agrees to pay its fair share of any levies imposed by any assessment district, geologic hazard abatement district, landscaping and lighting district, community facilities district, tax-exempt financing mechanisms or other funding mechanisms related to public safety; traffic; sewer; water; fire; the prevention, mitigation, abatement, or control of geologic hazards; or other infrastructure improvements (including without limitation, design, acquisition, construction and maintenance costs) (collectively, Funding Mechanisms) within the Project Site, provided that such Funding Mechanism is referenced herein and/or was legally created pursuant to applicable law.	Not Applicable at this time.		Pay fair share of levies imposed by assessment districts.
 3.11	Affordable Housing. Developer shall comply with PMC 18.86.080 and VTM Condition of Approval No. 7 by constructing at least 35 rental secondary units within the Project. A covenant shall be recorded limiting the amount of rent that may be charged for these secondary units, consistent with the terms and conditions set forth in the affordable housing agreement. 26 of these units shall be constructed no later than the 263rd building permit for the Project. Prior to the City's issuance of the first certificate of occupancy Developer agrees to enter into an affordable housing agreement with the City (the "Affordable Housing Agreement," attached as Exhibit C) which further memorializes the provisions of this section and is consistent with applicable law, including Pittsburg Municipal Code Chapter 18.50. Developer agrees that the secondary units referenced in this section shall not be built or otherwise allowed on adjoining lots without the prior written approval of the City Manager.	Not applicable at this time.	Plans not yet submitted.	Construct 35 rental secondary units (26 by 263rd building permit). Record covenant limiting rent amount. Enter into Affordable Housing Agreement before Certificate of Occupancy issued.
a	Timing. The Affordable Housing Agreement shall establish provisions to implement the affordable housing requirements within this Agreement and shall include but not be limited to, implementation and monitoring provisions to ensure compliance with municipal law related to affordable housing. The agreement shall include provisions for the reasonable reimbursement of costs to the City for the administration and monitoring of the agreement.	Not applicable at this time.		Implement and monitor provisions to ensure compliance with municipal law related to affordable housing. Include provisions to reimburse City for cost of administration and monitoring.
b	Inclusionary Housing Ordinance. Notwithstanding any provision of this Agreement, in the event that the City has rescinded its respective previously adopted affordable housing ordinance and not replaced it with another affordable housing or similar ordinance, or such ordinance has been declared illegal, Developer shall not be obligated to comply with the provisions for affordable housing set forth in this Agreement. In the event, prior to or during the development of the Project, the City amends or replaces or eliminates its affordable housing ordinance which would result in a reduction in the number of secondary units required to be constructed in the Project or elimination of the requirement.	Not applicable at this time.	Only applicable if City rescinds previously adopted affordable housing ordinance and not replaced it.	
3.12	Pre-payment for James Donlon Extension. Developer will pre-pay the City regional traffic mitigation fees for all units in the Project if at the time of the issuance of the first building permit for the Property for the first single-family residential production unit (or at any time during the build-out of the Project thereafter), the James Donlon Extension is either (i) under construction; (ii) is funded and scheduled for construction and the construction contract is awarded; or (iii) ECCRFFA has collected the funds necessary for its pro rate share of the James Donlon Extension. If none of the above conditions exist at the time of issuance of the first building permit, Developer will pay such fees on a permit-by-permit basis in the regular course of business. City and Developer agree that the obligations set forth in the March 15, 2006 Memorandum of Understanding ("March 2006 MOU") between City and Developer are met by compliance with this Section.	Not applicable at this time.	Applicable if/when the James Donlon Extension is either (i) under construction; (ii) is funded and scheduled for construction and the construction contract is awarded; or (iii) ECCRFFA has collected the funds necessary for its pro rate share of the James Donlon Extension	Pay the City regional traffic mitigation fees.

	DA Section	Condition/Requirement	Status	Comments	Action Items
19	3.13	Open Space Mitigation. City and Developer agree that the obligations set forth in the May 3, 2006, Memorandum of Understanding between City and Developer, Albert D. Seeno, III and Albert D Seeno, Jr. with respect to open space mitigation can be met by compliance by Developer with the HCP or through other agreements or approvals by the HCP conservancy and/or Regulatory Agencies.	Compliant to date.		No action.
20	 3.14	Security Improvements			
21	a	Developer shall pay to the City the actual cost incurred by the City (not to exceed \$75000) towards funding the acquisition and installation of security camera(s) at the intersection of James Donlon Extension and Kirker Pass Road. The security cameras will be installed under the supervision of the City's Police Chief. Developer shall pay such costs within 30 days of receipt of invoice.	Not applicable at this time.		Pay cost of installing security cameras at intersection of James Donlon Extension and Kirker Pass Road.
22	b	Developer shall install basic home security wiring in the Project homes (defined herein as wiring for basic home security system on the first floor windows and doors only). Developer shall offer one year of professional monitoring service to new homeowners. The monitoring service shall be at the election of the new homeowner.	Not applicable at this time.		Install basic home security wiring on first floor windows and doors. Offer one year of professional monitoring service.
23	3.15	Solar Roof System. Developer shall install a solar roof system on one of its model homes for example purposes only (which may consist of a few panels with photovoltaic compatibility or other comparable technologies) and offer solar installation as an option at the homeowner's expense.	Not applicable at this time.		Install solar roof system on one model home.
24	3.16	C.3 Facilities. Developer shall submit a complete Stormwater Control Plan and Report for the Project. The C.3 treatment facilities shall be adequately sized to treat the stormwater runoff from the associated drainage management areas, and supporting calculations and plans shall be submitted to the Engineering Division for review prior to issuance of a grading permit. In the event it is discovered that the runoff cannot be treated on site, the developer shall treat the remaining portion of runoff or all of the equivalent amount of runoff at an off-site facility adequately sized and designed to meet the treatment and flow control needs. The offsite facility(ties) shall be constructed with the first phase of the project, as approved by the City Engineer.	Not applicable at this time.	Will be a separate phase.	Submit C.3 Plan. They also still have to submit plans for the pump station and water reservoir, and complete supplemental geotechnical analyses.
25	 Article IV: Obligations of City				
26	4.01	Obligations of City Generally. The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.	Compliant to date.		No action.
27	4.02	Processing of Annexation and Central Valley Project Inclusion. City shall promptly, in cooperation with Developer, process all documents necessary to achieve annexation of the Property to the City, CCWD, and Delta Diablo and inclusion into the Central Valley Project area.	Compliant.	LAFCO's Certificate of Completion effective date April 17, 2017.	Annex property to City, CCWD, Delta Diablo, and Central Valley Project Area.
28	 4.03	Availability of Public Services.			
29	a	General. To the extent permitted by law and consistent with its authority, City shall reserve such capacity for water services as may be necessary to serve the Project. This reservation of water infrastructure capacity shall be assured for the Term to the extent consistent with applicable law.	Not applicable at this time.		City shall reserve capacity for water services for project.
30	b	Construction Water. City shall make construction water available to the Project by permitting the Project to hook up to existing City water supply infrastructure, at a location reasonably determined by the City, at Developer's cost and on those terms and conditions and charges customarily applied by City to similar projects consistent with City standards. City shall also permit Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer's use in any and all Project grading and construction operations, as long as such water is unrelated to potable use.	Not applicable at this time.	Discovery doesn't think it's possible to install the waterline north of the Kirker Creek Apartments. So we told them to pothole on Buchanan Road and figure out an alternate design, so we're waiting on their response. They also still have to submit plans for the pump station and water reservoir, and complete supplemental geotechnical analyses.	City shall permit water hook ups to existing water supply infrastructure.
31	4.04	Developer's Right to Rebuild. City agrees that Developer, in Developer sole's discretion, may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, acts of God, acts of terrorism, or damage to work in progress by reason of fire, floods, or other casualties. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA and this Agreement.	Not applicable at this time.		Can rebuild in within term.
32	 4.05	Reimbursement of Infrastructure Costs.			

	DA Section	Condition/Requirement	Status	Comments	Action Items
33	a	Reimbursement. Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, the off-site water tank, pump station, sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project's fair share obligation for such infrastructure, City shall reimburse developer for City's portion of such costs, subject to the City's prior verification through inspection and construction that is subject to such reimbursement and upon final acceptance of the infrastructure by the City. This reimbursement shall be paid within 60 days after City's final acceptance or at any such other time as mutually agreed upon in writing by the parties. Developer shall be entitled to a management fee of 5% for City's share of approved infrastructure costs, including but not limited to design and special inspection costs. The management obligations of Developer hereunder shall include contracting and managing the construction of the infrastructure, retaining copies of records, photographs and as built for the improvement(s) as well as attending meetings and providing necessary reports as reasonably requested by City.	Not applicable at this time.		City shall reimburse Developer for City portion of costs.
34	b	City Authorization of Reimbursement. Notwithstanding any other provision of this Section or of this Agreement or VTM provisions, City shall not be responsible to reimburse or credit Developer for any costs, including as referenced in Section 4.05a herein, unless prior to Developer incurring any costs for which Developer will request reimbursement from City, Developer shall first provide written documentation as to the work to be performed, the estimated costs thereof, including a not-to-exceed cap, and such other details as reasonably requested by the City Manager and the City Manager approves the proposed costs and related work. If the City Manager fails to respond within 30 days of its receipt of such estimated costs, Developer shall provide written notice to the City Manager and to the City Engineer, if neither responds within 30 days of the City's receipt of the second request, the request shall be deemed approved. the City Manager shall have the discretion to require Developer to obtain competitive bids on any work for which Developer may request reimbursement or credit from the City where the total cost of that work is \$100,000 or more. City shall also have the opportunity to inspect any and all infrastructure during its construction, as well as to review any work product for which Developer requests reimbursement or credits. If mutually agreed by the parties in writing, any reimbursement due Developer pursuant to this Agreement may be satisfied by City in form of credits, which can actually be used by Developer to offset Developer's payment of Applicable Fees. In the event there are not enough credits to fully satisfy the reimbursement due Developer and subject to the terms of the mutual agreement between the parties referenced in the prior sentence, City shall reimburse Developer within 30 days of invoicing.	Not applicable at this time.		Before City reimburses, Developer must provide estimates to City w not-to-exceed cap before hand. Must be approved by City Manager.
35	4.06	James Donlon Extension. Developer shall be entitled to build out the Project prior to construction of the James Donlon Extension, to the extend consistent with CEQA. Developer shall design the entrances to and exits from the Project so that all entrances and exists shall reasonably integrate into the future intersection at the James Donlon Extension and Kirker Pass Rd. The City acknowledges that the construction by Developer of the intersection shall be temporary up to the catch/tie-in point as determined by the City Engineer in writing. The City shall thereafter be responsible for coordinating and removing and replacing such temporary construction at the time the permanent intersection improvements are constructed, at no further cost to Developer.	Not applicable at this time.		Can build entrances to project that will integrate to intersection at James Donlon Extension before James Donlon is constructed.
36	4.07	Park Fee Credit. Developer may receive partial park fee credit for certain trails and trail improvements constructed by Developer. Developer and City agree that the park in-lieu fee amount will be \$9.40/sq ft increased annually by the CPI for the SF-Oakland area, with the first increase implemented in Jan 2017 reflecting 2016 increases. However, if a lower fee is established by the City Council in accordance with the provisions of the Pittsburg Municipal Code, than that fee shall apply.	Not applicable at this time.		Possible partial park fee credit for certain trails and improvements constructed by Developer.
37	4.08	EBRPD Fee. Pursuant to the May 2006 MOU, Developer shall pay to the East Bay Regional Park Ditrict (EBRPD) the fee of \$2,000 upon issuance of each building permit, for the purpose of either acquiring additional public open space or for the maintenance of open space areas. Additionally, Developer shall advance up to \$300,000 in these fees to EBRPD and shall receive credit for such advance as building permits are issued. This fee shall not constitute or otherwise affect any obligations under applicable law for Developer to fund park improvements to to otherwise pay park related fees as set forth in the May 2006 MOU.	Not applicable at this time.	No Building Permits issued at this time.	Pay \$2,000 to EBRPD upon issuance of each building permit.
38	– Article V: Cooperation – Implementation				
39	– 5.01	Processing Application for Subsequent Approvals. The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions:			
40	a	Standard of Review. By adopting 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 discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law, as defined below, and are not inconsistent with the Project Approvals as set forth above and meet the intent and comply with any City adopted Designed Guidelines, as applicable. To the extend permitted by law, City shall not use its discretionary authority in considering these Subsequent Approval applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals. Developer agrees that development under this Agreement shall comply with provisions reflected in Uniform Codes (whether building, fire, plumbing, or other applicable uniform codes) which may adopted subsequent to the Effective Date of this Agreement.	Compliant to date.		No action.

	DA Section	Condition/Requirement	Status	Comments	Action Items
41	b	Basis for Denial. City may deny and application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or as is necessary to make this Subsequent Approval consistent with the Project Approvals. If City denies any application for a Subsequent Approval, City shall specify in writing the reasons for such denial and may suggest a modification which would be approved by City.	Not applicable at this time.	Subsequent approvals.	Review subsequent approvals to ensure they comply w DA.
42	5.02	Timely Submittals by Developer. Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans, and other necessary materials as set forth in Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.	Not applicable at this time.	Subsequent approvals.	
43	5.03	Timely Processing by City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, (i) providing at the Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section, Developer's reimbursement to City for such services, in accordance with standard City practice.	Not applicable at this time.	Subsequent approvals.	
44	5.04	Other Government Permits. At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request of the Developer, use its best efforts to ensure the timely availability of such permits and approvals. City shall cooperate with Developer to obtain any and all approvals from Contra Costa County related to the construction or operation of the Drainage Improvements. City shall cooperate with Developer, CCWD and the Bureau of Reclamation in all matters related to CCWD's application to the Bureau to expand the place of use of Central Valley Project water to include the Project Site.	Not applicable at this time.		Developer shall apply for permits from other entities as required.
45	 5.05	Lighting and Landscaping District, Park Maintenance.			
46	a	Developer agrees that the Project Site will be annexed into City's existing Lighting and Landscaping District, as established pursuant to City Reso No. 88-7324 as well as City's Community Facilities District 2007-1 for park maintenance, City's Community Facilities District for the maintenance of C.3 facilities as, to the extent permitted by law, that the Project shall be assessed in a manner consistent with the provisions herein.	Not applicable at this time.		Annex into Lighting and Landscaping District and Community Facilities District.
47	b	Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of parks.	Not applicable at this time.		No action.
48	5.06	GHAD. Developer agrees to take all steps necessary to either expand the existing Southwest Pittsburg Geologic Hazard Abatement District or to establish a new GHAD, at no cost to the City or to the GHAD, to provide for, among other things, geologic hazard abatement, maintenance of detention basins, grassland maintenance, fire protection, and erosion control within portions of Project Site. Unless otherwise required by law, the parties intend that the Project Site will be assessed by the SW Pittsburg GHAD or a new GHAD upon the respective GHAD's acceptance of the GHAD Area identified in the Project Approvals (which GHAD Area shall include the detention basins and C.3 storm facilities).	Not applicable at this time.		Developer will either expand the existing Southwest Pittsburg Geologic Hazard Abatement District or to establish a new GHAD.
49	5.07	Police Services CFD. Developer agrees to take all steps necessary to include the Project Site into the City's existing police services Community Facilities District 2004-1, as adopted pursuant to Reso No. 04-10071 ("The Police Services District") at no cost to the City, in order to provide for police and other emergency services to the Project site. This process shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. Each legal residential lot located on the Project Site will be required to pay the levy by the Police Services District no earlier than the issuance of a building permit for such lot.	Not applicable at this time.		Developer shall include the Project Site into the City's existing police services Community Facilities District before filing first final map. Pay levy after issuance of building permit.

	DA Section	Condition/Requirement	Status	Comments	Action Items
50	5.08	Fire Services CFD. In the event the City forms a City Community Facilities district to provide for fire protection services in the City for the Contra Costa Fire Protection District and acquisition or replacement and acquisition or replacement of equipment primarily situated in the fire stations located in the City, Developer agrees to take all steps necessary to include the Project Site into the district. This inclusion of the Project into the district shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. City agrees that the levy to be assessed on each legal residential lot in the Project shall be no greater than \$75.00 and increased annually by the CPI for the SF-Oakland area, with the first increase implemented in January 2016 reflecting 2015 increases. Each legal residential lot located on the Project Site will be required to pay the levy by for this district no earlier than the issuance of a certificate of occupancy for such lot (such levy shall not go into effect for any certificate of occupancy for such lot (such levy shall not go into effect for any certificate of occupancy issued for model homes in the Project until such model home is transferred to a third party homebuyers).	Not applicable at this time.	Include into district before filing first final map.	If the City forms a City Community Facilities district for fire protection services, the Developer will include project site into district.
51	5.09	General Plan Maintenance Fees. Developer agrees to pay development related fee to help fund the maintenance of the Pittsburg General Plan. The General Plan Maintenance Fee will be \$125.00 per building Permit.	Not applicable at this time.	No building permits issued.	Pay \$125/building permit for GP.
52	5.10.	Assessment Districts or Other Funding Mechanisms.			
53	a	City understands that City's long term assurances to Developer concerning fee, taxes, and assessments related to Project are a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay the fees, the taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts or other Funding Mechanisms, as defined in Section 3.10 of this agreement, covering all or any portion of the Project site. Notwithstanding the foregoing, Developer retains all its rights to oppose the formation or proposed assessment of any new assessment district, Funding Mechanism, or any and all increases thereto, or to request or pursue assessment credits or reductions, unless otherwise provided for herein or unless such assessment, Funding Mechanism, or related increases are in place and legally effective as of the date of this Agreement's Effective Date.	Not applicable at this time.	Only applicable in event of formation of new assessment districts.	
54	b	At the request of Developer, City shall cooperate in the formation of, or annexation to, those assessment districts, geologic hazard abatement district, landscaping and lighting districts, community facilities district, tax-exempt financing mechanisms, or other Funding Mechanisms that Developer and City determine are needed to fund infrastructure improvements and to ensure the orderly development of the Project, at no cost to the City. City shall diligently and expeditiously process applications by Developer necessary to establish such Funding Mechanisms as long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City and which will result in no commitment of City funds. City shall diligently seek to sell any bonds to be issues and secured by such assessments upon the best terms reasonably available in the marketplace. Any and all costs associated with this Section shall be borne and/or advanced by Developer.	Not applicable at this time.	Only applicable in event of formation of new assessment districts.	
55	5.11	Warranty Bonds. Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property, or open space dedications) pursuant to this Agreement shall be accompanied by a one year warranty bond in a form and in an amount, and with a surety acceptable to City or otherwise as determined in the applicable Subdivision Improvement Agreement.	Not applicable at this time.		One year warranty bond for infrastructure improvements dedicated to City.
56	 Article VI: Standards, Laws, Procedures Governing the Project				
57	6.01	Vested Right to Develop. Developer shall have a vested right to develop the Project on the Project site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.	Compliant to date.		
58	6.02	Permitted Uses Vested by This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the max height, bulk, and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.	Compliant to date.		
59	6.03	Applicable Law. Applicable Law shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approval, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying new rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.	Compliant to date.		

DA Section	Condition/Requirement	Status	Comments	Action Items
60	6.04	Uniform Codes. Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City's then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limited construction of all or any part of the Project.	Not applicable at this time.	
61	6.05	Moratorium And Conflicting Enactments. To the extent consistent with State Law, if any ordinance, resolution, or other measure in enacted, whether by action of the City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution, or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.	Not applicable at this time.	
62	6.06	Environmental Mitigation. The parties understand that the EIR for the Project is a project level CEQA document intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with the CEQA policies and requirements applicable to the EIR, City agrees to use the EIR in connection with the processing of any Subsequent Approval to the extend allowed by law. City agrees not to impose on Developer any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the Mitigation Monitoring Program described in the FEIR, specifically required by Applicable Law, or as properly required through the design or architecture review process as long as such mitigation measures or other conditions are imposed in a manner consistent with applicable design review guidelines.	Compliant to date	
63	6.07	Life of Subdivision Maps, Development Approvals, and Permits. To the extend consistent with Applicable Law, the term of any subdivision map or any other map, permit, rezoning, or other land use entitlement approved as a Project Approval or a Subsequent Approval shall not include any period of time during which any applicable development moratorium (including, but not limited to, a water or sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits, or delays the construction of the Project. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable court order or other legal requirement prevents the processing of any Subsequent Approval or any Project development activities.	Not applicable at this time.	
64	6.08	State and Federal Law. As provided in California government Code 65869.5, if any state or federal laws or regulations, enacted after this Agreement's Effective Date prevent or preclude compliance with one or more provisions of this Agreement ("Changes in the Law"), such provision of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article V and Section 10.05. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically required by State or Federal laws and regulations.	Not applicable at this time.	
65	 6.09	Timing of Project Construction and Completion.		
66	a	Project Phasing. The Project is expected to be built in phases in response to then-existing market conditions over the Term of the Agreement. Except as otherwise specifically provided by this Agreement with respect to Project infrastructure timing, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular time period, and City shall not impose such a requirement on any Project Approval. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market demand, interest rates, competition, and other similar factors.	Compliant to date.	
67	 b	The parties agree that the Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time and Developer shall determine which part of the Project Site to develop first and at Developer's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in Pardee Construction Co v City of Camarillo, that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgement. Developer's rights under this Section 6.09b shall be subject to the requirement that adequate infrastructure to service each phase of the Project is constructed concurrently with such phase. the City Manager shall reasonably determine what infrastructure will be required to serve each phase of the Project, which determination shall be consistent with Applicable law.	Compliant to date.	
68	c	Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.	Compliant to date.	

DA Section	Condition/Requirement	Status	Comments	Action Items
6.10.	Exempting Fees, Mitigation Measures and Similar Requirements Imposed by Outside Agencies. Notwithstanding any other provision of this Agreement, the City agrees to exclude Developer from any and all discretionary collection agreements regarding fees, mitigation measures and similar requirements including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or on the Project Site after the Effective Date through the Term of this Agreement. This Section shall not prohibit the City from imposing on Developer any fee, mitigation measure, or similar requirement or obligation that is required by a local or regional agency in accordance with local, regional, State, or Federal obligations and implemented by the City in cooperation with such local, regional, state, federal agencies, provided such fee, mitigation measure, or similar requirement or obligation is imposed in a similar manner on similarly situated properties within the City as, for example, stormwater related C.3 requirements and increases thereto.	Compliant to date.		
6.11	City's Joint-Inspection Jurisdiction. Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.	Compliant to date.		
 Article VII: Amendment				
 7.01	Amendment to Project Approvals, Subsequent Approvals. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:			
a	Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City Manager or his/her designee shall determine (i) whether the requested amendment or modification is minor when considered in light of the project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable uniform codes, and State or Federal Law. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire project, consistent with this Agreement and Applicable Law, and will result in no new significant environmental impacts not addressed and mitigated in the EIR, the amendment shall be determined to be an Administrative Project Amendment and the City Manager or his/her designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale, or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, minor variations in lot layout, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.	Not applicable at this time.		City to review any requested amendments.
b	Non Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.	Not applicable at this time.		Amendments to be reviewed.
 7.02	Amendment of this Agreement. This Agreement may be amended from time to time in whole or in part by mutual written content of the parties hereto or their successors in interest as follows:			
a	The City Manager or his/her designee may, except to the extent otherwise required by law, enter into certain amendments of this Agreement on behalf of the City as long as any such amendment does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height of size of proposed buildings or (vi) monetary contributions by Developer, and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. For purposes of this Section, the term substantially affect shall be evaluated in context of the entire project.	Not applicable at this time.		
b	Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, whether done administratively or not, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by both parties.	Not applicable at this time.		
c	Amendment Limitations. In consideration of the cope of the benefits to City set forth in this Agreement, any amendment to this Agreement shall only be subject to such new terms and conditions including new exactions or other obligations as are reasonably related to the impacts on City directly attributable to such amendment.	Not applicable at this time.		
 Article VIII: Assignment, Transfer, and Notice				
8.01	Assignment of Interests, Rights and Obligations. Developer may transfer or assign all or any portion of its interests, rights, or obligations under this Agreement, the Project Approvals, or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including without limitation, purchasers or ground lessees of lots, parcels, or facilities.			
 8.02	Transfer Agreements.			

DA Section	Condition/Requirement	Status	Comments	Action Items
82	a	In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a "Non-Assuming Transferee", Developer and the transferee shall enter into a written agreement regarding the respective interests rights, and obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred and (iii) address ant other matter deemed by developer to be necessary or appropriate in connection with the transfer or assignment.		
83	b	Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City's prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within 30 days of a written request by Developer for City's consent shall be deemed City's approval of the Transfer Agreement in question. City may refuse to give its consent only id, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable determination be able to perform the obligations proposed to be assumed by such trasnferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent ot a proposed transferee pursuant to this Section 8.02b if such transferee has a net worth of at least Ten Million Dollars documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa Countu, Developer shall automatically be released from those obligations assumed by the transferee therein.		
84	c	Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.		
85	8.03	Non-Assuming Transferees. Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with (i) any single residential parcel conveyed to a purchaser, (ii) any property transferred as fewer than 10 lots to a single retail builder, or (iii) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school, or other nonresidential uses. The transferee in such a transaction and its successors shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this section shall exempt any property transferred to Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.		
86	8.04	Notice of Compliance Generally. Subject to the City's finding that the facts contemplated by clauses (i) through (iii) herein are true and accurate, within 30 days following any written request which Developer may make from time to time, City shall execute and deliver to Developer a written "Notice of Compliance" in recordable form, duly executed and acknowledged by the City, that certifies that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default and (iii) any other information reasonably requested by Developer. City's failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.		
87	 Article IX: Cooperation in the Event of Legal Challenge			
88	 9.01	Cooperation		
89	a	Developer agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal, or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to all court costs and attorney's fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein.		
90	b	Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.		

DA Section		Condition/Requirement	Status	Comments	Action Items
91	c	The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any provision of this Agreement, or the Agreement as a whole, is invalidated rendered null, or set aside by a court of competent jurisdiction, the parties agree to the bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.	Compliant to date.		No action.
92	 9.02	Cure; Reapproval.			
93	 a	If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgement in such action or proceeding, the parties agree to use their respective best efforts to sustain or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise:	Not applicable at this time.		
94	i	If any Judgement requires reconsideration or consideration by the City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgement invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgement or upon which the Judgement is based in a manner consistent with the intent of this Agreement and the Judgement. Upon the parties cure of such Deficiencies, City shall then take steps consistent with the Judgement necessary readopt or reenact this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof.	Not applicable at this time.		
95	ii	Acting in a manner consistent with the intent of this Agreement or a Judgement includes, but is not limited to, recognizing that the parties intent that Developer may develop a 351 single-family residential unit project, and adopting such ordinances, resolutions, and other enactments, including by not limited to, a general plan amendment, rezoning, vesting subdivision map approvals development plan approvals, PD plan approvals, design review, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificate of occupancy, final development plans, development agreements, permits, resubdivisions, and any amendments to, or repealing of, any of the foregoing as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgement.	Not applicable at this time.		
96	b	The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.02, which shall survive such invalidation, nullification or setting aside.	Compliant to date.		No action.
97	 Article X: Defaults; Remedies; Termination				
98	10.01	Defaults. Any failure by either party to perform any term or provision of this Agreement, which failure continued uncured for a period of 30 days following written notice of such failure from the other party, shall constitute a default under this Agreement. The Complaining Party's notice shall specify the nature of the alleged failure and, may specify the manner in which the failure and, may specify the manner in which the failure satisfactorily may be cured By the other party. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot be reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than 30 days after the Defaulting Party's receipt of the Default Notice), the Defaulting party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30-day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within 120 days after the Notice of Default is given. Complaining Party shall not send notice to any third party, including, but not limited to, bonding and surety companies, until such time as the cure opportunities set forth above have expired unless otherwise required by applicable law. Upon the occurrence of a default under this Agreement, the Complaining Party may institute legal proceedings to enforce the terms of this Agreement, or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party shall take no further action.	Not applicable at this time.		

	DA Section	Condition/Requirement	Status	Comments	Action Items
99	10.02	Termination. If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. As used herein, a finding of materiality shall be based on the effect of the default in relation to the size and scope of the Project. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated 60 days thereafter; provided, however, that if Developer files an action to challenge City's termination of this Agreement within such 60-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).	Not applicable at this time.		
100	 10.03	Periodic Review.			
101	a	Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every 12 months following the execution of this Agreement , City shall review the extend of good-faith compliance by Developer with the terms of this Agreement. This review shall be conducted by the City Manager or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code 65865.1. Developer also agrees to pay City annually the greater of \$5000 or the actual cost of Periodic Review Fee (not to exceed \$10,000). The \$5,000 shall be increased annually thereafter by the CPI for the San Francisco-Oakland Area, with the first increase implemented in January 2017 reflecting 2016 increases. Such Periodic Review Fee shall only be paid in the years in which a Periodic Review is actually conducted.		Payment request to sent . 4/21/22.	Complete DA Review annually. Developer pays City fee.
102	b	Notice. At least 10 days prior to the Periodic Review, and in the manner prescribed in Article 12 of this Agreement, City shall deposit in the mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer's performance hereunder. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Such response shall be made to the City Manager.	Compliant to date.		Send notice at least 10 days prior to 4/21/22.
103	c	Good Faith Compliance. During the Periodic Review, the City Manager shall review Developer's good faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that the Developer has not complied wit such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally Developer and City.	Compliant to date.		City Manager make written findings and determination if Developer has complied in good faith.
104	d	Failure to Properly Conduct Periodic Review. If, after 30 days following Developer's notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.	Compliant to date.		No action.
105	e	Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within 30 days, following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.	Compliant to date.		Provide developer written notice of compliance within 30 days of request.
106	10.04	Default by City or Developer. In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law.	Not applicable at this time.		
107	10.05	Excusable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer's actions or inactions and beyond Developer's control. Upon the properly noticed request of either party hereto, as required by Section 12.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay or longer, as may be mutually agreed upon in writing.	Not applicable at this time.		

	DA Section	Condition/Requirement	Status	Comments	Action Items
108	10.06	Legal Action. 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, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.	Not applicable at this time.		
109	10.07	California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Compliant to date.		Follow state law.
110	10.08	Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of the process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session or 90 days of filing the written request of mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provision of this Section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees, and expenses to be paid by the party against whom enforcement is ordered. Nothing in this Section shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters begin addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.	Not applicable at this time.		
111	10.09	Attorney's Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorney's fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.	Not applicable at this time.		
112	Article XI: No Agency, Joint Venture or Partnership				
113		It is specifically understood and agreed to by and between the parties hereto unless otherwise expressly provided herein (i) the subject development is a private development; (ii) City have no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer. The City agrees that Developer's obligations under this Agreement related to the construction of Project water, sewer and drainage infrastructure improvements, the grading and construction of traffic improvements are all public works of improvement the City is requiring as a condition of regulatory approval of the Project and that the Project is an otherwise private development. The City further agrees that it will contribute no more money, or the equivalent of money, to the overall Project than is required to construct the Public Improvements and that City maintain no proprietary interest in the overall Project.	Compliant to date.		No action.
114	Article XII: Miscellaneous				
115	12.01	Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.	Compliant to date.		No action.
116	12.02	Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this agreement shall be enforceable by party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or an other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by the City that changes, alters, or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement shall prevail.	Compliant to date.		
117	12.03	Finding. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.	Compliant to date.		No action.

	DA Section	Condition/Requirement	Status	Comments	Action Items
118	12.04	Severability. If any term or provision of this Agreement or the application of any term or provision of this Agreement to a particular situation, is held by a competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination the other party.	Not applicable at this time.		
119	12.05	Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Compliant to date.		Deliver documents as necessary.
120	12.06	Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval, or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.	Compliant to date.		No action.
121	12.07	Other Misc Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.	Compliant to date.		No action.
122	12.08	Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil code 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.	Compliant to date.		No action.
123	12.09	Notices. Any notice or communication required hereunder between City or Developer must be in writing and may be given either personally, by fax (with original forwarded by regular US mail), by registered or certified mail (return receipt requested), or by FedEx or or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday or Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or b) 5 days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the US mail. If given by Federal Express or a similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving 10 days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below. If to City, to: City Manager City of Pittsburg Civic Center 65 Civic Avenue Pittsburg, CA 94565-2830 With Copies , to: Ruthann G. Zeigler City Attorney Meyers Nave 555 Capitol Mall, Suite 1200 Sacramento, CA 95814 If to Developer, to: Albert D. Seeno, III Altec Homes, Incl. 4061 Port Chicago Hwy. Ste. H Concord, CA 94520 With Copies , to: Altec Homes, Incl. Attn: Legal Department 4021 Port Chicago Hwy. Concord, CA 94520	Compliant to date.		10 days written notice.

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DA Section	Condition/Requirement	Status	Comments	Action Items
12.10.	Entire Agreement, Counterparts, and Exhibits. This Agreement is executed in two duplicate counterparts, each of which is deemed to be an original. This Agreement consists of 32 pages and 3 exhibits which constitute in full, the final and exclusive understanding and agreement of the parties supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof, excluding the March 2006 MOU, the May 2006 MOU, and the July 2005 Faria MOU. The Parties, however, agree that to the extent Developer complies with all terms and conditions of this Development Agreement, Developer has fully met the obligations of the March 2006 MOU and Sections B, C and D of the May 2006 MOU. All waivers of any provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes: Exhibit A - Legal Description Exhibit A-1 - Project Site Diagram Exhibit B - Applicable Fees Exhibit C - Affordable Housing Agreement.	Compliant to date.		No action.
12.11	Recordation of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.	Compliant. Recorded Thursday, April 21, 2016.		Record DA.

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Columbia Solar		
Energy Development Agreement	)	
Between The City of Pittsburg and	)	RESOLUTION NO. 23-
Columbia Solar Energy LLC	)	
and Determination as to	)	
Compliance With Development	)	
Agreement	)	

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DAs") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Columbia Solar Development Agreement was conducted, and on November 18, 2019, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and City Staff, as well as the information contained in the Columbia Solar DA – 2022 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Columbia Solar Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Columbia Solar Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

Section 5. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 1st day of May 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit 1 - Columbia Solar DA 2022 Annual Review Summary Table



0	DA Section	Condition/Requirement	Department	Status
1	DA Term:			
2	Start Date	May 20, 2013	Planning	Active
3	End Date	May 20, 2033	Planning	Active
4	Length of Term	20 years	Planning	Active
5	SECTION 4: GENERAL DEVELOPMENT OF THE PROPERTY			
6	8 Section 4.01	Project development	Planning	Compliant
7	Section 4.02	Development on the project site	Planning	Compliant
8	Section 4.03(a)	Permitted Uses: Mitigated Negative Declaration	Planning	Compliant
9	Section 4.03(b)	Permitted Uses: Design Review Approval by the City	Planning	Compliant
10	Section 4.03(c)	Permitted Uses: Such other uses permitted by Agreement	Planning	Compliant
11	Section 4.04	Approvals	Planning	Compliant
12	Section 4.05	Vested right to develop	Planning and Engineering	Compliant
13	Section 4.06	Amendment to applicable ordinances	Planning	Compliant to date
14	Section 4.07	Application of new rules, regulations, and policies	Planning	City complaint to date
15	Section 4.08	Future public financing	City Manager	N/A
16	Section 4.09	Changes in Local, Regional, State and Federal Rules and Regulations	Community Development	N/A
17	SECTION 5: PERIODIC REVIEW			
18	9 Section 5.01	Annual review	Planning	City compliant to date
19	10 Section 5.02	Procedure for annual review	Planning	City compliant to date
20	Section 5.03	Notice of annual review	Planning	City compliant to date
21	Section 5.04	Good-faith compliance	Planning	Compliant to date
22	Section 5.05	Production of documents and other evidence	Planning	Compliant to date
23	Section 5.06	Cost of annual review	Planning	Compliant to date
24	SECTION 6: OBLIGATIONS OF CSE			
25	Section 6.01	General obligations	Planning	Compliant to date
26	Section 6.02	Nexus/reasonable relationship challenges	Attorney and Planning	Compliant
27	Section 6.03	Cooperation by CSE	Planning	Compliant to date
28	Section 6.04	Other governmental permits	Community Development	Compliant
29	11 Section 6.05.1	Property Taxes		
30	12 Section 6.05.2	Sales and use taxes	Planning	Compliant
31	13 Section 6.05.3	HCP/NCCP Fees	Planning	Compliant to date
32	14 Section 6.06	Mitigation Measures	Planning	Compliant to date
33	15 Section 6.07	Decommissioning	Planning	N/A
34	16 Section 6.08	Continuing obligations	Planning	Compliant
35	SECTION 7: OBLIGATIONS OF CITY			
36	17 Section 7.01(a)	Holding of all required public hearings	Planning	City compliant
37	18 Section 7.01(b)	Processing of all ministerial matters	Community Development	City compliant
38	19 Section 7.02	Fire main and PG&E line extensions	Engineering	Complaint

Comments	Action Items
CSE has obtained all necessary City approvals for rezoning, design review, and environmental review subject to CEQA.	
Development has been completed in compliance with the terms and conditions of this Agreement and the Project Description, the City's building standards, Design Review process, and applicable rules and regulations.	
City and developer compliant. Current project consistent with development envisioned in MND.	
City and developer compliant. Current project consistent with development envisioned in DR approval.	
City and developer compliant. Current project consistent with development envisioned in DA.	
City and developer compliant. Current project consistent with development envisioned in DA.	
City and developer compliant. Current project consistent with development envisioned in DA.	
No amendments to the zoning code to provide more favorable development standards have been adopted.	
No subsequent development applications have been submitted to date.	
The Columbia Solar Project was completed in 2015. The City is continuing to review the provisions on a yearly basis.	
This annual review has been prepared in accordance with the City's adopted procedures for Development Agreement Review.	
The City has provided CSE with notice of the Annual Review at least 30 days prior.	
CSE has exhibited compliance with all measures of the DA and requests for information during this process.	
CSE has exhibited compliance with all measures of the DA and requests for information during this process.	
CSE has exhibited compliance with all requirements of this Agreement to date	
CSE has exhibited compliance with all measures of the DA and requests for information during this process.	
CSE obtained all necessary permits and approvals in order to construct project	
Staff has confirmed with the Contra Costa County Tax Collector's Office that all property taxes currently due have been paid (through FY 2021-22).	
All HCP/NCCP payments due during the 2021-22 FY have been paid in full.	
See below	
Project is still operational and no decommission date has been set	
City granted an easement extension to provide for the relocation of a PG&E utility pole. Relocation was completed at CSE's expense.	

0	DA Section	Condition/Requirement	Department	Status	
39	20	Section 7.03	Approval of ministerial applications	Community Development	Compliant
40		SECTION 8: AMEDNMENTS			
41	21	Section 8.01	Major amendments	City Attorney	Compliant
42	22	Section 8.02	Minor amendments	City Attorney	Compliant
43	23	Section 8.03	Discretion of manager	City Manager	Compliant
44		SECTION 9: TRANSFERS AND ASSIGNMENTS			
45		Section 9.01	City's intent	City Attorney	Compliant
46		Section 9.02	CSE's Right to Assign or Transfer	City Attorney	Compliant
47		Section 9.03	Restriction on Assignment Does Not Constitute an Unreasonable Restraint on Alienation	City Attorney	Compliant
48		Section 9.04	Restriction on Assignment Shall Not Prevent CSE From Conveying the Project Site	City Attorney	Compliant
49		Section 9.05	Request procedure	City Attorney	Compliant
50		Section 9.06	Additional information	City Attorney	Compliant
51		Section 9.07	Approval of assignment	City Attorney	Compliant
52		Section 9.08	Notice of proposed assignment	City Attorney	Compliant
53		Section 9.09(a)	Conditions and standards: assignee or transferee possesses the experience, reputation and financial resources to cause the Project Site to be developed and maintained in the manner contemplated by the City's General Plan and this Agreement.	City Attorney	Compliant
54		Section 9.09(b)	Conditions and standards: assignee or transferee enters into a written assumption agreement, in form and content satisfactory to the City Attorney, expressly assuming and agreeing to be bound by the provisions of this Agreement.	City Attorney	Compliant
55		Section 9.09(c)	Conditions and standards: assignment or transfer will not impair the ability of City to achieve the objectives of its general Plan and this Agreement.	City Attorney	Compliant
56		Section 9.10	Financing exemption	City Attorney	Compliant
57		Section 9.11	Notice of assignment	City Attorney	Compliant
58		Section 9.12	Unapproved assignment	City Attorney	Compliant
59	25	MITIGATION MEASURES			
60	26	MM-BIO-1	Permit coverage under the ECCC HCP/NCCP	Planning	Compliant to date
61	27	MM-BIO-2	Preconstruction nesting bird surveys for protected species	Planning	Complaint
62	28	MM-HAZ-1	Compliance with DTSC Covenants	Planning	Compliant
63	29	MM-NOISE-1	Noise generating activities	Planning	Compliant
64	30	MM-NOISE-2	Stationary electrical equipment sound pressure levels	Planning	Compliant
65	31	OUTSTANDING CONDITIONS OF APPROVAL			
66	32	COA No. 3	The applicant shall submit a landscaping and irrigation plan to add landscape screening along the southwest corner of the site across from the single family residences to the south and from Central Park to the west.	Planning	Compliant
67	33	COA No. 4	All landscaping shall be maintained in good growing condition.	Planning	Compliant to date
68	34	COA No. 6	The site shall be maintained at all times in a neat and clean manner, free of trash and debris.	Planning	Compliant to date
69	35	COA No. 30	The applicant shall be supportive of the Delta Trail, as it may extend past, and in close proximity, to the solar facility.	Planning	Compliant to date
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	0	DA Section	Condition/Requirement	Department	Status
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	0	DA Section	Condition/Requirement	Department	Status
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193	159				

Comments	Action Items

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Greystone Place	)	
Development Agreement and	)	RESOLUTION NO. 23-
Determination as to Compliance	)	
<u>With Development Agreement</u>	)	

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DAs") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the Greystone Place Development Agreement was recorded in 2016, so this is the second periodic review of the agreement.

WHEREAS, the last periodic review of the Greystone Place Development Agreement was conducted, and on December 3, 2018, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Recitals

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and City Staff, as well as the information contained in the "Greystone Place DA – 2022 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Greystone Place Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Greystone Place in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

Section 5. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 1st day of May, 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit 1 - Greystone Place DA - 2022 Annual Review Summary Table



DA Section	Condition/Requirement	Status	Comments	Action Items
1 Article II - Effective Date; Term				
2 Section 2.01	Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the "Effective Date").	Not Applicable	Ordinance No. 15-1397 approving the DA was adopted on October 5, 2015	
3 Section 2.02	Term. The term of this Agreement shall commence upon the Effective Date and continue for a period of ten (10) years (the "Term").	Not Applicable	DA expires 10/5/2025	
4 Article III - Obligations of Developer				
5 Section 3.01	Obligations of Developer Generally. The parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer's agreement to perform and abide by its long term covenants and obligations, as set forth herein. As material consideration for the long term assurances and vested rights provided by this Agreement and as a condition of approval to one or more of the Project Approvals, Developer agrees to each of the following:	Not Applicable		
6 Section 3.02	Applicable Fees. City may levy development fees, and charges during the term of this Agreement relative to the development of the Project Site which are in force and effect as of the Effective Date, as more particularly described and according to the payment schedule set forth on Exhibit B ("Applicable Fees"). Unless otherwise provided in this Agreement, no development fees, or charges, or categories thereof, shall be imposed on the Project other than those fees (including categories within such fees), and charges identified as Applicable Fees on Exhibit B, which exhibit shall exclusively govern the Applicable Fee payment schedule. The parties agree that any and all Project development fees, charges or exactions related to schools, fire prevention, water, sewer, stormwater, and storm drainage facilities, which are to be paid by Developer directly to third-party governmental agencies, are not subject to or within the scope of this Agreement whether such third party charges exist or are subsequently imposed by such third parties, whether directly upon Developer or through City. This provision shall not be construed to benefit any Non-Assuming Transferees, as such term is defined in herein.	Compliant	Project has been completed and fees were collected in accordance with those set forth in Exhibit B of the DA.	
7 Section 3.03	Applicable Fee Adjustments. Developer shall pay fees and charges consistent with Section 3.02 above, and the applicable adjustments currently provided in such fees, and as modified from time to time by the City, whether such adjustment or modification is an increase or decrease. Developer retains the right to challenge the imposition of any new fees not referenced in this Agreement or the modification, amendment or adjustment of all Applicable Fees pursuant to Government Code § 66000 et seq., not already authorized by ordinances, resolutions or policies in place at the time of this Agreement's execution. Should the City Council approve a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Compliant	Project has been completed and fees were collected in accordance with those set forth in Exhibit B of the DA.	
8 Section 3.04	City Local Traffic Mitigation Fee. Developer shall pay the City Local Traffic Mitigation Fee, which fee is necessary to finance unmet City traffic improvement needs in the amount in effect as of the Effective Date and subject to adjustment in accordance with Resolution No. 07 10917 with credit for certain improvements constructed by Developer per Section 4.04 below. If the City Council approves a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Compliant	Project has been completed and the appropriate LTMF was collected.	
9 Section 3.05	Regional Traffic Fee. Developer shall pay the ECCRFA regional traffic fee should it be imposed by the City in an amount equal to or less than the amount paid by projects in the Cities of Antioch, Brentwood, and Oakley or in accordance with the existing valid MOU dated June 29, 2010, as amended, whichever is less.	Compliant	Project has been completed and the appropriate RTF was collected.	
10 Section 3.06	Fees, Assessments and/or Taxes to be Paid by Developer. Developer agrees to pay its fair share of any levies imposed by any assessment district, landscaping and lighting district, community facilities district, tax-exempt financing mechanisms, or other funding mechanisms related to public safety; traffic; sewer; water; fire; the prevention, mitigation, abatement, or control of geologic hazards; or other infrastructure improvements (including, without limitation, design, acquisition, construction and maintenance costs) (collectively, "Funding Mechanisms") within the Project Site, provided that such Funding Mechanism is referenced herein and/or was legally created pursuant to applicable law.	Compliant		
11 Section 3.07	Affordable Housing. Developer shall comply with PMC 18.86.080 and Planning Commission Resolution 9985 Condition of Approval No. 5 by constructing at least four (4) rental secondary dwelling units within the Project. A covenant shall be recorded limiting the amount of rent that may be charged for these secondary units, consistent with the terms and conditions set forth in the affordable housing agreement. Prior to the City's issuance of the first certificate of occupancy Developer agrees to enter into an affordable housing agreement with the City (the "Affordable Housing Agreement") attached as Exhibit C which further memorializes the provisions of this Section 3.07 and is consistent with applicable law, including Pittsburgh Municipal Code Chapter 18.50. Developer agrees that the secondary dwelling units referenced in this section shall not be built or otherwise allowed on adjoining lots without the prior written approval of the City Manager.	Compliant	Affordable Housing Agreements were recorded for 28, 52, 79, and 87 Greystone Place. Planning staff has confirmed construction of each secondary unit.	
12 (a)	Timing. The Affordable Housing Agreement shall establish provisions to implement the affordable housing requirements within this Agreement and shall include, but not be limited to, implementation and monitoring provisions to ensure compliance with municipal law related to affordable housing. The agreement shall include provisions for the reasonable reimbursement of costs to the City for the administration and monitoring of the agreement.	Compliant		

DA Section	Condition/Requirement	Status	Comments	Action Items
13 (b)	Inclusionary Housing Ordinance. Notwithstanding any provision of this Agreement, in the event that the City has rescinded its respective previously adopted affordable housing ordinance and not replaced it with another affordable housing or similar ordinance, or such ordinance has been declared illegal, Developer shall not be obligated to comply with the provisions for affordable housing set forth in this Agreement. In the event, prior to or during the development of the Project, the City amends or replaces or eliminates its affordable housing ordinance which would result in a reduction in the number of secondary units Developer is obligated to construct, then the Affordable Housing Agreement shall be modified to provide for an equivalent reduction in the number of secondary units required to be constructed in the Project or elimination of the requirement.	Compliant		
14 Section 3.08	C.3 Facilities. Developer shall construct the C.3 facilities offsite on land owned by the City. Should the C.3 regulations be revised in the future such that the size of the facilities may be decreased, Developer shall have the right to reduce the size of the proposed facilities subject to written approval by the City Manager and may seek entitlements to develop the eliminated property for residential uses. Developer shall also have the right to construct or participate in the funding of offsite C.3 facilities as approved by the City Manager in writing.	Compliant	Project area was annexed to CFD No. 2016-1 (Maintenance of Project Facilities) Ordinance No. 16-1404.	
15  Section 3.09	Security Improvements.			
16 (a)	Developer shall allow the City to install a camera on the commercial building adjacent to the Property. The City and Developer will execute an access rights agreement detailing the obligations of each Party pursuant to this Section.			Emailed Fritz on 10/18
17 (b)	Developer shall install the basic home security wiring in the Project homes (defined herein as wiring for a basic home security system on the first floor windows and doors only). Developer shall offer one year of professional monitoring service to new homeowners. The monitoring service shall be at the election of the new homeowner	Compliant		
18  Article IV - Obligations of the City				
19 Section 4.01	Obligations of City Generally. The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.	Not Applicable		
20  Section 4.02	Availability of Public Services.			
21 (a)	General. To the extent permitted by law and consistent with its authority, City shall reserve such capacity for water services as may be necessary to serve the Project. This reservation of water infrastructure capacity shall be assured for the Term to the extent consistent with applicable law.	Compliant		
22 (b)	Construction Water. City shall make construction water available to the Project by permitting the Project to hook up to existing City water supply infrastructure, at a location reasonably determined by the City, at Developer's cost and on those terms and conditions and charges customarily applied by City to similar projects consistent with City standards. City shall also permit Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer's use in any and all Project grading and construction operations, as long as such water is unrelated to potable use.	Compliant		
23 Section 4.03	Developer's Right to Rebuild. City agrees that Developer, in Developer sole's discretion, may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, acts of God, acts of terrorism, or damage to work in progress by reason of fire, floods or other casualties. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA and this Agreement.	Compliant	There has been no need to exercise this provision of the agreement.	
24  Section 4.04	Reimbursement of Infrastructure Costs.			
25 (a)	Reimbursement. Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, the off-site water tank, pump station, sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project's fair share obligation for such infrastructure, City shall reimburse Developer for the City's portion of such costs (including any management fees provided for in this Agreement), subject to City's prior verification through inspection of the construction that is subject to such reimbursement and upon final acceptance of the infrastructure by the City. This reimbursement shall be paid within sixty (60) days after City's final acceptance or at such other time as mutually agreed upon in writing by the parties. Developer shall be entitled to a management fee of five percent (5%) for City's share of approved infrastructure costs, including but not limited to design and special inspection costs. The management obligations of Developer hereunder shall include contracting and managing the construction of the infrastructure, retaining copies of records, photographs and "as built" for the improvement(s) as well as attending meetings and providing necessary reports as reasonably requested by City.	Compliant	There has been no need to exercise this provision of the agreement.	

DA Section	Condition/Requirement	Status	Comments	Action Items
26	(b) City's Authorization of Reimbursement. Notwithstanding any other provision of this Section, of this Agreement, or of VTM provisions, City shall not be responsible to reimburse or credit Developer for any costs, including as referenced in Section 4.04(a) herein, unless prior to Developer incurring any costs for which Developer will request reimbursement from City. Developer shall first provide written documentation as to the work to be performed, the estimated costs thereof, including a not-to-exceed cap, and such other details as reasonably requested by the City Manager and the City Manager approves the proposed costs and related work. If the City Manager fails to respond with thirty (30) days of its receipt of such estimated costs, Developer shall provide a second written notice to the City Manager and to the City Engineer, if neither responds within thirty (30) days of the City's receipt of the second request, the request shall be deemed approved. The City Manager shall have the discretion to require Developer to obtain competitive bids on any work for which Developer may request reimbursement or credit from the City where the total cost (not just the City's share) of that work is One Hundred Thousand Dollars (\$100,000) or more. City shall also have the opportunity to inspect any and all infrastructure during its construction, as well as to review any work product for which Developer requests reimbursement or credits. If mutually agreed by the parties in writing, any reimbursement due Developer pursuant to this Agreement may be satisfied by City in the form of credits, which can actually be used by Developer to offset Developer's payment of any Applicable Fees. In the event there are not enough credits to fully satisfy the reimbursement due Developer and subject to the terms of the mutual agreement between the parties referenced in the prior sentence, City shall reimburse Developer within thirty (30) days of invoicing.	Compliant	There has been no need to exercise this provision of the agreement.	
27	Section 4.05 Park Fee Credit. Developer and City agree that the park in-lieu fee amount will be \$9.40 per square foot, increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2017 reflecting 2016 increases.	Not Applicable	The developer paid parkland dedication fees.	
28	 Article V - Cooperation - Implementation			
29	 Section 5.01 Processing Application for Subsequent Approvals. The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions:			
32	Section 5.02 Timely Submittals by Developer. Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.	Compliant		
33	Section 5.03 Timely Processing by City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, (i) providing at Developer's expense and subject to Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section 5.03, Developer's reimbursement to City for such services shall be made in amount equal to City's actual costs of providing such services, in accordance with standard City practice.	Compliant		
34	Section 5.04 Other Government Permits. At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request of Developer, use its best efforts to ensure the timely availability of such permits and approvals.	Compliant		
35	 Section 5.05 Lighting and Landscaping District, Park Maintenance.			
36	(a) Developer agrees that the Project Site will be annexed into the City's existing Lighting and Landscaping District, as established pursuant to City Resolution No. 88 7324 ("LLD"), as well as City's Community Facilities District 2007 1 for park maintenance ("CFD"), City's Community Facilities District for maintenance of C.3 facilities and, to the extent permitted by law, that the Project shall be assessed in a manner consistent with the provisions herein.	Compliant		
37	(b) Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of the parks.	Compliant		
38	Section 5.06 Police Services CFD. Developer agrees to take all steps necessary to include the Project Site into the City's existing police services Community Facilities District 2004 1, as adopted pursuant to Resolution No. 04 10071 (the "Police Services District") at no cost to the City, in order to provide for police and other emergency services to the Project Site. This process shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. Each legal residential lot located on the Project Site will be required to pay the levy by the Police Services District no earlier than the issuance of a building permit for such lot.	Compliant		
39	 Section 5.07 Assessment Districts or Other Funding Mechanisms.			

DA Section	Condition/Requirement	Status	Comments	Action Items
40	(a) City understands that City's long term assurances to Developer concerning fees, taxes and assessments related to the Project are a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay the fees, taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts or other Funding Mechanisms, as defined in Section 3.06 of this Agreement, covering all or any portion of the Project site. Notwithstanding the foregoing, Developer retains all its rights to oppose the formation or proposed assessment of any new assessment district, Funding Mechanism, or any and all increases thereto, or to request or pursue assessment credits or reductions, unless otherwise provided for herein or unless such assessment, Funding Mechanism or related increases are in place and legally effective as of the date of this Agreement's Effective Date.	Compliant		
41	(b) At the request of Developer, City shall cooperate in the formation of, or annexation to, those assessment districts, landscaping and lighting districts, community facilities districts, tax-exempt financing mechanisms, or other Funding Mechanisms that Developer and City determine are needed to fund infrastructure improvements and to ensure the orderly development of the Project, at no cost to the City or to the GHAD. City shall diligently and expeditiously process applications by Developer necessary to establish such Funding Mechanisms as long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City, and which will result in no commitment of City or GHAD funds. City shall diligently seek to sell any bonds to be issued and secured by such assessments upon the best terms reasonably available in the marketplace. Any and all costs associated with this Section shall be borne and/or advanced by Developer.	Compliant		
42	Section 5.08 Warranty Bonds. Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property or open space dedications) pursuant to this Agreement shall be accompanied by a one (1) year warranty bond in a form and in an amount, and with a surety acceptable to City, or otherwise as determined in the applicable Subdivision Improvement Agreement.	Compliant		
43	Section 5.09 General Plan Maintenance Fee. Developer agrees to pay a development related fee to help fund the maintenance of the Pittsburg General Plan. The General Plan Maintenance Fee will be \$125.00 per building permit.	Compliant	Funds were paid on 8/9/16 for a total of \$4,750.	
44	 Article VI - Standards, Laws and Procedures Governing the Project			
45	Section 6.01 Vested Right to Develop. Developer shall have a vested right to develop the Project on the Project Site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.	Compliant		
46	Section 6.02 Permitted Uses Vested by This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.	Compliant		
47	Section 6.03 Applicable Law. "Applicable Law" shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approvals, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying any new rules, regulations, official policies, standards, and specifications that do not conflict with those rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.	Compliant		
48	Section 6.04 Uniform Codes. Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City's then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.	Compliant		
49	Section 6.05 Moratorium and Conflicting Enactments. To the extent consistent with State Law, if any ordinance, resolution or other measure is enacted, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.	Compliant	No moratoria or conflicting enactments were adopted during this review period.	

DA Section	Condition/Requirement	Status	Comments	Action Items
50	Section 6.06	Life of Subdivision Maps, Development Approvals, and Permits. To the extent consistent with Applicable Law, the term of any subdivision map or any other map, permit, rezoning or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the duration of this Agreement, including any extensions. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable development moratorium (including, but not limited to, a water or sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Project. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable court order or other legal requirement prevents the processing of any Subsequent Approval or prevents any Project development activities	Compliant	Project construction is completed.
51	Section 6.07	State and Federal Law. As provided in California Government Code § 65869.5, if any state or federal laws or regulations, enacted after this Agreement's Effective Date prevent or preclude compliance with one or more provisions of this Agreement ("Changes in the Law"), such provision of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article V and Section 10.05. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically required by State or Federal laws and regulations.	Compliant	There has been no need to exercise this provision of the agreement.
52	 Section 6.08	Timing of Project Construction and Completion.		
53	(a)	Project Phasing. The Project may be built in phases in response to then-existing market conditions over the Term of the Agreement. Except as otherwise specifically provided by this Agreement with respect to Project infrastructure timing, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular period of time, and City shall not impose such a requirement on any Project Approval. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market demand, interest rates, competition and other similar factors.	Compliant	Construction of project is complete.
54	(b)	The parties agree that Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time, and Developer shall determine which part of the Project Site to develop first, and at Developer's chosen schedule. In particular, and not in limitation of any of the foregoing, since 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 consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. Developer's rights under this Section 6.08(b) shall be subject to the requirement that adequate infrastructure to serve each phase of the Project is constructed concurrently with such phase. The City Manager shall reasonably determine what infrastructure will be required to serve each phase of the Project, which determination shall be consistent with Applicable Law.	Compliant	
55	(c)	Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.	Compliant	
56	Section 6.09	Exempting Fees, Mitigation Measures and Similar Requirements Imposed by Outside Agencies. Notwithstanding any other provision of this Agreement, the City agrees to exclude Developer from any and all discretionary collection agreements regarding fees, mitigation measures and similar requirements including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or on the Project Site after the Effective Date through the Term of this Agreement. This Section 6.09 shall not prohibit the City from imposing on Developer any fee, mitigation measure or similar requirement or obligation that is required by a local or regional agency in accordance with local, regional, State or Federal obligations and implemented by the City in cooperation with such local, regional, state or federal agency, provided such fee, mitigation measure or similar requirement or obligation is imposed in a similar manner on similarly situated properties within the City as, for example, stormwater-related C.3 requirements and increases thereto.	Compliant	
57	Section 6.10	City's Joint-Inspection Jurisdiction. Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.	Not Applicable	
58	 Article VII - Amendment			
59	 Section 7.01	Amendment to Project Approvals, Subsequent Approvals. To the extent permitted by State and Federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:		

DA Section	Condition/Requirement	Status	Comments	Action Items
60	(a) Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City Manager or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable uniform codes and State or Federal law. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire Project, consistent with this Agreement and Applicable Law, and will result in no new significant environmental impacts not addressed and mitigated in the EIR, the amendment shall be determined to be an "Administrative Project Amendment" and the City Manager or his designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.	Compliant	There has been no need to exercise this provision of the agreement.	
61	(b) Non-Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.	Compliant	There has been no need to exercise this provision of the agreement.	
62	 Section 7.02 Amendment of this Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, as follows:			
63	(a) Administrative Agreement Amendments. The City Manager, or his/her designee, may, except to the extent otherwise required by law, enter into certain amendments of this Agreement on behalf of the City as long as any such amendment does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) monetary contributions by Developer ("Administrative Agreement Amendment"), and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. For purposes of this Section 7.02(a), the term "substantially affect" shall be evaluated in the context of the entire Project.	Compliant	There has been no need to exercise this provision of the agreement.	
64	(b) Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, whether done administratively or not, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by both parties.	Compliant	There has been no need to exercise this provision of the agreement.	
65	(c) Amendment Limitations. In consideration of the scope of the benefits to City set forth in this Agreement, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to the impacts on City directly attributable to such amendment.	Compliant	There has been no need to exercise this provision of the agreement.	
66	 Article VIII - Assignment, Transfer and Notice			
67	Section 8.01 Assignment of Interests, Rights and Obligations. Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.	Compliant	There has been no need to exercise this provision of the agreement.	
68	 Section 8.02 Transfer Agreements.			
69	(a) In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a "Non-Assuming Transferee" (as defined in Section 8.03), Developer and the transferee shall enter into a written agreement (a "Transfer Agreement") regarding the respective interests, rights and obligations of Developer and the transferee in and under the Agreement, the Project Approvals, and the Subsequent Approvals. Such Transfer Agreement may (i) release Developer from obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations, (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred and (iii) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment.	Compliant	There has been no need to exercise this provision of the agreement.	
70	(b) Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City's prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within thirty (30) days of a written request by Developer for City's consent shall be deemed City's approval of the Transfer Agreement in question. City may refuse to give its consent only if, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable determination be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent to a proposed transferee pursuant to this Section 8.02(b) if such transferee has a net worth of at least Ten Million Dollars (\$10,000,000) documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa County, Developer shall automatically be released from those obligations assumed by the transferee therein.	Compliant	There has been no need to exercise this provision of the agreement.	

	DA Section	Condition/Requirement	Status	Comments	Action Items
71	(c)	Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.	Compliant	There has been no need to exercise this provision of the agreement.	
72	Section 8.03	Non-Assuming Transferees. Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with (i) any single residential parcel conveyed to a purchaser, (ii) any property transferred as fewer than ten (10) lots to a single retail builder or (iii) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school or other nonresidential uses. The transferee in such a transaction and its successors ("Non-Assuming Transferees") shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this Section 8.03 shall exempt any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.	Compliant	There has been no need to exercise this provision of the agreement.	
73	Section 8.04	Notice of Compliance Generally. Subject to City's finding that the facts contemplated by clauses (i) through (iii) herein are true and accurate, within thirty (30) days following any written request which Developer may make from time to time, City shall execute and deliver to Developer (or to any party requested by Developer) a written "Notice of Compliance," in recordable form, duly executed and acknowledged by City, that certifies that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default, and (iii) any other information reasonably requested by Developer. City's failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.	Compliant	There has been no need to exercise this provision of the agreement.	
74	 Article IX - Cooperation in the Event of Legal Challenge				
75	 Section 9.01	Cooperation.			
76	(a)	Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein.	Compliant	There has been no need to exercise this provision of the agreement.	
77	(b)	Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.	Compliant	There has been no need to exercise this provision of the agreement.	
78	(c)	The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.	Compliant	There has been no need to exercise this provision of the agreement.	
79	 Section 9.02	Cure; Reapproval.			
80	 (a)	If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or any portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgment (a "Judgment") in such action or proceeding (based on procedural, substantive or other deficiencies, hereinafter "Deficiencies"), the parties agree to use their respective best efforts to sustain and reenact or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise:	Compliant	There has been no need to exercise this provision of the agreement.	
81	(i)	If any Judgment requires reconsideration or consideration by City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement and the Judgment. Upon the parties cure of such Deficiencies, City shall then take steps consistent with the Judgment necessary readopt or reenact this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof.	Compliant	There has been no need to exercise this provision of the agreement.	

DA Section	Condition/Requirement	Status	Comments	Action Items
82	(ii)	Compliant	There has been no need to exercise this provision of the agreement.	
83	(b)	Compliant	There has been no need to exercise this provision of the agreement.	
84	 Article X - Default, Remedies, Termination			
85	Section 10.01	Compliant	There has been no need to exercise this provision of the agreement.	
86	Section 10.02	Compliant	There has been no need to exercise this provision of the agreement.	
87	 Section 10.03			
88	(a)	In Progress		
89	(b)	In Progress		

DA Section	Condition/Requirement	Status	Comments	Action Items
90	(c) Good Faith Compliance. During the Periodic Review, the City Manager shall review Developer's good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that Developer has not complied with such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code §§ 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally by Developer and City.	In Progress		
91	(d) Failure to Properly Conduct Periodic Review. If, after thirty (30) days following Developer's notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall be conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.	In Progress		
92	(e) Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.	In Progress		
93	Section 10.04 Excusable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer's actions or inactions and beyond Developer's control. Upon the properly noticed request of either party hereto, as required by Section 12.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon in writing.	Compliant	There has been no need to exercise this provision of the agreement.	
94	Section 10.05 Legal Action. 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, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.	Compliant	There has been no need to exercise this provision of the agreement.	
95	Section 10.06 California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Compliant		
96	Section 10.07 Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provisions of this Section 10.07 may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. Nothing in this Section 10.07 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.	Compliant	There has been no need to exercise this provision of the agreement.	
97	Section 10.08 Attorneys' Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.	Compliant	There has been no need to exercise this provision of the agreement.	
98	Section 10.09 Default by City or Developer. In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law.	Compliant	There has been no need to exercise this provision of the agreement.	
99	Article XI - No Agency, Joint Venture or Partnership			

DA Section	Condition/Requirement	Status	Comments	Action Items
100	It is specifically understood and agreed to by and between the parties hereto that unless otherwise expressly provided herein (i) the subject development is a private development; (ii) City have no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer. The City agrees that Developer's obligations under this Agreement related to the construction of Project water, sewer and drainage infrastructure improvements, the grading and construction of traffic improvements, and the grading and construction of any other public improvements (collectively, the "Public Improvements") are all public works of improvement the City is requiring as a condition of regulatory approval of the Project and that the Project is an otherwise private development. The City further agrees that it will contribute no more money, or the equivalent of money, to the overall Project than is required to construct the Public Improvements and that City maintain no proprietary interest in the overall Project.	Compliant		
101	 Article XII - Miscellaneous			
102	Section 12.01	Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.	Not Applicable	
103	Section 12.02	Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code § 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement shall prevail.	Not Applicable	
104	Section 12.03	Findings. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.	Not Applicable	
105	Section 12.04	Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.	Not Applicable	
106	Section 12.05	Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Not Applicable	
107	Section 12.06	Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.	Not Applicable	
108	Section 12.07	Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.	Not Applicable	
109	Section 12.08	Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.	Not Applicable	

	DA Section	Condition/Requirement	Status	Comments	Action Items
110	Section 12.09	Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by fax (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by Federal or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below...	Not Applicable		
111	 Section 12.10	Entire Agreement, Counterparts and Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of 26 pages and four exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of any provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:	Not Applicable		
112	EXHIBIT A	Legal Description	Not Applicable		
113	EXHIBIT A-1	Project Site Diagram	Not Applicable		
114	EXHIBIT B	Applicable Fees	Not Applicable		
115	EXHIBIT C	Affordable Housing Agreement	Not Applicable		
116	Section 12.11	Recordation of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.	Not Applicable		



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Authorizing the Execution of the First Amendment to Consulting Services Agreement between City of Pittsburg and Opticos Design, Inc. for the Accessory Dwelling Unit Pre-Approved Plan

MEETING DATE: May 1, 2023

EXECUTIVE SUMMARY

The proposed item would authorize the City Manager to execute the First Amendment to the Consulting Services Agreement with Opticos Design, Inc. in an amount not to exceed \$244,475. This amount would allocate an additional \$8,000 to the existing Consultant Budget of \$236,475 for contract design and consulting services related to streamlining the City's permitting and entitlement process for multifamily development projects and Accessory Dwelling Unit (ADU) projects.

FISCAL IMPACT

The funding for the ongoing project related to streamlining the City's permitting and entitlement process for multifamily development projects and Accessory Dwelling Unit projects has been awarded to the City through the California Department of Housing and Community Development (HCD) under the Senate Bill (SB) 2 Planning Grants Program. The total awarded amount was \$310,000. As such, there is no fiscal impact to the City.

RECOMMENDATION

Staff recommends the City Council adopt a Resolution authorizing the City Manager to execute the First Amendment to the Consulting Services Agreement with Opticos Design, Inc. for contract design and consulting services related to streamlining the City's permitting and entitlement process for multifamily development projects and Accessory Dwelling Unit projects.

BACKGROUND

On March 28, 2019, the California Department of Housing and Community Development released a Notice of Funding Availability (NOFA) for the SB 2 Planning Grants Program (Program) for approximately \$123 million for local government planning grants. The

Program reflects the State's commitment to work in partnership with local governments to address California's critical housing needs. Local governments are using the grant awards to accelerate housing production by streamlining the approval of affordable housing and promoting development consistent with the state's planning priorities.

In November 2019, following direction from the City Council, staff submitted an application to the SB 2 Planning Grants Program to complete three projects: (1) preparation of Objective Design Standards for Multi-Family Projects, (2) Development of ADU Ordinance updates and 'Permit-Ready' Prototype Plans, and (3) Application of Vehicles Miles Travelled as a California Environmental Quality Act impact threshold.

On February 6, 2020, the City was awarded \$310,000 under the SB 2 Planning Grants Program for the three projects. To streamline the consultant selection process, staff contacted surrounding cities that had released Requests for Qualifications to complete the Objective Design Standards for Multi-Family Projects and ADU 'permit-ready' Prototype Plans projects under SB 2 Planning Grants Program. Upon soliciting proposals from the qualified consulting firms, the City received a proposal from Opticos Design, Inc and one other consulting firm. The City executed a Consultant Service Agreement with Opticos Design, Inc. on November 16, 2020.

SUBCOMMITTEE FINDINGS

The item was not presented to a sub-committee.

STAFF ANALYSIS

Since 2020, City staff has been working on the projects under the SB 2 Planning Grants Program and are nearing completion. To ensure the ADU prototype plans are 'permit-ready', the plan set must have Mechanical, Electrical, and Plumbing (MEP) calculations included. This scope was not included within the original Consultant Service Agreement with Opticos Design, Inc. The additional \$8,000 proposed with this First Contract Amendment would cover the cost associated with the drafting of the MEP plans, which is required for Building Permit issuance.

Staff recommends approval of the First Amendment to the Consultant Service Agreement with Opticos, Design, Inc. in an amount not to exceed \$8,000 to be utilized for the drafting of MEP plans for the preapproved ADU prototype, which will be free to the public for use in applying for a Building Permit to construct an ADU on their privately owned property in the City.

ATTACHMENTS:

1. Proposed Resolution
2. First Amendment to Consulting Services Agreement Between City of Pittsburg and Opticos Design, Inc.
 - a. Attachment 1 - Exhibit A, Scope of Services
 - b. Attachment 2 - Exhibit B, Compensation Schedule

Report Prepared By: Kelsey Gunter, Associate Planner

**FIRST AMENDMENT TO
CONSULTING SERVICES AGREEMENT BETWEEN
CITY OF PITTSBURG AND OPTICOS DESIGN, INC.**

RECITALS

This First Amendment to the Principal Agreement made and entered into on November 16, 2020, hereafter referred to as Agreement, between Opticos Design, Inc., therein referred to as Consultant, and the City of Pittsburgh, a municipal corporation, therein referred to as City, is made and entered into on this 1st day of May 2023.

WHEREAS, the parties entered into an Agreement for Design Consulting services to establish a streamlined permitting and entitlement process for multifamily development projects and Accessory Dwelling Unit (“ADU”) projects pursuant to recent State Laws including, but not limited to, SB330, SB9, and SB13; and

WHEREAS, the Agreement between the parties allocated specific services and scope details for two overall tasks; and

WHEREAS, the first task in the Agreement is described as “Scope 1” which includes “Objective Design Standards for Mixed-Use and Multifamily Development” and the second task in the Agreement is described as “Scope 2” which comprises “Accessory Dwelling Unit Pre-Approved Plans + Code Revisions”; and

WHEREAS, the parties desire to amend only “Scope 2” of the Principal Agreement, which includes the addition of services and increase the compensation amount accordingly in the amount of \$8000 to prepare Mechanical, Electrical, and Plumbing Plans.

NOW, THEREFORE, Consultant and City do mutually agree as follows:

1. Compensation. Section 2 of the Agreement is hereby amended to read as follows: City hereby agrees to pay Consultant a sum not to exceed two hundred forty-four thousand, four hundred seventy-five dollars (\$244,475), as set forth in Exhibit B, attached hereto and incorporated herein for the performance of Services as detailed in Exhibit A.

Sections 2.1 – 2.6 of the Agreement remain unchanged.

2. Services. Section 1.1 of the Agreement is hereby amended to read as follows: The term of this Agreement shall begin on the Effective Date and shall end on July 1, 2023 or the date the Consultant completes the services specified in Exhibit A, whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as references herein.

Sections 1.2 – 1.4 of the Agreement remain unchanged.

3. Exhibit A Scope of Services. Exhibit A is hereby amended with Attachment 1 of this First Amendment.

4. Exhibit B Compensation Schedule. Exhibit B is hereby replaced with Attachment 2 of this First Amendment.

5. Integration. This First Amendment contains the entire agreement between the parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this First Amendment. This First Amendment shall not be amended or modified except by a written agreement executed by each of the parties. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and Consultant shall perform all duties, obligations and conditions required under the Agreement.

6. Inconsistencies. In the event of any conflict or inconsistency between the provisions of this First Amendment and the Agreement, the provisions of this First Amendment shall control in all respects.

7. Ambiguities. The parties have each carefully reviewed this First Amendment and have agreed to each term of this First Amendment. No ambiguity shall be presumed to be construed against either party.

8. Counterparts. This First Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

9. Authority. The person signing this First Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this First Amendment on behalf of Consultant.

IN WITNESS WHEREOF, the parties have entered into this First Amendment on the day and year first hereinabove appearing.

CONSULTANT:

OPTICOS DESIGN, INC.

CITY:

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

By: _____

Stephen Pellegrini, Principal

By: _____

Garrett Evans, City Manager

ATTEST:

By: _____
Alice Evenson, City Clerk

APPROVED AS TO FORM:

By: _____
Donna Mooney, City Attorney

EXHIBIT A
SCOPE OF SERVICES

Consultant shall perform the following:

Deliverable: Additional drawings in the preapproved ADU plan set, containing lighting and electrical layout, location and baseline performance specifications of mechanical and plumbing systems, and demonstration of Title 24 compliance, delivered in PDF format.

The work shall be completed by May 31, 2023.

ATTACHMENT 2 – COMPENSATION SCHEDULE

Pittsburg Professional Services Opticos budget Budget for Scope 2: Accessory Dwelling Unit Pre-Approved Plans + Code Revisions	Opticos Design, Inc.				
	Principal	Associate	Senior Designer	Designer	Total
	\$315	\$205	\$175	\$165	
Task 2A Project Initiation	1 hr	3 hr	2 hr	2 hr	\$1,610
2A.1 Project set-up and review of materials provided by City staff	0 hr	1 hr	0 hr	0 hr	\$205
2A.2 Internal kick-off meeting	1 hr	1 hr	1 hr	1 hr	\$860
2A.3 Project kick-off meeting with City staff including discussion of background materials and ADU sizes and program	0 hr	1 hr	1 hr	1 hr	\$545
Task 2B ADU Permit Analysis	4 hr	10 hr	14 hr	14 hr	\$8,070
2B.1 Review of ADU permitted drawings and documentation	0 hr	2 hr	2 hr	1 hr	\$925
2B.2 Lot testing and analysis for lot size and coverage [will be completed as part of ODS task 1A.3]	1 hr	2 hr	3 hr	3 hr	\$1,745
2B.3 Materials palette and architectural research using Google Earth and permit drawings	0 hr	2 hr	2 hr	2 hr	\$1,090
2B.4 Determine top 3 - 5 most common lot configurations and evaluate for ADU capacity	2 hr	2 hr	5 hr	5 hr	\$2,740
2B.5 Make recommendations for ADU plans and massing diagrams, and material palette based on most common lot configurations and precedent styles	1 hr	2 hr	2 hr	3 hr	\$1,570
Task 2C Review Existing Fee and Procedures Document	1 hr	3 hr	0 hr	0 hr	\$930
2C.1 Based on the analysis in task 2B, review existing fee and procedure document and mark up for recommended changes	1 hr	3 hr	0 hr	0 hr	\$930
Task 2D Permit Documents	11 hr	50 hr	64 hr	68 hr	\$41,135
2D.1 Develop schematic design sketches for 2 ADU types based on the review of materials and previously permitted drawings	5 hr	16 hr	14 hr	18 hr	\$10,275
2D.2 Produce permit-ready plans for 2 ADU types	6 hr	34 hr	50 hr	50 hr	\$25,860
2D.3 Structural drawings for permit ready plans [by subconsultant]					\$5,000
Task 2E Municipal Code Revisions	0 hr	0 hr	0 hr	0 hr	\$1,900
2E.1 Review and make edits to Municipal code to conform to state bills and include recommendations for edits to address any identified barriers [by subconsultant]					\$1,900
Task 2F Guidance Document	1 hr	4 hr	3 hr	4 hr	\$2,320
2F.1 Create a one page document to convey process and code information for owners wanting to build an ADU	1 hr	3 hr	2 hr	0 hr	\$1,280
2F.2 Generate new images/graphics as needed	0 hr	1 hr	1 hr	4 hr	\$1,040

Pittsburg Professional Services Opticos budget Budget for Scope 2: Accessory Dwelling Unit Pre-Approved Plans + Code Revisions	Opticos Design, Inc.				
	Principal	Associate	Senior Designer	Designer	Total
	\$315	\$205	\$175	\$165	
Task 2G Study Session with Planning Commission	1 hr	6 hr	3 hr	3 hr	\$2,565
2G.1 Work with City staff to assemble materials from previously generated content for the study session with Planning Commission (limit to 4 hours of work for each session or 8 hours total)	1 hr	4 hr	3 hr	1 hr	\$1,825
2G.2 Post study session edits (limited to 2 hours per session)	0 hr	2 hr	0 hr	2 hr	\$740
Task 2H Planning Commission Recommendations	0 hr	6 hr	4 hr	3 hr	\$2,425
2H.1 Work with City staff to assemble materials from previously-generated content for the Planning Commission meeting (limited to 4 hours of work for each session or 8 hours total)	0 hr	4 hr	4 hr	1 hr	\$1,685
2H.2 Post meeting edits (limited to 2 hours per session)	0 hr	2 hr	0 hr	2 hr	\$740
Task 2I City Council Session	1 hr	6 hr	3 hr	2 hr	\$2,400
2I.1 Work with City staff to assemble materials from previously-generated content for the City Council Session (limit to 2 hours of work for each session or 8 hours total)	1 hr	4 hr	3 hr	0 hr	\$1,660
2I.2 Post meeting edits (limit to 2 hours per session)	0 hr	2 hr	0 hr	2 hr	\$740
Task 2J Project Management and Project Closeout	4 hr	24 hr	2 hr	2 hr	\$6,860
2J.1 Periodic phone calls, coordination and invoicing	4 hr	24 hr	2 hr	2 hr	\$6,860

Total Budget for Scope 2	\$70,215

TOTAL BASE BUDGET for Scope 1 + Scope 2	\$206,055

Budget for Additional Tasks: Scope 1 Tasks 1A.4 and 1C.3 + Additional ADU Prototype for Scope 2	\$30,420

TOTAL RECOMMENDED BUDGET	\$236,475

ATTACHMENT 2 – COMPENSATION SCHEDULE

In addition to task “**2D**” as outlined in the existing compensation schedule from the Principal Agreement, the following Deliverable is proposed:

Deliverable 2D.3:

Additional drawings in the preapproved plan set, containing lighting and electrical layout, location and baseline performance specifications of mechanical and plumbing systems, and demonstration of the Title 24 compliance, delivered in PDF format.

Fee:

The work will be performed as a fixed fee in the amount of \$8,000.

Timeline:

The work will be completed by the end of May 2023.

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter Of:

Authorizing Execution of the First Amendment)
To the Consultant Contract Design, Inc. for the)
Preparation of Mechanical, Electrical, and)
Plumbing Plans for an Accessory Dwelling Unit)
Prototype Plan Set)

RESOLUTION 23-

WHEREAS, on March 28, 2019, the State of California, Department of Housing and Community Development (HCD) issued a Notice of Funding Availability (NOFA) for the SB 2 Planning Grants Program (Program) for approximately \$123 million for local government planning grants; and

WHEREAS, on October 21, 2019, the City Council authorized the City Manager or his designee to apply for and submit to HCD the 2019 SB 2 Planning Grants Program Application in an amount totaling \$310,000; and

WHEREAS, on February 6, 2020, the City was awarded an SB 2 Planning Grant for three separate programs, in an amount totaling \$310,000; and

WHEREAS, on November 16, 2020, the City executed a Consultant Service Agreement with Opticos Design, Inc. for consultant and design professional services to implement two of the three programs proposed in the 2019 Planning Grants Program Application submitted by the City; and

WHEREAS, the two programs that the City and Opticos Design, Inc. have been developing are the implementation of Objective Design Standards and 'permit-ready' Accessory Dwelling Unit (ADU) prototype plans. In order to ensure the ADU prototype plans are 'permit-ready', the plan set must include calculations and specifications for Mechanical, Electrical, and Plumbing (MEP) details; and

WHEREAS, the \$8,000 cost associated with the development of MEP plans for the ADU was not included in original budget or scope of work within the Consulting Services Agreement with Opticos Design, Inc.; and

WHEREAS, the City must have the MEP plans in order to provide a full 'permit-ready' ADU prototype plan set; and

WHEREAS, City staff recommends City Council approve the First Amendment to the Consultant Services Agreement between Opticos Design, Inc. and the City of Pittsburgh in an amount not to exceed \$8,000 for the additional MEP scope of work, or \$244,475 for the project in its entirety, and a change in term of the Agreement to have all work completed by July 1, 2023 or the date the Consultant completes the services specified in Exhibit A of the Agreement, whichever occurs first.

NOW, THEREFORE BE IT RESOLVED that the City Council hereby authorizes the City Manager to execute the First Amendment to the Consulting Services Agreement between the City of Pittsburgh and Opticos Design, Inc.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 1st day of May 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Allocating Additional Funds to Project 3021—City Park Tree Maintenance and Authorizing the City Manager to Execute the First Amendment to the Consultant Services Agreement with Hamilton Tree Service, Inc.

MEETING DATE: May 1, 2023

EXECUTIVE SUMMARY

During the most recent storm events, emergency work began to reduce stress on certain trees in City Park. If approved, the resolution would allocate additional funds to Project 3021—City Park Tree Maintenance (the “Project”) and authorize execution of the First Amendment to the consulting services agreement with Hamilton Tree Service, Inc. for additional tree maintenance and removals in City Park.

FISCAL IMPACT

If approved, the resolution would authorize the allocation of \$63,700 from Fiscal Year 2021/22 Measure M Surplus and \$30,000 from Fiscal Year 2022/23 General Fund Surplus to the Project.

There are sufficient funds for this allocation, and this is an appropriate use of these funds.

RECOMMENDATION

City Council adopt the attached resolution allocating \$63,700 from Fiscal Year 2021/22 Measure M Surplus and \$30,000 from Fiscal Year 2022/23 General Fund Surplus to the Project and authorize the City Manager to execute the First Amendment to the Consulting Services Agreement with Hamilton Tree Service, Inc.

BACKGROUND

On January 17, 2023, the City Council adopted Resolution No. 23-14233, allocating funds to Project 3021 to continue maintenance practices and tree removals in City Park. Due to recent storm events, funds for the Project were expended for emergency tree maintenance and removal. Additional funds are needed to remove additional trees and perform substantial maintenance on others that remain.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

Hamilton Tree Service, Inc. is a local tree service company with specialized equipment, including a crane, to perform the work on the particularly tall trees in City Park. Other local tree companies rent this crane and equipment from Hamilton Tree Service for an additional cost, resulting in a 15% - 25% price increase for the same work with a different company. Hamilton Tree Service is the sole provider in the region of the equipment to perform this work at a reasonable cost.

ATTACHMENTS: Resolution
 Agreement with Hamilton Tree Service
 First Amendment to Agreement

Report Prepared By: Natasha Farmer, Administrative Analyst I

**FIRST AMENDMENT TO
CITY PARK TREE MAINTENANCE AGREEMENT BETWEEN
CITY OF PITTSBURG
AND HAMILTON TREE SERVICE, INC.**

This First Amendment to the Principal Agreement made and entered into on March 23, 2023, hereafter referred to as Agreement, between Hamilton Tree Service, Inc. a California Corporation, therein referred to as Consultant, and the City of Pittsburg, a municipal corporation, therein referred to as City, is made and entered into on this 1st day of May, 2023.

WHEREAS, The City entered into a Consulting Services Agreement with Hamilton Tree Service to perform emergency tree safety maintenance work in City Park in March 2023; and

WHEREAS, Hamilton Tree Service is a company that exclusively owns the equipment and crane required to perform the City Park Tree Safety Maintenance work; and

WHEREAS, additional funds are needed for removing trees or branches and performing substantial maintenance on other trees impacted by the recent atmospheric rivers; and

WHEREAS, the parties desire to add services and increase the compensation amount accordingly.

NOW, THEREFORE, Consultant and City do mutually agree as follows:

1. Compensation. The first paragraph of Section 2 of the Agreement is hereby amended to read as follows:

City hereby agrees to pay Consultant a sum not to exceed two hundred forty three-thousand seven hundred dollars (**\$243,700.00**), as set forth in Exhibit B, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement.

3. Exhibit A Scope of Services. Exhibit A is hereby replaced with Attachment 1 of this First Amendment.

4. Exhibit B Compensation Schedule. Exhibit B is hereby replaced with Attachment 2 of this First Amendment.

5. Integration. This First Amendment contains the entire agreement between the parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this First Amendment. This First Amendment shall not be amended or modified except by a written agreement executed by each of the parties. Except as specifically revised herein, all terms and

conditions of the Agreement shall remain in full force and effect, and Consultant shall perform all duties, obligations and conditions required under the Agreement.

6. Inconsistencies. In the event of any conflict or inconsistency between the provisions of this First Amendment and the Agreement, the provisions of this First Amendment shall control in all respects.

7. Ambiguities. The parties have each carefully reviewed this First Amendment and have agreed to each term of this First Amendment. No ambiguity shall be presumed to be construed against either party.

8. Counterparts. This First Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

9. Authority. The person signing this First Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this First Amendment on behalf of Consultant.

IN WITNESS WHEREOF, the parties have entered into this First Amendment on the day and year first hereinabove appearing.

CONSULTANT:

HAMILTON TREE SERVICE, INC.

CITY:

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

By: Kelly Outman
Kelly Outman, Operations Manager

By: _____
Garrett Evans, City Manager

ATTEST:

By: _____
Alice Evenson, City Clerk

APPROVED AS TO FORM:

By: _____
Donna Mooney, City Attorney

ATTACHMENT 1 / EXHIBIT A
SCOPE OF SERVICES

- Emergency removal of (18) Eucalyptus trees and (1) Pine tree located at City Park along Civic Ave. Off haul and dispose of resulting debris from this service
- Emergency removal of (4) Eucalyptus trees along Railroad Ave. Off haul and dispose of resulting debris from this service.
- Grind (22) Eucalyptus, (1) Pine stumps 12 to 14 inches below grade. Leave stump grindings from this service
- Provide traffic and pedestrian control
- Pollard interior and perimeter trees as directed by City Staff
- Remove additional trees as directed by City staff

ATTACHMENT 2 / EXHIBIT B

First payment upon completion of removals up to \$100,000

Second payment upon completion of pollarding up to \$50,000

Third payment upon completion of all removals and pollarding up to \$93,700

Total of all payments for work not to exceed \$243,700.00

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF PITTSBURG AND
HAMILTON TREE SERVICE, INC.
TREE032323**

THIS Agreement ("Agreement") for consulting services is made by and between the City of Pittsburgh ("City") and Hamilton Tree Service, Inc., a California Corporation ("Consultant") (together referred to as the "Parties") as of March 23, 2023 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2023 or the date the Consultant completes the services specified in Exhibit A, whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as referenced herein.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, requests in writing the reassignment of any such persons to ensure Consultant performs services in accordance with the Standard of Performance, Consultant shall, immediately upon receiving City's request, reassign such persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided herein above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed One-hundred fifty-thousand dollars (\$150,000.00), as set forth in Exhibit B, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. This dollar amount is not a

guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information, unless waived by the City Manager, or his or her designee:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall pay undisputed invoices that comply with the above requirements within 30 days from the receipt of the invoice.

2.3 Final Payment. Consultant shall submit its final invoice within 60 days of completing its services. Consultant's failure to submit its final invoice

within this 60 day period shall constitute Consultant's waiver of any further billings to, or payments from, City.

- 2.4 Reimbursable Expenses.** Reimbursable expenses, if any, are specified in Exhibit B and included in the total compensation referenced in Section 2. Expenses not listed in Exhibit B are not chargeable to, or reimbursable by, City.
- 2.5 Payment of Taxes.** Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.
- 2.6 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written authorization from the City Manager, or his or her designee.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement

Section 4. INSURANCE REQUIREMENTS. Before beginning any services under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall be fully responsible for the acts and omissions of its subcontractors or other agents.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Consultant is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.
- 4.2 Commercial General and Automobile Liability Insurance.**
- 4.2.1 General requirements.** Consultant, 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 \$2,000,000 per occurrence and \$4,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Consultant has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

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

- a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.
- b. City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Consultant. Coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and non-contributing.

- d. The policy shall cover inter-insured suits and include a “separation of Insureds” or “severability” clause which treats each insured separately.
- e. Consultant agrees to give at least 30 days prior written notice to City before coverage is canceled or modified as to scope or amount.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, 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 \$1,000,000 per occurrence or claim covering the Consultant’s errors and omissions.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Submittal Requirements. Consultant shall submit the following to City prior to beginning services:

- a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
- b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

4.4.2 Acceptability of Insurers. All insurance required by this Agreement is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.3 Deductibles and Self-Insured Retentions. Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than \$100,000.

4.4.4 Wasting Policies. No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

4.4.7 Excess Insurance. If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.

- 4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

- 5.1 General Indemnification.** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City or its directors, officials, officers, employees, agents or volunteers. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor. This Section 5.1 shall survive any expiration or termination of this Agreement.

- 5.2 PERS Indemnification.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City.
- 6.2 Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder. Consultant shall also, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates as determined by the California Department of Industrial Relations.
- 7.3 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have, and will maintain at their sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and

maintain during the term of this Agreement valid business licenses from City.

- 7.4 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.
- 7.5 Registration and Monitoring.** Consultant shall be currently registered with the Department of Industrial Relations and qualified to perform public work consistent with Labor Code section 1725.5, except in limited circumstances as referenced in Labor Code section 1771.1(a). Additionally, Consultant is hereby notified that this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the services described in Exhibit A are to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the services described in Exhibit A. In accordance with California Labor Code Section 1773.2, the City has obtained the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City's General Services Department and shall be made available on request. Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the services described in Exhibit A. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims

made by any worker, governmental agency or other third party with regard thereto.

The Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply with Labor Code Section 1775, which establishes a penalty per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage.

In accordance with Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Such records shall be in kept, maintained and made available in accordance with the requirements of Labor Code Section 1776.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** Upon ten days' prior written notice, City may cancel this Agreement at any time and without cause upon such written notification to Consultant. In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.
- 8.2 Amendments.** The parties may amend this Agreement only by a writing signed by the parties hereto.
- 8.3 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City

Manager, or his or her designee. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the City Manager, or his or her designee.

8.4 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant, including but not limited to the provisions of Section 5, shall survive the termination of this Agreement.

8.5 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.5.1 Immediately terminate the Agreement;

8.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.5.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.5.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

8.5.5 The remedies mentioned in this Agreement are not exclusive of any other right, power or remedy permitted by law. The City's failure or delay in exercising any remedy shall not constitute a waiver of such remedy or preclude the further exercise of City's rights.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All final versions of reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City

upon termination of the Agreement, and the City may use, reuse or otherwise dispose of the documents without Consultant's permission. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential drafts and will not be released to third parties by Consultant without prior written approval of City.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Pursuant to Government Code Section 8546.7, the Agreement may be subject to the examination and audit of the State Auditor for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in Contra Costa County or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this

Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

10.7 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.8 Notices. Any notice, demand, request, consent or approval that either party is required to give the other pursuant to this Agreement, shall be in writing and may be given by either (i) personal service, or (ii) certified United States mail, postage prepaid, return receipt requested,. Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable.

Consultant : Hamilton Tree Service, Inc.
4949 Pacheco Blvd.
Martinez, CA 94553

City: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
ATTN: City Manager

10.9 Professional Seal. Where applicable in the determination of the City Manager, or his or her designee, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility."

10.10 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent there are any inconsistencies between this Agreement, the Exhibits, and Consultant's proposal, the Agreement shall control. To the extent there are any inconsistencies between the Exhibits and the Consultant's Proposal, the Exhibits shall control.

Exhibit A Scope of Services
Exhibit B Compensation Schedule

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.12 Construction of Agreement. Each party hereto has had an equivalent opportunity to participate in the drafting of the agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

10.13 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any third parties.

The Parties have executed this Agreement as of the Effective Date.

CITY OF PITTSBURG

Garrett Evans, City Manager

Attest:

Alice Evenson, City Clerk

Approved as to Form:

Donna Mooney, City Attorney

CONSULTANT

Signature

Operations Manager
Printed Name & Title

EXHIBIT A

SCOPE OF SERVICES

- Emergency removal of (18) Eucalyptus trees and (1) Pine tree located at City Park along Civic Ave. Off haul and dispose of resulting debris from this service
- Grind (18) Eucalyptus, (1) Pine stumps 12 to 14 inches below grade. Leave stump grindings from this service
- Provide traffic and pedestrian control
- Pollard interior and perimeter trees as directed by City Staff

EXHIBIT B

One (1) payment upon completion of removals

One (1) payment upon completion of pollarding

Total payment of all work not to exceed \$150,000

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANT

By: _____

Title: _____

Kelly Cuthbert
Operations Manager

2784987.1

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Allocating Additional Funds to Project)
3021—City Park Tree Maintenance and)
Authorizing the City Manager to Execute)
the First Amendment to the Consulting)
Services Agreement with Hamilton)
Tree Service, Inc.)

RESOLUTION NO. 23-

WHEREAS, on January 17, 2023, the City Council adopted Resolution No. 23-14233, allocating funds to Project 3021—City Park Tree Maintenance to perform critical tree maintenance and removals after several atmospheric river events to address water-logged, and failed trees and branches throughout City Park; and

WHEREAS, Hamilton Tree Service is a company that exclusively owns the equipment and crane required to perform the City Park tree safety maintenance; and

WHEREAS, in March 2023, the City entered into an agreement with Hamilton Tree Service to perform emergency tree safety maintenance in City Park; and

WHEREAS, additional funds are needed for removing strained trees and performing substantial maintenance on other trees; and

WHEREAS, staff seeks to amend the agreement to perform additional tree safety maintenance in an amount not to exceed \$93,700, with \$63,700 coming from Fiscal Year 2021/22 Measure M Surplus and \$30,000 from Fiscal Year 2022/23 General Fund Surplus, increasing the project total to an amount not to exceed \$243,700.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby approves the allocation of \$63,700 from Fiscal Year 2021/22 Measure M Surplus and \$30,000 from Fiscal Year 2022/23 General Fund Surplus to Project 3021 and authorizes the City Manager to execute the First Amendment to the Consulting Services Agreement with Hamilton Tree Service, Inc.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 1st day of May 2023 by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution to Comply with State Housing Laws

MEETING DATE: May 1, 2023

EXECUTIVE SUMMARY

The One Bay Area Grant 3 (OBAG 3) establishes the policy framework and commitments for investing federal Surface Transportation Block Grant Program (STP) and Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds for a four-year period covering federal Fiscal Year (FY) 2022/23 through FY 2025/26. As part of the OBAG 3 program, the City of Pittsburg must comply with State housing laws related to surplus lands, accessory dwelling units, density bonuses, and the Housing Accountability Act to maintain funding eligibility.

FISCAL IMPACT

No fiscal impact.

RECOMMENDATION

City Council adopt the attached resolution to comply with State housing laws to maintain funding eligibility for the OBAG 3 grant.

BACKGROUND

The OBAG 3 grant funding was adopted by the Metropolitan Transportation Commission (MTC) in January 2022. This grant includes more than \$750 million in federal funding for projects from 2023 to 2026.

On July 15, 2022, The City of Pittsburg submitted an OBAG 3 application for Pittsburg's Delta de Anza Multimodal Trail Safety Improvements. The Project was selected to receive \$4,427,000 in CMAQ funding.

In order to maintain funding eligibility, the City of Pittsburg is required to self-certify compliance with State housing laws related to surplus lands, accessory dwelling units, density bonuses, and the Housing Accountability Act.

SUBCOMMITTEE FINDINGS

The item was not presented to a subcommittee.

STAFF ANALYSIS

The OBAG 3 grant provides dedicated funding within the County & Local Program to support planning and programming activities throughout the nine Bay Area counties. This program is managed by MTC and the funds are utilized to support Plan Bay Area 2050 regional policies, development of countywide transportation plans, outreach activities, and the advancement of additional plans and projects determined by MTC.

In order to augment the base funding levels for countywide planning and programming, compliance with State housing laws is required. The 2015-2023 City of Pittsburg Housing Element, Chapter 2 – Housing Needs Assessment in addition to the 2015-2023 City of Pittsburg Housing Element, Chapter 3 –Housing Opportunities and Constraints are applicable policies that support all elements of MTC's approach to affordable housing. The call for projects process will not be programmed into the transportation improvement Program (TIP) until such resolution is adopted. After December 31, MTC, will reprogram these funds to projects that are in compliance with the State housing laws.

ATTACHMENTS: Resolution

Report Prepared By: Julissa Rico Ruiz, Consultant Engineer

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution)
to Comply with State Housing Laws)

RESOLUTION NO. 23-

WHEREAS, the Bay Area has the highest housing cost in the United States; and

WHEREAS, the Bay Area produced less than 30% of the need for low- and moderate-income housing units from 2007- 2014 and is on track to underproduce low-income units during the 2015-2023 time period; and

WHEREAS, public lands can play critical role in increasing the supply of land for affordable housing; and

WHEREAS, accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) provide an important option to increase the availability and affordability of housing in existing lower density neighborhoods. AB 1255 (Rivas, 2019) requires jurisdictions to compile and report annually an inventory of surplus lands to the California Department of Housing and Community Development; and

WHEREAS, density bonuses are an effective tool to increase the financial feasibility of housing and incentivize the creation of affordable housing; and

WHEREAS, the Metropolitan Transportation Commission adopted Resolution No.4505, outlining the programming policy and project selection criteria for One Bay Area Grant Program (OBAG 3) including certain requirements to access these funds.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of Pittsburg, State of California, as follows:

That the City of Pittsburg agrees to comply with State laws to ADUs and JADUs, as it exists now or may be amended in the future, including but not limited to, AB 1255 (Rivas, 2019), which requires jurisdictions to compile and report annually an inventory of surplus lands to the California Department of Housing and Community Development, and.

That the City of Pittsburg agrees to comply with State Density Bonus Law (California Government Code § 65915 et seq.), as it exists now or may be amended in the future; and

That the City of Pittsburg warrants and represents that is in compliance with the aforementioned State housing laws and that there are no claims, actions, suits, or proceedings pending to the best of City of Pittsburg's knowledge, alleging violations of the State housing laws by the City of Pittsburg.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 1st day of May 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Authorizing the Use of General Fund Fund Balance and Measure M Surplus Funds for Additional Library Services

MEETING DATE: May 1, 2023

EXECUTIVE SUMMARY

To better serve the needs of the community, the City worked with the Contra Costa County Library (County Library) to extend the hours of service by an additional 12 hours at the Pittsburg Library.

FISCAL IMPACT

The annual cost of the additional 12 hours per week is \$110,235. The County Library is also charging the City for phone service of approximately \$4,800 annually. The total annual cost for the additional hours and phone service (collectively, the "Library Services") is approximately \$116,000. For Fiscal Year 2022/23, up to \$116,000 of General Fund Fund Balance will be used to pay for the Library Services.

Up to \$365,000 of Measure M Surplus funds will be used for the next three fiscal years; Measure M Surplus funds generated in Fiscal Years 2022/23, 2023/24, and 2024/25 will pay Library Services in Fiscal Years 2023/24, 2024/25, and 2025/26 respectively.

RECOMMENDATION

City Council adopt the Resolution authorizing the use of General Fund Fund Balance and Measure M Surplus funds to pay for Library Services, commencing Fiscal Year 2022/23.

BACKGROUND

The County Library sent a letter to the City, dated March 30, 2022, notifying the City of the County Library's budget and the 40 base hours that it would provide at the Pittsburg Library:

- Monday CLOSED
- Tuesday 12-8
- Wednesday 10-6
- Thursday 10-6
- Friday 9-5
- Saturday 9-5

Pursuant to the letter, the County Library is contributing \$653,097 towards the 40 base hours and library operations at the Pittsburg Library for Fiscal Year 2022/23.

The County Library gave the following options for additional hours for July 1, 2022 – June 30, 2023:

- Option A – 6 additional hours per week \$68,743
- Option B – 12 additional hours per week \$110,235
- Option C – 16 additional hours per week \$180,307

On May 2, 2022, a Minute Order was accepted, and during the presentation, proposed uses of the Measure M surplus funds were presented to the City Council along with the proposed uses of the American Rescue Plan Act funds.

SUBCOMMITTEE FINDINGS

The use of Measure M Surplus funds for extended library hours was presented to the Measure M Committee on June 23, 2022 and to the Finance Subcommittee on September 30, 2022.

STAFF ANALYSIS

In addition to the 40 base hours of service the County Library provides at the Pittsburg Library, it continues to fund a collection of 1 million physical items for checkout, over 4 million ebooks and audiobooks, 35 electronic resources such as movies and newspapers, and administration of the 26 libraries in the County. Administration includes providing back of house support for computing and networking equipment, hiring and retention of staff, shipping of materials, budget and finance support, and countywide coordination of programs and services to meet the specific needs of each community.

The 12 additional hours has enabled the Pittsburg Library to now be open on Mondays, 10-8 and the hours on Tuesdays were extended from 12-8 to 10-8.

The resources made available at the Pittsburg Library are invaluable because there are residents in the community who may not have access to computers, books, and materials that encourage imagination and help with school projects. Extending the Library Services provide Pittsburg residents with an amenity that is available in other communities.

ATTACHMENTS: Resolution

Report Prepared By: Maria M. Aliotti, Assistant City Manager

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Authorizing the Use of General Fund Fund)
Balance and Measure M Surplus Funds for) RESOLUTION NO. 23-
Additional Services)

WHEREAS, the Contra Costa County Library sent a letter to the City, dated March 30, 2022, notifying the City of the County Library's budget and of the 40 base hours it would provide at the Pittsburg Library:

- Monday CLOSED
- Tuesday 12-8
- Wednesday 10-6
- Thursday 10-6
- Friday 9-5
- Saturday 9-5; and

WHEREAS, pursuant to the March 30, 2022 letter, the County Library is contributing \$653,097 towards the 40 base hours and library operations at the Pittsburg Library for Fiscal Year 2022/23; and

WHEREAS, the County Library gave the following options for additional hours of service for July 1, 2022 – June 30, 2023:

- Option A – 6 additional hours per week \$68,743
- Option B – 12 additional hours per week \$110,235
- Option C – 16 additional hours per week \$180,307; and

WHEREAS, on May 2, 2022, a Minute Order was accepted by the City Council, and during the presentation, proposed uses of the Measure M Surplus funds were presented along with the proposed uses of the American Rescue Plan Act funds; and

WHEREAS, the use of Measure M Surplus funds for extended library services was presented to the Measure M Committee on June 23, 2022 and to the Finance Subcommittee on September 30, 2022; and

WHEREAS, to better serve the needs of the community, the City worked with the County Library to extend the hours of service by an additional 12 hours at the Pittsburg Library; and

WHEREAS, the annual cost of the additional 12 hours per week is \$110,235. The County Library is also charging the City for phone service of approximately \$4,800 annually. The total annual cost for the additional hours and phone service (collectively, the "Library Services") is approximately \$116,000; and

WHEREAS, the resources made available at the Pittsburg Library are invaluable because there are residents in the community who may not have access to computers, books, and materials that encourage imagination and help with school projects. Extending the Library Services provide Pittsburg residents with an amenity that is available in other communities.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes the use of General Fund Fund Balance of up to \$116,000 to pay for the Library Services for Fiscal Year 2022/23. Be it further resolved that up to \$365,000 of Measure M Surplus funds will be used for the next three fiscal years; Measure M Surplus funds generated in Fiscal Years 2022/23, 2023/24, and 2024/25 will pay Library Services in Fiscal Years 2023/24, 2024/25, and 2025/26 respectively.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 1st day of May 2023 by the following votes:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Directing the City Engineer to Prepare and File an Annual Report for the Citywide Landscaping and Lighting Assessment District 1988-01 for FY 23/24

MEETING DATE: May 1, 2023

EXECUTIVE SUMMARY

Directing the City Engineer as the Engineer of Work to prepare and file the Engineer's Report is the first of three steps in the annual renewal process for the Citywide Landscaping and Lighting Assessment District 1988-01. Upon receipt and approval of the Engineer's Report, the City Council may order that assessments be placed on the County tax roll. Revenue collected through this district is necessary to fund citywide landscaping and lighting operations.

FISCAL IMPACT

The fiscal impact of levying Fiscal Year 2023/24 assessments will be determined during the Engineer's Report review. For Fiscal Year 2022/23, the projected assessments collected are projected to be \$3,136,994.

RECOMMENDATION

City Council approve the attached resolution directing the City Engineer to prepare and file the Fiscal Year 2023/24 report for Citywide Landscaping and Lighting Assessment District 1988-01.

BACKGROUND

In June 1988, the City Council confirmed the Engineer's Report, ordered improvements, and levied the first annual assessment for District 1988-01. Since then, the funds collected annually support landscaping and lighting operations citywide. Services include the following:

Street median and right-of-way landscaping maintenance;
Street tree maintenance;
Sidewalk repair related to street tree damage; and
Street light energy costs and maintenance.

SUBCOMMITTEE FINDINGS

This item was not reviewed by a subcommittee.

STAFF ANALYSIS

State statute mandates an annual renewal of assessments in District 1988-01. The first step is for the City Council to direct the City Engineer to prepare and file an annual report. The report will be submitted for City Council consideration in June.

Following preparation of the annual Engineer's Report, the City Council will consider adoption of a resolution of intention to levy and collect assessments within the district. In July, the City Council will hold a public hearing prior to considering confirming the district and levying the annual assessments.

ATTACHMENTS: Resolution

Report Prepared By: Sharon Paz, Administrative Analyst II

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Directing the City Engineer to Prepare)
and File an Annual Report for Citywide)
Landscaping and Lighting Assessment)
District 1988-01 for Fiscal Year 2023/24)

RESOLUTION NO. 23-

WHEREAS, the Citywide Landscaping & Lighting Assessment District 1988-01 was established by the City Council and approved by property owners; and

WHEREAS, the City has levied assessments on property in this district to pay for improvements therein; and

WHEREAS, Section 22622 of the California Streets and Highways Code requires the City Council to annually adopt a resolution generally describing any proposed new improvements or any substantial changes in existing improvements to be included for the determination of annual assessments levied for any existing assessment district created under the Landscaping and Lighting Act of 1972; and

WHEREAS, Section 22622 further requires that the City Council order the preparation of an Engineer's Report prior to declaring their intention to levy annual assessments for any district.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds that there are no proposed new improvements or any substantial changes in the existing improvements to Landscaping & Lighting Assessment District 1988-01, Citywide, and directs John Samuelson, City Engineer, to prepare and file with the City Clerk an annual report in accordance with Section 22622 of the Act.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 1st day of May 2023, by the following vote:

AYES:
 NOES:
 ABSTAINED:
 ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

MEMO: May 1, 2023

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

RE: **Adoption of Two City Council Ordinances Amending Prezoning Designations, Including Approval of a Master Plan, and Approving a Development Agreement for the Faria/Southwest Hills Annexation Project, AP-10-717 (GP, RZ, DA, ANNEX)**

EXECUTIVE SUMMARY

On April 17, 2023, the City Council adopted Resolutions certifying a Final Environmental Impact Report; approving CEQA Findings; adopting a Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program; approving General Plan mapping and text amendments; and initiating annexation proceedings for the Faria/Southwest Hills Annexation Project. The City Council also introduced and waived further reading of two ordinances amending the prezoning designations, adopting a master plan, and approving a development agreement for the proposed project. The project site is located in the hills southwest of the existing city limits and is commonly known as the Faria property APN's 097-180-002, 097-180-006, 097-190-002, 097-200-002, 097-200-003, 097-230-008 & 097-240-002 (now APN's 091-040-002, 092-010-002 & -006, 092-020-002 & -003, 092-040-008, 092-050-002, and a portion of 092-030-012).

FISCAL IMPACT

One-time revenues related to construction permits and other development fees and exactions (as outlined in the proposed development agreement) are anticipated with this project. The applicant also would be required to deposit a minimum of \$5,000 on an annual basis to reimburse the City for staff time expended in the annual review of the development agreement terms.

RECOMMENDATION

Staff recommends the City Council take the following actions for the Faria/Southwest Hills Annexation Project, in the order shown below:

1. Move to adopt Ordinance No. 23-1508 amending the prezoning designations for the site and adopting a Master Plan; and

2. Move to adopt Ordinance No.23-1507 approving a development agreement.

BACKGROUND

Prezoning Amendments: The prezoning amendments would reclassify the project site from HPD (Hillside Planned Development) and OS (Open Space) Zoning Districts, to RS-4-P (Single Family Residential, 4,000 square foot minimum lot size with Master Plan) and OS-P (Open Space with Master Plan) Districts (see Figure 1 and 2 below). The “-P” added to each zoning district signifies a Master Plan Overlay District. To comply with this proposed zoning, a draft Master Plan has been prepared (see Exhibit B of Attachment 1).

Figure 1

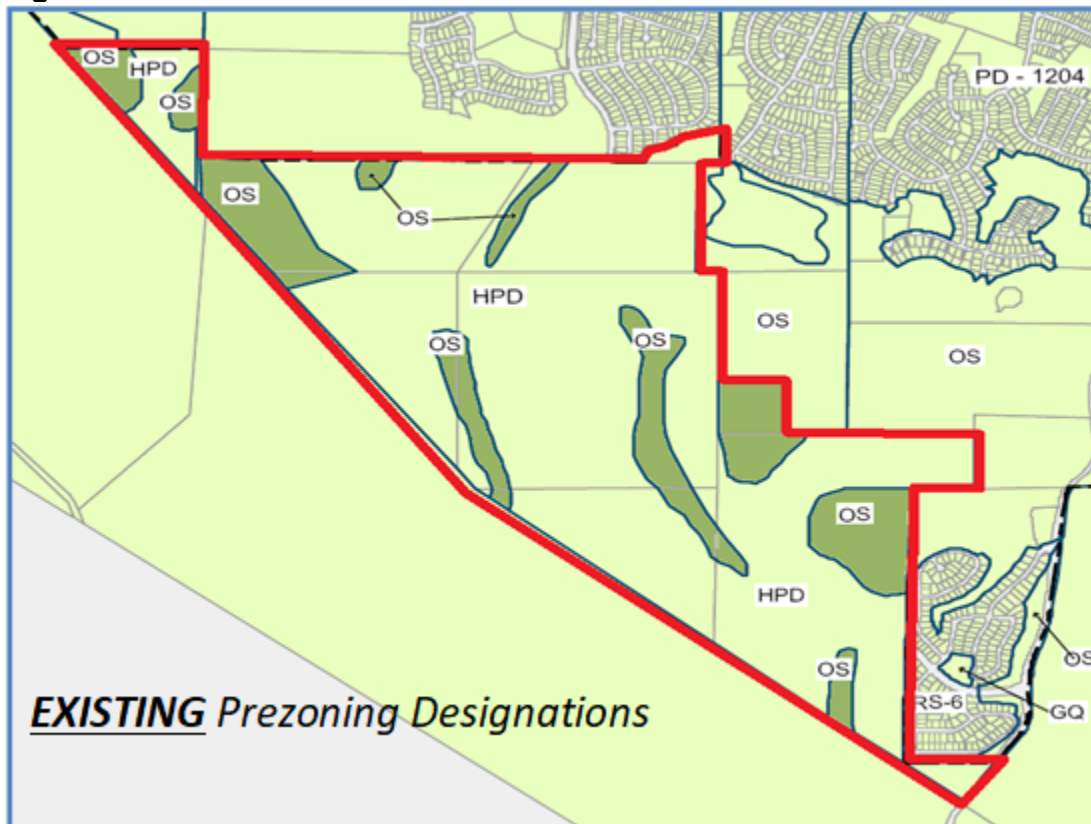
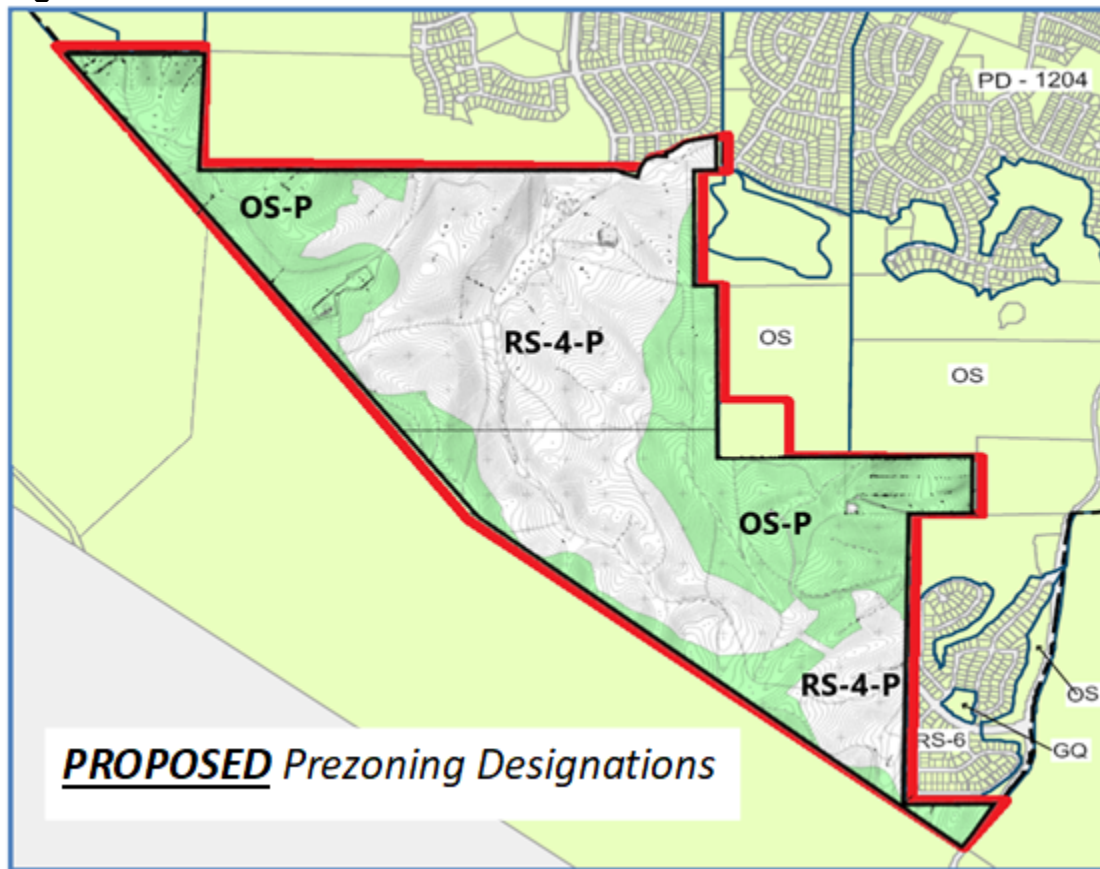


Figure 2



The proposed Master Plan includes a land use map, development regulations, design review guidelines and a definition of the proposed circulation system. The general theme of the land use map is to focus all development within the natural valley area that runs through the middle of the site (north to south) and allow for a natural buffer on the east and the west, where several prominent ridgelines are located and would remain mostly untouched. The development in the center of the site would include a denser product (3-5 units per acre) on the northern half of the site, compared to a less dense product (1-3 units per acre) on the southern half.

The development regulations and design guidelines have been crafted to foster appropriate hillside development patterns, which can be more complex than development in other areas of the City because of the unique topography of the property. The overall traffic circulation pattern for the site is largely unknown at this time; however, under the proposed Master Plan, the project would ensure that San Marco Boulevard would be extended and continue south through the site and Bailey Estates, serving as the backbone for development to branch off, and eventually connect to Bailey Road to the east. Design guidelines for the larger on-site circulation system have been incorporated into the plan.

Development Agreement: The developer has requested that the City enter into a Development Agreement, which has the purpose of locking in fees and regulations to provide certainty during a multi-year project, and in exchange, developer would have the following contractual obligations a) payment of fees to assist in the financing of unmet local and regional traffic improvement needs; b) payment of in-lieu fees to fulfill inclusionary housing obligations under PMC Chapter 18.86; c) inclusion of at least 75 single-story houses spread throughout the future project; d) payment of \$200,000 to expand the City's security camera network; e) payment of a \$2,000,000 community benefit fee; f) payment of

\$100,000 to construct monument entry signs to the City; g) installation of basic home security systems into each future house; h) annexation of the site into all applicable Community Facilities Districts (CFDs) for park maintenance, off-site stormwater facilities, police and other emergency services, and fire facilities, fire safety and emergency services; and i) support for creation of a new district to support ongoing lighting and landscaping needs for the area.

The Development Agreement also includes an additional Article (XII) which would acknowledge the City and the Developer's agreement that the Project shall encourage hillside estate-style development and recognize that the City Manager, at his/her discretion, may take the necessary actions to bring subsequent entitlement approvals normally brought before the Planning Commission also be brought before the City Council. The new Article 12 would also require the Developer provide one or more connecting trails from the Property to the Regional Park trail network, support and cooperate with any effort to amend the school district boundaries to include schools serving the Property within the boundary of the Pittsburgh Unified School District; and cooperate and implement the Pittsburgh Active Transportation Plan.

The public hearing for this project was held before the City Council on April 17, 2023. After close of the public hearing the City Council moved to introduce and waive further reading of both ordinances attached to this report.

SUBCOMMITTEE FINDINGS

The item was not reviewed by a subcommittee.

STAFF ANALYSIS

An ordinance may be adopted by majority vote at a meeting at least five days after the ordinance is introduced. An ordinance becomes effective 30 days after the date of its adoption.

ATTACHMENTS:

1. Proposed Ordinance 23-1508
 - a. Exhibit A – Rezoning Amendments
 - b. Exhibit B – Master Plan
2. Proposed Ordinance 23-1507
 - a. Exhibit A – Development Agreement

Prepared by: John Funderburg, Assistant Director of Planning

ATTACHMENT 1
BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Granting an Appeal and Adoption of an)
Ordinance Amending the Prezoning)
Designations for Approximately 606)
Acres from HPD and OS, to RS-4-P)
And OS-P, and Adopting a Master Plan)
For the "Faria/Southwest Hills)
Annexation Project, AP-10-717 (RZ)")

ORDINANCE NO. 23-1508

The City Council of the City of Pittsburg DOES ORDAIN as follows:

WHEREAS, the Faria/Southwest Hills Annexation Project (proposed project) includes applications for a General Plan amendment, change in prezoning designations, adoption of a Master Plan, approval of a development agreement, and initiation of annexation proceedings, for a 606-acre site located in the hills southwest of the existing city limits, including APN's 097-180-002, 097-180-006, 097-190-002, 097-200-002, 097-200-003, 097-230-008 & 097-240-002 (now APN's 091-040-002, 092-010-002 & -006, 092-020-002 & -003, 092-040-008, 092-050-002, and a portion of 092-030-012); and,

WHEREAS, in 2001, the current Pittsburg General Plan was adopted with a planned land use development pattern for the southwest hills (outside current city limits) that included a combination of Low Density Residential, Hillside Low Density Residential, and Open Space. The 2001 General Plan land use map for this specific area has not been amended since its initial adoption; and,

WHEREAS, on November 5, 2005, the voters of the City of Pittsburg approved a ballot initiative entitled, 'Measure P (City of Pittsburg Voter Approved Urban Limit Line and Prezoning Act)', which brought the entire 606-acre Faria project site into the new Urban Limit Line (ULL) boundary and prezoned the property to HPD (Hillside Planned Development) and OS (Open Space) Districts, consistent with existing General Plan residential and open space designations; and,

WHEREAS, on July 8, 2009, the Contra Costa Local Agency Formation Commission (LAFCo) approved an extension of the Pittsburg Sphere of Influence (SOI), as well as the Contra Costa Water District and Delta Diablo SOI's, to include the project site; and,

WHEREAS, on September 24, 2010, Louis Parsons, on behalf of Faria Land Investors, filed Annexation Application No. 10-717, requesting that the city initiate proceedings to annex the approximately 606-acre site into the municipal boundary, as well as the SOIs for the Contra Costa Water District and Delta Diablo service areas; and,

WHEREAS, in 2014, Application No.10-717 was amended to include a prezoning amendment to add an Interim Study Overlay (-S) District to the existing base prezoning designations in order to designate the site as an area where zoning regulations would remain under study until such time when the developer provided a development plan; and,

WHEREAS, in 2017, Application No. 10-717 was revised again to amend the

rezoning designations on the site from HPD and OS, to RS-4-P (Single Family Residential, 4,000 square foot minimum lot sizes) and OS-P Districts, with a Master Plan Overlay (-P) in place of the previously proposed Interim Study Overlay (-S) District. The proposal was also amended to include a development agreement and General Plan mapping and text amendments to ensure consistency with the proposed master plan; and,

WHEREAS, the proposed project is subject to the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000, et seq.), and the State CEQA Guidelines (14 Cal. Code Regs. Section 15000, et seq.), and on April 17, 2023, the City Council adopted Resolution No. 23-14269, certifying a Revised and Updated Final Environmental Impact Report (RUEIR) and adopting associated CEQA findings, a Statement of Overriding Considerations (SOC) and Mitigation Monitoring and Reporting Program (MMRP); and,

WHEREAS, the proposed rezoning amendment conforms with the applicable General Plan land use designations of *Low Density Residential* and *Open Space*, adopted by the City Council on April 17, 2023, Resolution No. 23-14270, and with applicable goals and policies of the Pittsburg General Plan and Pittsburg Municipal Code (PMC); and,

WHEREAS, on February 14, 2023, after conducting a duly noticed public hearing, the Planning Commission adopted Resolution No. 10215, to not recommend approval of the requested General Plan amendments, rezoning amendments (including adoption of the draft Master Plan), and development agreement for the Faria/Southwest Hills Annexation project; and

WHEREAS, on February 17, 2023, Louis Parsons, applicant for the project, filed an appeal of the Planning Commission's Determination and pursuant to PMC section 18.18.060.D; and

WHEREAS, in accordance with PMC section 18.48.050, before adoption of an ordinance, the City Council shall make findings that the proposed regulation or map amendment is consistent with the policies of the General Plan and the notice and hearing provisions of this title; and,

WHEREAS, in accordance with PMC section 18.72.070, prior to approval of a proposed Master Plan, the City Council must find that the proposed Master Plan:

- 1) Conforms to the General Plan;
- 2) Generally complies with the land use and development regulations of the base zoning district and does not significantly alter the regulations; and
- 3) Can be adequately, reasonably and conveniently served by the public services, utilities and public facilities.

WHEREAS, on or before April 7, 2023, in accordance with Government Code sections 65090 and 65091, and PMC section 18.14.020, a "Notice of Public Hearing" for the April 17, 2023, City Council public hearing on this item was published in the East County Times; was posted at City Hall and in the "Public Notices" section of the City website; and was mailed via first class or electronic mail to the applicant/property owner, all property owners and/or residents within 800-feet of the site, all local service agencies expected to

provide future services to the site, and to individuals who had previously filed written request for such notice. In addition, the notice was also published on www.nextdoor.com (“Nextdoor”) and was sent directly to all subscribed members in the following Nextdoor neighborhoods: Oak Hills South, San Marco, San Marco Villas, Toscana and Vista Del Mar; and,

WHEREAS, documents and other materials constituting the record of the proceedings upon which the City’s decision and its findings are based, are located at the City of Pittsburg Planning Division, located at 65 Civic Avenue in Pittsburg, California 94565; and,

WHEREAS, on April 17, 2023, the City Council held a duly-noticed public hearing on the appeal of the Planning Commission Decision to not Recommend Approval of Planning Application No.10-717 (GP, RZ, DA, ANNEX), at which time oral and/or written testimony was considered.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

A. Based on the evidence and oral and written testimony presented at the public hearings, and based on all the information contained in the Planning Division’s files on the project, including but not limited to the Revised and Updated Final EIR for the project and the City Council staff report entitled “Appeal of the Planning Commission’s Determination to not Recommend for City Council Approval a Development Agreement, Amendments to the General Plan and Rezoning Designations, and Adoption of a Master Plan for the Faria/Southwest Hills Annexation Project. AP-10-717 (GP, RZ, DA),” dated April 17, 2023, the City Council finds that:

- 1) On or before April 7, 2023, in accordance with Government Code sections 65090 and 65091, and PMC section 18.14.020, a “Notice of Public Hearing” for the April 17, 2023, City Council public hearing on this item was published in the East County Times; was posted at City Hall and in the “Public Notices” section of the City website; and was mailed via first class or electronic mail to the applicant/property owner, all property owners and/or residents within 800-feet of the site, all local service agencies expected to provide future services to the site, and to individuals who had previously filed written request for such notice. In addition, although not required, the notice was also published on www.nextdoor.com (“Nextdoor”) and was sent directly to all subscribed members in the following Nextdoor neighborhoods: Oak Hills South, San Marco, San Marco Villas, Toscana and Vista Del Mar.
- 2) The Revised and Updated Final EIR (“RUFER”) for the Faria/Southwest Hills Annexation project (SCH #2017032027), certified by the City Council on April 17, 2023 (Resolution No. 23-14269), was prepared in compliance with CEQA (Public Resources Code Section 21000, et seq.), and the State CEQA Guidelines 14 Cal. Code Regs. Section 15000, et seq.). All impacts have been analyzed and mitigated to the extent feasible as set forth in the RUFER

prepared for this project, and the City Council has independently reviewed and considered the information contained therein, prior to approving the project.

Pre-zoning Designation Changes

- 3) The proposed rezoning amendment and Master Plan are consistent and conforms with General Plan, in that the project site is located in the Southwest Hills Subarea of the General Plan, and has been envisioned since the General Plan adoption in 2001, as accommodating a combination of Residential and Open Space uses with a maximum of 1,500 residential units to be spread across the entire 606 acre site (see General Plan policy 2-P-96). The proposed rezoning amendments are within the Pittsburg Planning Area, the voter approved Urban Limit Line, and the Pittsburg Sphere of Influence, and they will facilitate implementation of General Plan policy 2-P-91, by concentrating all future development to the center of the site within the natural valley-like area located between two existing prominent ridgelines, and thereby establishing a greenbelt buffer along the western edge of the site to be preserved as open space. Upon annexation of the site into the City, the RS-4-P zoning will allow construction of homes consistent with General Plan goals/policies including 2-G-4, 2-G-5, 2-P-73, 2-P-75, Housing G-1, and Housing P-1.2, P-1.2.B and P-1.2.D, and will provide expanded housing opportunities for the City's moderate and above-moderate income households, thereby helping to balance the City's housing stock and improve the resident-consumer tax base in the City. The rezoning amendment and Master Plan will be consistent with General Plan policies as further set forth in Attachment 6 (Applicable General Plan Goals and Policies) to the April 17, 2023 Staff Report.
- 4) The proposed Master Plan will comply with the land use and development regulations of the base zoning districts of RS-4 (Single Family Residential with 4,000 square foot minimum lot sizes) and OS (Open Space) and does not significantly alter the regulations.
- 5) The proposed Master Plan can be adequately, reasonably and conveniently served by public services, utilities and public facilities, of which this growth has been contemplated for that last 20 years by multiple planning documents including the General Plan, the City's sewer and water system master plans, as well as other long range planning documents for stormwater drainage/treatment, recreational needs/facilities, and regional growth and transportation.

Section 2. Decision

Based on the findings and the authority set forth above, the City Council hereby:

- 1) Amends the Zoning Map, as referenced in Pittsburg Municipal Code, Title 18 (Zoning Ordinance) section 18.04.020, to change the rezoning of the properties described above, from a combination of HPD (Hillside Planned Development) and OS Districts, to RS-4-P (Single Family Residential with 4,000 square foot minimum lot size and a Master Plan Overlay) and OS-P

(Open Space with a Master Plan Overlay) Districts as substantially presented in “Exhibit A” of this resolution;

- 2) Approves a Master Plan, as substantially presented in Exhibit “B” of this resolution.

Section 3. Severability

If any section, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions.

Section 4. Publication

The ordinance shall be posted and published in accordance with the California Government Code.

The foregoing ordinance was introduced at a meeting of the City Council of the City of Pittsburg held on April 17, 2023, and was adopted and ordered published at a meeting of the City Council held on May 1, 2023 by the following vote:

AYES:

NOES:

ABSTAINED:

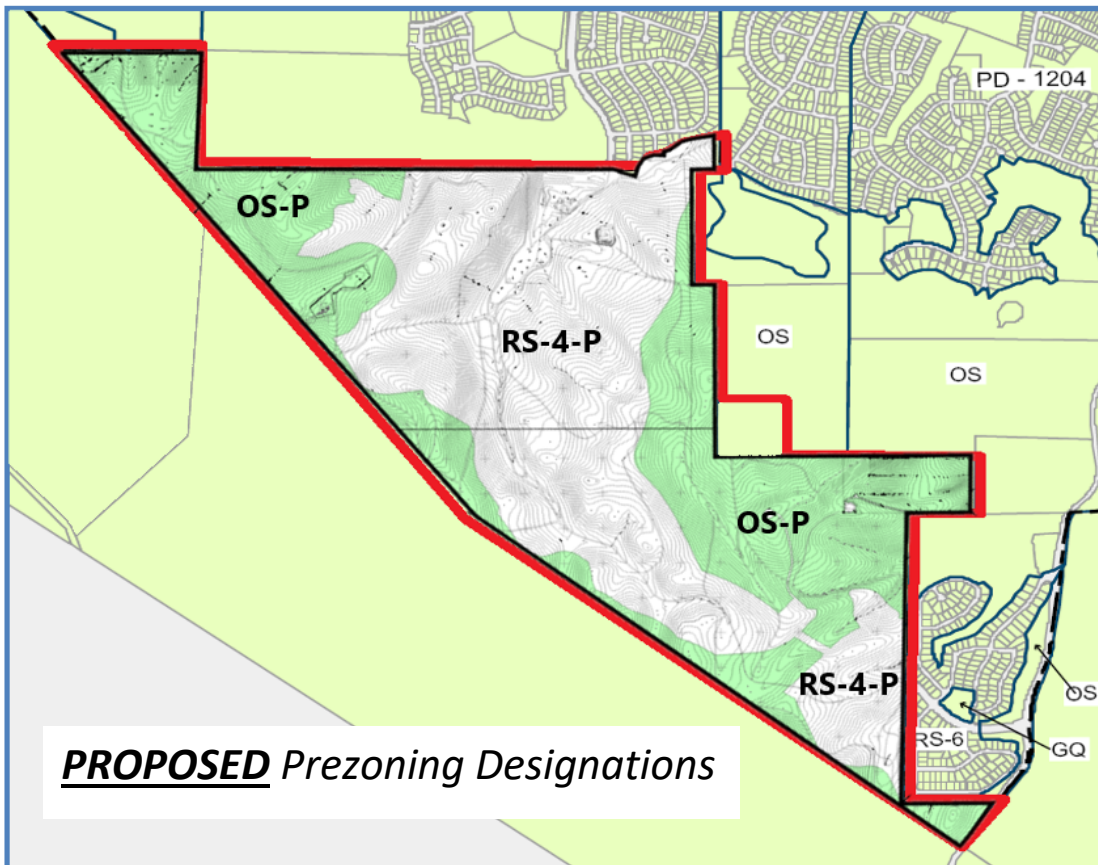
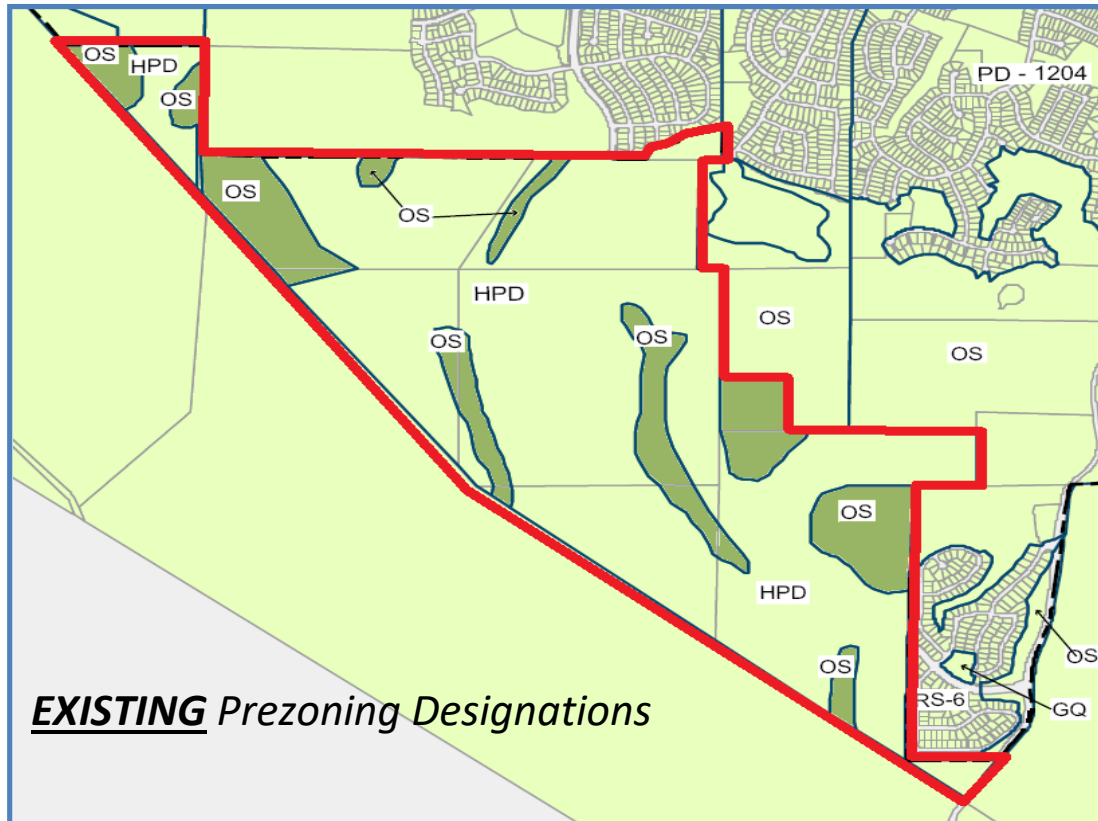
ABSENT:

Shanelle Scales-Preston, Mayor

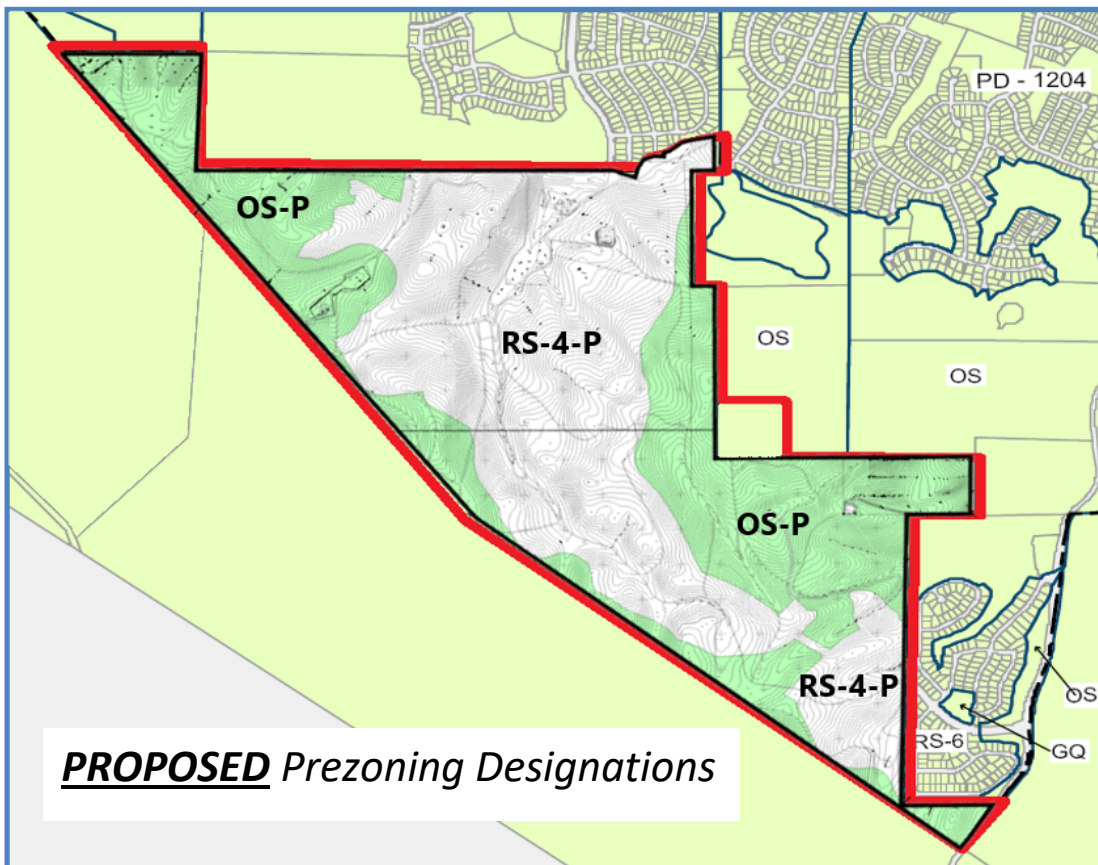
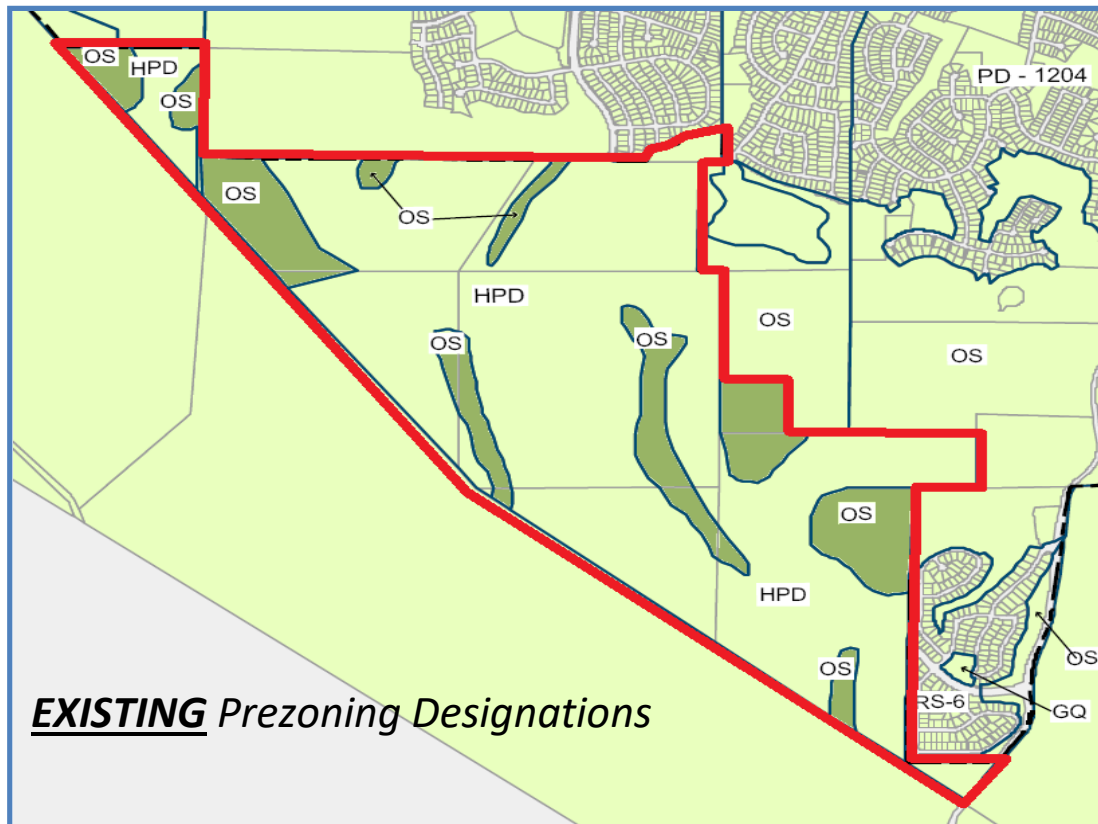
ATTEST:

Alice E. Evenson, City Clerk

City Council Ordinance No. 23-1508
EXHIBIT "A"



Attachment 1a
Exhibit A to City Council Ordinance No. 23-1508



Faria Property Master Plan

For Faria/Southwest Hills Reclassification from HPD and OS Rezoning Districts, to RS-4-P and OS-P Rezoning Overlay Districts

This Master Plan document is organized in the following manner:

- Section 1 describes the intent of the Master Plan Overlay District, and the area which it would govern.
- Section 2 includes a Land Use Map and defines the permitted uses, density and property development regulations.
- Section 3 defines Design Review Guidelines that will govern the master plan area and subsequent development activities.
- Section 4 outlines the project phasing and subsequent entitlements.

Section 1. Purpose, Location and Boundaries.

In accordance with Pittsburg Municipal Code (PMC), Chapter 18.72, the purpose of this master plan overlay district is to:

- a) ensure orderly planning for the development of a large, unsubdivided area in the city's sphere of influence consistent with the general plan;
- b) maintain an environmental equilibrium consistent with existing vegetation, soils, geology, topography, and drainage patterns;
- c) avoid premature or inappropriate development that would result in incompatible uses or create public service demands exceeding the capacity of existing or planned facilities; and
- d) encourage sensitive site planning and design.

The master plan overlay district is located in the southwest hills and encompasses approximately 607 acres of land (see Figure 1). The district is generally bounded by Bailey Road and the approved but not yet constructed, "Bailey Estates" subdivision to the east; the Concord City Limits and recently closed Concord Naval Weapons Station (CNWS) property to the south and west; and the San Marco and Vista Del Mar residential subdivisions (substantially developed) along the northern boundary and other open space areas along the northeastern boundary.

Upon City approval of this master plan, a request to annex the Faria property into the City limits would be filed with the Contra Costa Local Agency Formation Commission (LAFCo). Following annexation, entitlement applications would be submitted to the City for review and approval. It is anticipated that the initial entitlement process would include review of a subdivision map and design review for new construction. This

7/28/20 DRAFT

process is expected to take two or more years due to the City's discretionary review requirements and the California Environmental Quality Act (CEQA) processing requirements. Once the entitlement process is completed, the tentative subdivision map and construction documentation would be finalized for City review and approval. This process could take an additional six to twelve months. Once the construction documents are approved construction would commence. The entire process from entitlement to completion of initial construction could take approximately four years. Single family homes at San Marco (immediately north of the site) are anticipated to be fully completed by the year 2020, leaving the Faria property as the next logical place for development to occur in the Pittsburg Southwest Hills area.

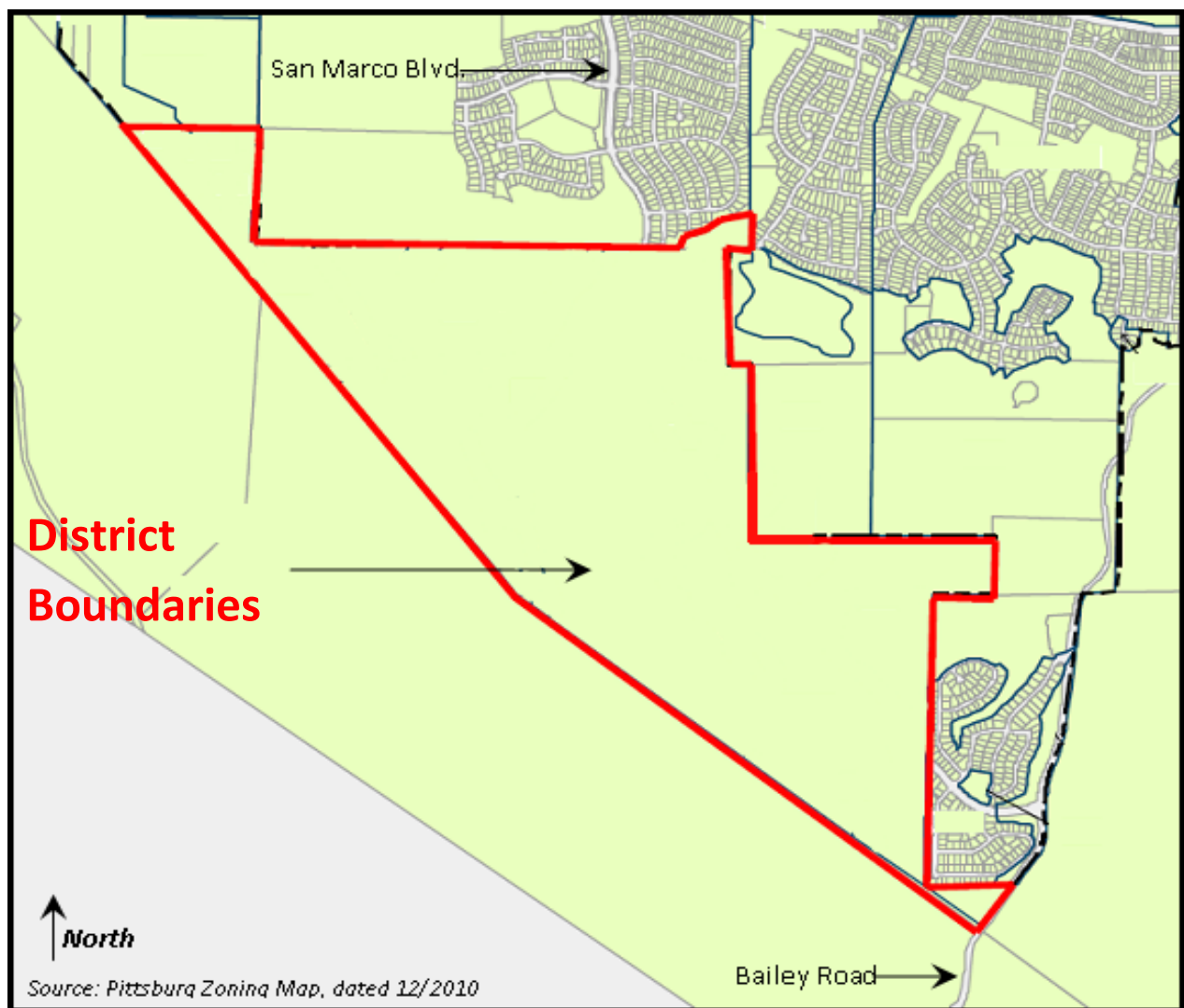


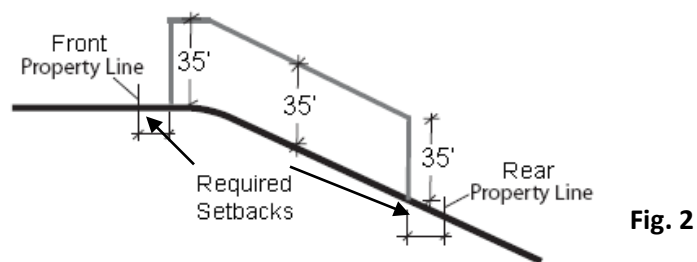
Fig 1. District Boundaries

Section 2. Land Use & Development Regulations

Proposed areas of development and areas of preservation (labeled as “Undeveloped Area”) are shown in Exhibit A of this Master Plan. The master plan area includes a total of 341 acres for residential development and 265 acres of preservation as open space. The master plan would permit development on the approximate 606-acre project site as follows:

A. Residential Development

1. Allowable Uses. The land use regulations within each of the residential neighborhoods shall be the same as RS-4 District, PMC section 18.50.010. Neighborhood serving commercial land uses, as identified in PMC 18.50.010, shall be allowable within the master plan area with a use permit.
2. Residential Density. The project site is divided into two residential areas: *(1) 209 acres at a density of 3-5 dwelling units per gross acre, and (2) 132 acres at a density of 1-3 dwelling units per gross acre*; however, in no event shall the total number of dwelling units within the master plan area exceed 1,500 units, as dictated by General Plan policy 2-P-96.
3. Property Development Regulations. Property Development Regulations set forth in PMC Schedule 18.50.105 shall apply to all residential development permitted by this master plan, except where specified below.
 - a) Height and form of main structures on sloped lots. For terraced structures built on sloped lots, a maximum height of thirty-five feet (35') is permitted. Building height is measured from any point along the finished grade (Fig. 2).



- b) Deck sizes and heights for structures on sloped lots. Where decks are provided as a primary private outdoor space, they shall be a minimum of six feet (6') in length (measured parallel to the adjacent wall of the structure) to

provide adequate usable area and to effectively break-up the mass of large structures. The support posts or columns for any deck that extend out over a downslope shall not exceed a vertical height of twelve feet (12'), as measured from the bottom of the deck to the finished grade.

- c) Flag lots. Flag lots are allowed in order to reduce environmental impacts, minimize roadway cut-and-fill, and create a better view protection. Flag lot driveways shall be designed to break up the long expanse of concrete paving with different materials, textures, and/or colors. Determination of flag lot widths and front lot lines shall be conducted in accordance with PMC 18.80.015.

4. Landscaping. In addition to the requirements of Section 18.84.300, subdivision landscaping shall comply with the following standards:

- a) Slopes adjacent to collector or arterial streets shall be landscaped and irrigated.
- b) Street trees shall be planted at a minimum of one tree every forty feet (40') along all streets. Street trees shall not be less than six feet (6') in height, as measured from the ground surface after planting.
- c) Fire resistant landscaping shall be provided and maintained within one hundred feet (100') of an exposed elevation of a structure. An exposed elevation is one or two sides of a structure that have direct exposure to unimproved open space areas, natural grasslands or agricultural lands.
- d) Codes, covenants and restrictions shall be filed and recorded with the Contra Costa County Recorder prior to the sale of any residence requiring maintenance of any fire resistant landscaping on private property.

5. Viewshed Analysis. A viewshed analysis shall be required in conjunction with any request for development to ensure impacts from nearby public vantage points, as well as neighboring properties, are minimized to the maximum extent practicable.

B. Open Space/Green Belt/Resource Conservation Area:

1. Allowable Uses.

- a) Pittsburgh-Concord Greenbelt Buffer. No development shall be permitted within the green belt area, as required by General Plan policy 2-P-91.
- b) Open Space/Resource Conservation Areas. The land use regulations for open space areas not in a state of permanent preservation shall be the same as OS District, PMC section 18.58.020. Water storage tanks, trails and/or vehicular access roadways deemed necessary to provide adequate water supply and access to residential development areas shall be permitted.

2. Property Development Regulations. Property Development Regulations set forth in PMC 18.58.030 shall apply to all open space areas.

C. Site Development Standards Applicable to All Areas:

- 1. Trails. Subdivisions shall be designed to incorporate a pedestrian trail system to interconnect neighborhoods and provide safe routes to schools, parks, and public open space within a one-mile radius of the subdivision. All trails must have public access.
- 2. Fences and walls. In addition to the requirements of Section 18.84.205-235, fences and walls shall comply with the following:
 - a) Safety fences. Where barbed wire fences are used around the perimeter of designated open space areas within a project, a second fence shall be constructed on the developed side of the barbed wire to minimize potential injury to people.
 - b) Chain link. Chain link fences are prohibited on residential lots.
 - c) Retaining walls. All retaining walls shall be engineered and constructed of reinforced concrete or masonry, or interlocking modular block.
 - d) Entrance gates. Gates to residential neighborhoods that are intended to be opened only by residents and other designated users are prohibited.

- e) Single lot security gates. Where security gates are utilized for single estate lots, materials shall be visually permeable.

3. Outdoor lighting.

- a) Residential private lighting. All lights attached to buildings shall provide a soft “wash” of light against the wall and shall not spill onto adjacent properties. Other exterior lighting shall be designed and installed in such a manner that the light source is shielded from view off the site.
- b) Street lighting. All street lighting shall use “full cutoff” luminaires which allow no direct light emissions above a horizontal plane through the luminaires’ lowest light –emitting part (See Fig.2). Light poles and fixtures shall be of an ornamental type and low-level street lighting shall be used where feasible.

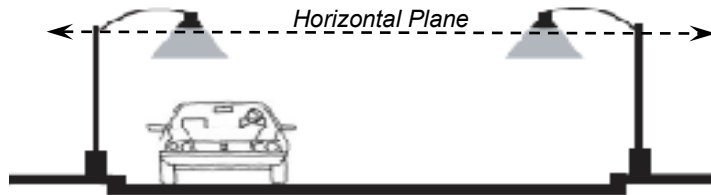


Fig. 3

- 4. Other Development Regulations. All other development regulations not covered by this master plan, shall be as prescribed in PMC Title 18, where appropriate.

Section 3. Design Review Guidelines

The Design Review Guidelines provided below are generally derived from existing General Plan policies and they are grouped into six main categories for ease of reference (with the applicable policies referenced in parentheses at the end of each guideline). The policies are intended to provide guidance for future plan review and development within the master plan area.

- A. Neighborhood and Subdivision Design
- B. Circulation
- C. Grading Design
- D. Fence and Wall Design
- E. Site Design, Architectural & Building Materials
- F. Landscaping

A. Neighborhood and Subdivision Design

1. Encourage hillside 'estate' development along the outer edges of the master plan area. 2-G-5
2. Encourage the use of flag lots with common driveways in sloped areas as a means of encourage terracing of buildings and minimizing roadway cut-and-fill (Fig.4). 4-P-16

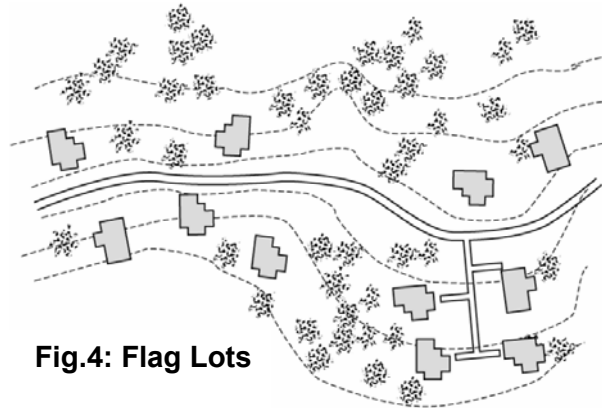


Fig.4: Flag Lots

Figure 4-4: Flag Lots

4. Design the layout of new park facilities in accordance with the natural features of the land. Where possible, preserve such natural features as creeks and drainage ponds, rock outcroppings, and significant topographic features. 8-P-9
5. Design diverse and distinctive neighborhoods that build on the patterns of the natural landscape and provide a sense of connection with surrounding uses. 4-G-17
6. Avoid placement of lots that allow the rear of homes to be viewed from public vantage points, such as parks, trails, roadways or open space areas. Where backyards may be visible from public view, provide additional screening by using natural slopes, berms and additional vegetation.
7. Vary building setbacks/orientations for new residential developments to reflect the natural contours of the hillside (Fig.5).
8. Development along the outer edges of the master plan should face outwards towards the rural landscape (preventing a solid wall of residential backyard fences). 4-P-7, 4-P-19
9. Encourage green building designs and techniques. Houses should be sited so that portions of the roofs would be suitable for solar collectors (roof should face within 15 degrees of true south).

10. Provide open space amenities such as a green belt, park and/or trails alongside ridges, creeks and/or storm drainage.
11. Utilize creeks and/or storm drainage as a shared natural community resource by incorporating them into the subdivision design and maximizing public access.
12. Protect unique environmental features, such as large rock outcroppings, mature trees, creeks and ridgelines, and incorporate them into the subdivision design. 4-G-4
13. Enhance views from individual residences by staggering lots (Fig.6).
14. Any large parcels with lot sizes greater than 10,000 square feet should be planned for those areas near ridges and in view sheds. Such lots should be designed with exclusive estate style homes that are placed to minimize grading while also providing some usable exterior living space around the house.
15. In terms of neighborhood design, reserve sites near ridges and in view sheds for unique, estate-style homes, with special effort given to provide unique design.

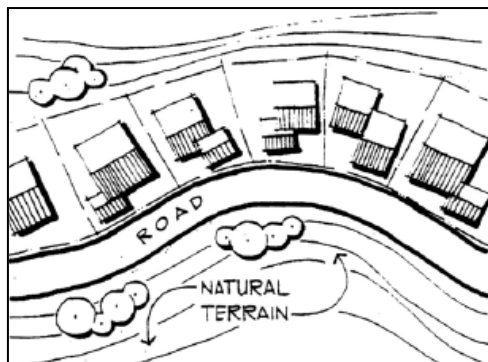


Fig. 5

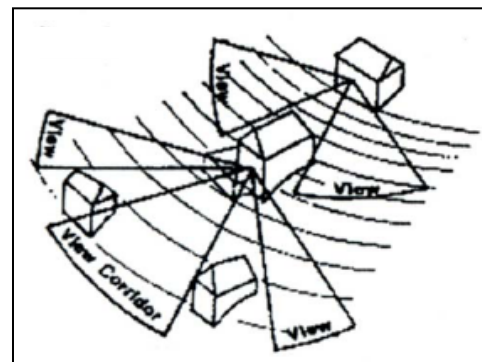


Fig. 6

B. Circulation

1. Prioritize pedestrian circulation. Develop linear parks, public trails and/or trailheads to connect pedestrians to schools, commercial centers, parks, other neighborhoods and local and regional open space areas, including those planned within the Concord Naval Weapons Station Reuse area. 8-G-3, 8-P-21, 2-P-90, 4-P-30
2. Ensure San Marco Boulevard is extended through the master plan area and through the future Bailey Estates Subdivision, to connect up to Bailey Road.

3. Maximize access for fire and emergency response personnel by providing through-roads and multiple connection points between neighborhoods. 2-P-27, 4-P-83
4. Provide on-street parking along hillside roads in parking bays where topography allows. 4-P-31
5. Allow streets with sidewalks on only one side in hillside areas where topography may be challenging. 4-P-85

C. Grading Design

1. Utilize geological hazard abatement districts (GHADs) in hillside areas to ensure that geotechnical mitigation measures are maintained over the long-term, and that financial risks are equitably shared among owners and not borne by the City. 10-P-11
2. Design new development on unstable slopes (as designated in General Plan Figure 10) to avoid potential soil creep and debris flow hazards. Avoid concentrating runoff within swales and gullies, particularly where cut-and-fill has occurred. 10-P-8
3. Limit grading of hillside areas over 30 percent slope (see General Plan Figure 10-1), to elevations less than 900 feet. 4-P-11
4. Design 'cut and fill' slopes visible to the general public to be contour rounded in order to replicate an un-graded natural terrain. Limit all engineered slopes to 3:1, unless an engineering geologist can establish that a steeper slope can perform satisfactorily over the long term. 10-P-3
5. Replant 'cut and fill' slopes with native, non-invasive species. 9-P-9, 10-P-3
6. Place manufactured slopes behind buildings where they will not be visible to the general public.
7. Design lots so that lot lines are at the top of slopes with adequate property line setback from the slope to provide for required vertical slope rounding.
8. Ensure driveways are constructed to be at least 20 feet long. For courtyard style developments without standard driveways, garage access aprons should be no longer than three feet. 4-P-16
9. Design concrete storm drainage ditches to blend with the surrounding environment by reflecting the predominant colors and textures of the surrounding

environment (examples include providing colored concrete or lining ditches with rocks or other natural materials). Screen ditches from lower elevations by building up the adjoining bench, to a slope of at least 5%.

10. Design slopes at the boundary of project areas to match the elevation of the approved grade of the adjoining property, outside of a project boundary. Where no approved map exists for an adjoining property, design projects to match the existing elevation of the adjoining property, outside the project boundary.

D. Site Design, Architectural & Building Materials

1. Permit second units (accessory dwellings) in single-family residential developments in accordance with State law. 2-P-17
2. When sloped lots are utilized, site structures so that the long axis of the building runs parallel with hillside contours (Fig.7) and the slope of roof lines and gables run parallel with the hillside slope (Fig.8).

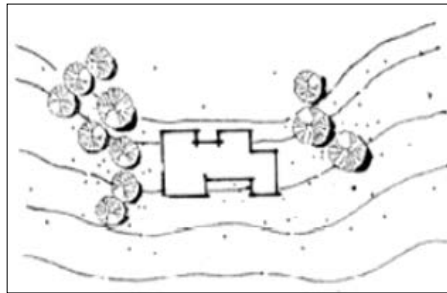


Fig. 7

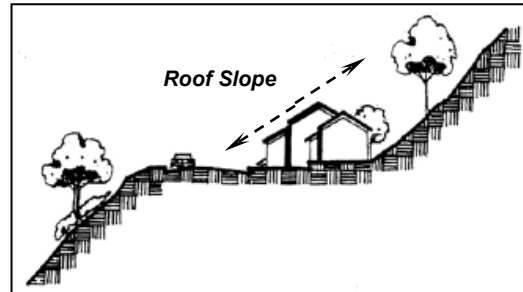


Fig. 8

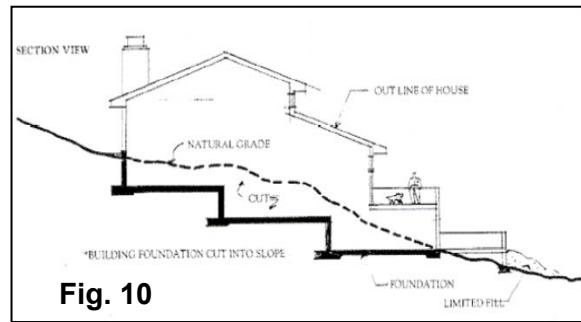
3. Design driveways serving multiple parcels (flag lots or courtyards) to break up the long expanse of concrete with different materials, textures, or colors. Encourage the use of permeable materials such as grasscrete, grass, stone, stamped concrete pavers or decomposed granite for driveways (Fig.9)



Fig. 9

4. Design buildings with natural looking materials that reflect the predominant colors and textures of the surrounding landscape.

5. Use darker earth tones for roofing colors to ensure they are less visible to adjacent or up-slope properties.
6. Encourage terrain-neutral colors for structures that are visible from major roadways or open space areas. White or light exterior colors with a reflection factor of more than sixty percent (60%) should not be used except as trim that constitutes no more than ten percent (10%) of the building surface. Codes, covenants and restrictions should be filed prior to the sale of any residence restricting future colors of structures to those in the approved color palette.
7. Avoid large expanse of flat, blank walls, especially on the downhill side of a downhill lot; this is also meant for side elevations, particularly on corner lots.
8. Break building massing and rooflines into smaller components. 4-P-3
9. 'Step' building forms to conform to site topography where appropriate. (Fig. 10)
10. Screen decks that extend out from a building with natural landscaping between the building wall and the outer skirt of the deck.



11. Provide a variety of home styles with a minimum of three exterior styles available for each model within each development phase. This is to be implemented by use of different architectural details and by varying building materials, roof slopes, window and trim treatments.
12. Large estate-style homes should include unique designs with 360-degree architecture, providing special attention to architectural details, materials and beautifying elements applied to all sides of the house, not just the front façade. Special design consideration should also be given to homes, as they could also be viewed from below and above.

E. Fence & Wall Design

1. Use natural looking building materials for fences and retaining walls in order to reflect the predominant colors and textures of the surrounding environment and to promote a rural feeling (Fig.11).



Fig. 11

2. Design fences/walls that abut designated rural open space areas to be visually permeable. Chain link fencing is discouraged. 4-P-7
3. Design fences and walls adjacent to arterials and collector streets to incorporate visual interest through variation in placement, use of planters, differing materials, use of natural materials, and modulation of the wall plane.
4. Break up retaining walls (e.g. undulating sections or landscaped screening), rather than one continuous blank wall (Fig. 12).
5. Build single retaining walls no taller than four feet (4') in height, where located within ten feet (10') of a public right-of-way. If additional height is necessary, build multiple walls (with landscaping in between) no taller than three feet (3') in height with minimum horizontal step-backs of three feet (3') between each wall segment (Fig. 13).

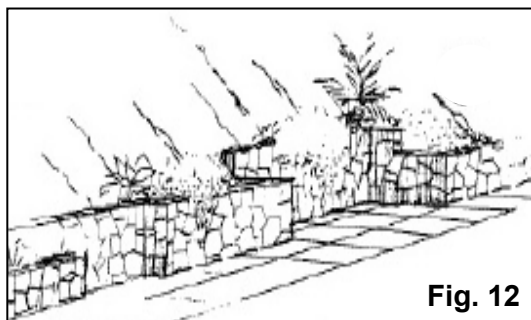


Fig. 12

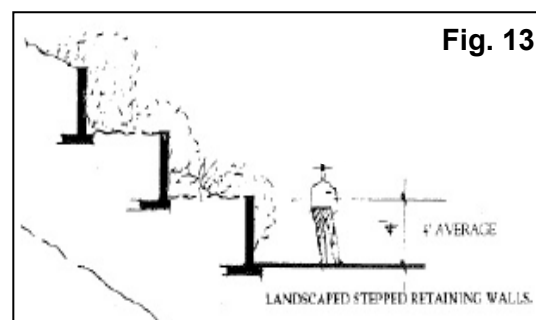


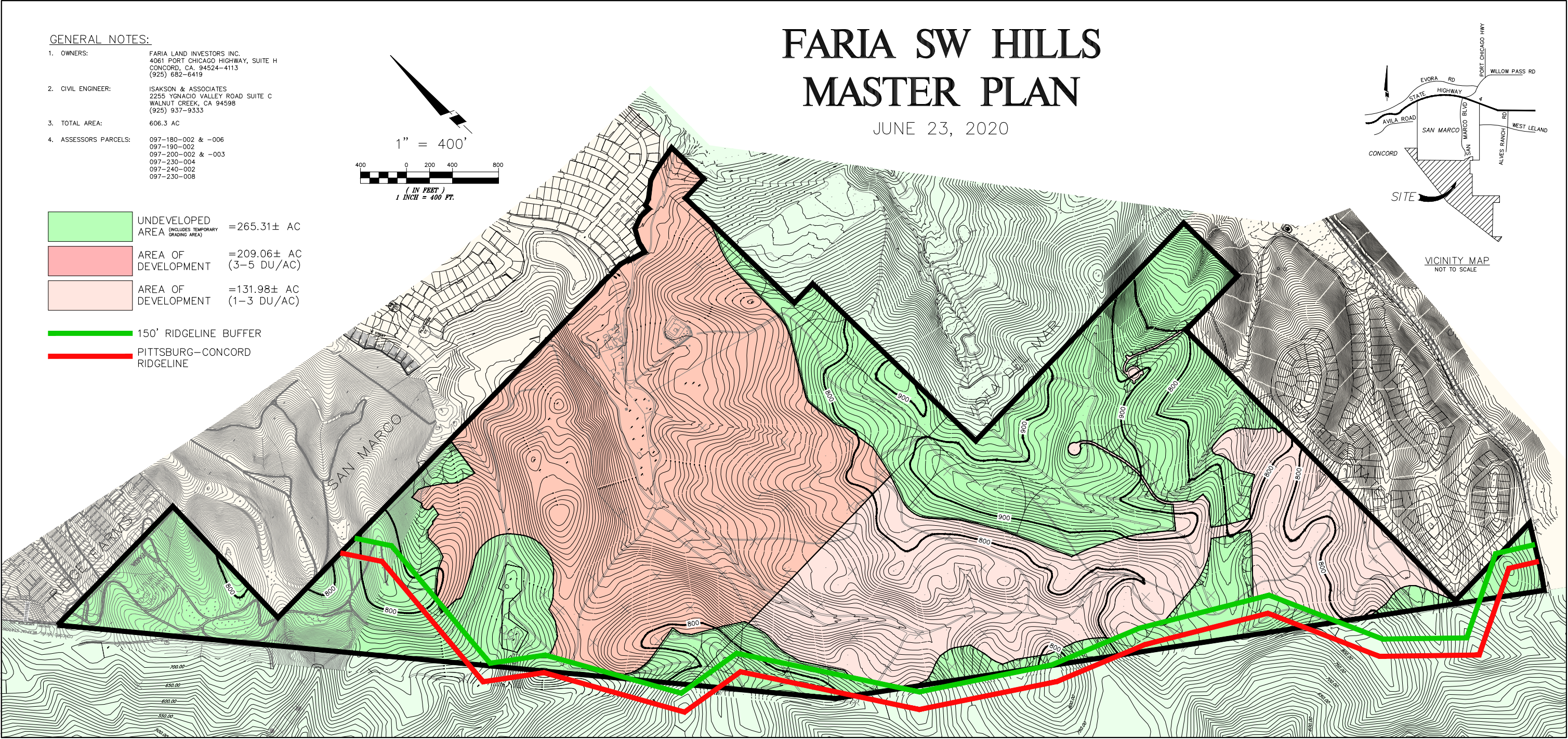
Fig. 13

F. Vegetation

1. Use irregular planting to achieve a natural and 'rural' appearance in landscape areas. 4-P-6
2. Plant native, non-invasive and fire resistant street trees, complimentary shrubbery and other vegetation along collector and arterial roadways consistent with the landscape ordinance. Street trees should be planted adjacent to the curb to provide a buffer between pedestrian sidewalks and vehicular streets. 4-P-85
3. Plant trees and other shrubbery to be individually spaced to allow for maintenance that would not form a means of transmitting fire from native growth to nearby structures. Limit the use of plants that develop large volumes of foliage and branches, deciduous bark, or dry undergrowth.

Section 4. Project Phasing & Subsequent Entitlements

After the project is annexed by the City of Pittsburgh, based on the zoning and density proposed as part of this Master Plan, the applicant would submit a Tentative Subdivision Map and detailed plans for Design Review approval to the City of Pittsburgh. It is also anticipated that a Development Agreement would be completed with the City of Pittsburgh.



ATTACHMENT 2
BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Granting an Appeal and Adoption of an)
Ordinance Approving a Development)
Agreement for the "Faria/Southwest)
Hills Annexation Project, AP-10-717")

ORDINANCE NO. 23-1507

The City Council of the City of Pittsburg DOES ORDAIN as follows:

WHEREAS, the Faria/Southwest Hills Annexation Project (proposed project) includes applications for a General Plan amendment, change in rezoning designations, adoption of a Master Plan, approval of a development agreement, and initiation of annexation proceedings, for a 606-acre site located in the hills southwest of the existing city limits, including APN's 097-180-002, 097-180-006, 097-190-002, 097-200-002, 097-200-003, 097-230-008 & 097-240-002 (now APN's 091-040-002, 092-010-002 & -006, 092-020-002 & -003, 092-040-008, 092-050-002, and a portion of 092-030-012); and,

WHEREAS, in 2001, the current Pittsburg General Plan was adopted with a planned land use development pattern for the southwest hills (outside current city limits) that included a combination of Low Density Residential, Hillside Low Density Residential, and Open Space. The 2001 General Plan land use map for this specific area has not been amended since its initial adoption; and,

WHEREAS, on November 5, 2005, the voters of the City of Pittsburg approved a ballot initiative entitled, 'Measure P (City of Pittsburg Voter Approved Urban Limit Line and Rezoning Act)', which brought the entire 606-acre Faria project site into the new Urban Limit Line (ULL) boundary and rezoned the property to HPD (Hillside Planned Development) and OS (Open Space) Districts, consistent with existing General Plan residential and open space designations; and,

WHEREAS, on July 8, 2009, the Contra Costa Local Agency Formation Commission (LAFCo) approved an extension of the Pittsburg Sphere of Influence (SOI), as well as the SOIs for the Contra Costa Water District and Delta Diablo, to include the project site; and,

WHEREAS, on September 24, 2010, Louis Parsons, on behalf of Faria Land Investors, filed Annexation Application No. 10-717, requesting that the City initiate proceedings to annex the approximately 606-acre site into the municipal boundary, as well as into the Contra Costa Water District and Delta Diablo service areas; and,

WHEREAS, in 2014, Application No.10-717 was amended to include a rezoning amendment to add an Interim Study Overlay (-S) District to the existing base rezoning designations in order to designate the site as an area where zoning regulations would remain under study until such time when the developer provided a development plan; and,

WHEREAS, in 2017, Application No. 10-717 was revised again to amend the rezoning designations on the site from HPD and OS, to RS-4-P (Single Family Residential, 4,000 square foot minimum lot sizes) and OS-P Districts, with a Master Plan Overlay (-P) in place of the previously proposed Interim Study Overlay (-S) District. The proposal was also

amended to include a development agreement and General Plan mapping and text amendments to ensure consistency with the proposed Master Plan; and,

WHEREAS, the proposed project is subject to the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000, et seq.), and the State CEQA Guidelines (14 Cal. Code Regs. Section 15000, et seq.), and on April 17, 2023, the City Council adopted Resolution No. 23-_____, certifying a Revised and Updated Final Environmental Impact Report (RUIEIR) and adopting associated CEQA findings, a Statement of Overriding Considerations (SOC) and Mitigation Monitoring and Reporting Program (MMRP); and,

WHEREAS, state law (Government Code section 65865) authorizes cities to enter into development agreements in connection with development projects; and

WHEREAS, pursuant to Pittsburg Municipal Code (PMC) Section 18.44.020, the City Council adopted procedures and requirements for considering, adopting and reviewing development agreements on November 25, 1996, through Resolution No. 96-8371. Article V, Section A of City Council Resolution No. 96-8371 states that the Planning Commission shall hold a public hearing to consider the application for a development agreement and may make recommendations to the City Council concerning the application; and,

WHEREAS, on February 14, 2023, after conducting a duly noticed public hearing, the Planning Commission adopted Resolution No. 10215, to not recommend approval of the requested General Plan amendments, rezoning amendments (including adoption of the draft Master Plan), and development agreement for the Faria/Southwest Hills Annexation project; and

WHEREAS, on February 17, 2023, Louis Parsons, applicant for the project, filed an appeal of the Planning Commission's Determination pursuant to PMC Section 18.18.060.D; and

WHEREAS, pursuant to City Council Resolution No. 96-8371, the City Council may adopt an ordinance approving a development agreement if it finds that:

- 1) the development agreement is consistent with the General Plan and any applicable specific plan; and
- 2) the development agreement will promote the public health, safety, and general welfare.

WHEREAS, on or before April 7, 2023, in accordance with Government Code sections 65090 and 65091, and PMC section 18.14.020, a "Notice of Public Hearing" for the April 17, 2023, City Council public hearing on this item was published in the East County Times; was posted at City Hall and in the "Public Notices" section of the City website; and was mailed via first class or electronic mail to the applicant/property owner, all property owners and/or residents within 800-feet of the site, all local service agencies expected to provide future services to the site, and to individuals who had previously filed written request for such notice. In addition, the notice was also published on www.nextdoor.com ("Nextdoor") and was sent directly to all subscribed members in the following Nextdoor neighborhoods: Oak Hills South, San Marco, San Marco Villas, Toscana and Vista Del Mar; and,

WHEREAS, documents and other materials constituting the record of the proceedings upon which the City's decision and its findings are based, are located at the City of Pittsburg Planning Division, located at 65 Civic Avenue in Pittsburg, California 94565; and,

WHEREAS, on April 17, 2023, the City Council held a duly-noticed public hearing on the appeal of the Planning Commission Decision to not Recommend Approval of Planning Application No.10-717 (GP, RZ, DA, ANNEX), at which time oral and/or written testimony was considered; and

WHEREAS, at the hearing, the City Council added new Section 3.24 to the Development Agreement to state, "Developer shall have a lot size of at least 6,000 square feet for any development occurring within the master plan area, including as requested through any subsequent entitlements."

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

- A. Based on the evidence and oral and written testimony presented at the public hearings, and based on all the information contained in the Planning Division's files on the project, including but not limited to the Revised and Updated Final EIR for the project and the City Council staff report entitled "Appeal of the Planning Commission's Determination to not Recommend for City Council Approval a Development Agreement, Amendments to the General Plan and Rezoning Designations, and Adoption of a Master Plan for the Faria/Southwest Hills Annexation Project. AP-10-717 (GP, RZ, DA)," dated April 17, 2023, the City Council finds that:
- 1) The Revised and Updated Final EIR ("RUFER") for the Faria/Southwest Hills Annexation project (SCH #2017032027), certified by the City Council on April 17, 2023 (Resolution No. 23-14269), was prepared in compliance with CEQA (Public Resources Code Section 21000, et seq.), and the State CEQA Guidelines 14 Cal. Code Regs. Section 15000, et seq.). All impacts have been analyzed and mitigated to the extent feasible as set forth in the RUFER prepared for this project, and the City Council has independently reviewed and considered the information contained therein, prior to approving the project.
 - 2) The proposed development agreement is consistent with the General Plan, in that the project site is located in the Southwest Hills Subarea of the General Plan and has been envisioned since the General Plan adoption in 2001 as accommodating a combination of Residential and Open Space uses, with a maximum of 1,500 residential units to be spread across the entire 606-acre site (see General Plan policy 2-P-96).
 - 3) The proposed development agreement will promote the public health, safety, and general welfare, in that it would help facilitate a greater amount of open space preservation in the southwest hills than what was previously envisioned by the 2001 General Plan. The development agreement also requires the applicant to comply with additional measures above and beyond those

required by the PMC, including (but not limited to): 1) payment of fees to assist in the financing of unmet local and regional traffic improvement needs; 2) payment of in-lieu fees to fulfill inclusionary housing obligation under PMC Chapter 18.86; 3) inclusion of at least 75 single-story houses spread throughout the future project; 4) payment of \$200,000 to expand the City's security camera network; 5) payment of a \$2,000,000 community benefit fee; 6) payment of \$100,000 to construct monument entry signs to the City; 7) installation of basic home security systems into each future house; 8) annexation of the site into all applicable Community Facilities Districts (CFDs) for park maintenance, off-site stormwater facilities, police and other emergency services, and fire facilities, fire safety and emergency services; and 9) support for creation of a new district to support ongoing lighting and landscaping needs for the area.

- 4) Pursuant to PMC Section 18.86.080(C), the project site is not suitable for affordable housing. Imposing a requirement for affordable housing on the site would be inconsistent with the good zoning practices underlying the project design, which increases the open space preservation area by approximately 127 acres more than what the current General Plan has planned by placing residential uses in a focused area of the site. The current project design and scope thus results in a more environmentally conscious development of the area. In addition, the site is not suitable for affordable housing because it lacks proximity to schools and the Bay Area Rapid Transit (BART) system, both of which are important to fostering affordable housing uses.

Section 2. Decision

Based on the findings and the authority set forth above, the City Council hereby approves a development agreement, as substantially presented in Exhibit "A" of this ordinance.

Section 3. Severability

If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions.

Section 4. Publication

The ordinance shall be posted and published in accordance with the California Government Code.

The foregoing ordinance was introduced at a special meeting of the City Council of the City of Pittsburg held on April 17, 2023, and was adopted and ordered published at a meeting of the City Council held on May 1, 2023, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Faria Land Investors, LLC
4021 Port Chicago Hwy.
Concord, CA 94520
Attention: Albert D. Seen0, III

City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attention: City Clerk

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

**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF PITTSBURG, CALIFORNIA
AND
FARIA LAND INVESTORS, LLC
(Faria/Southwest Hills)**

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is entered into as of the Effective Date between FARIA LAND INVESTORS, LLC, a California limited liability company (“**Developer**”), and the CITY OF PITTSBURG, a California municipal corporation (“**City**”), pursuant to California Government Code § 65864 *et seq.* The Effective Date is May 31, 2023.

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted California Government Code § 65864 *et seq.*, which authorizes City to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property.

B. Pursuant to California Government Code § 65865, City has adopted procedures and requirements for the consideration of development agreements (Resolution No. 89-7466). This Development Agreement has been processed, considered, and executed in accordance with such procedures and requirements.

C. Developer has a legal interest in certain real property consisting of approximately 607 acres, as more particularly described in the **Exhibit A** attached hereto (the “**Property**” or “**Project**”), and as diagrammed in the attached **Exhibit A-1** (the “**Project Site**”). The Property is located within the spheres-of-influence for the City, Delta Diablo (“**Delta Diablo**”) and Contra Costa Water District (“**CCWD**”) and is within the City’s voter-approved Urban Limit Line (“**ULL**”).

D. Developer filed applications with the City requesting (1) initiation of annexation into the City, the CCWD service area and DDSD service area; (2) amendment of the pre-zoning designations of the Project Site from HPD (Hillside Planned Development) and OS (Open Space), to RS-4-P (Single Family Residential, 4,000 square foot minimum lot sizes) and OS-P Districts, with a Master Plan Overlay (-P) in place of the previously proposed Interim Study Overlay (-S) District; (3) approval of a master plan for the site which includes a land use map corresponding to the pre-zoning designations, development regulations, design review guidelines, and a general circulation system; (4) amendment of the General Plan to modify two goals and two policies relevant to the project site, remove an existing General Plan goal and seven policies related to development in the southwest hills, and change the existing General Plan land use patterns for the project site to match the master plan land use map; and (5) approval of this Development Agreement.

E. On January 31, 2023, the City released a Revised and Updated Final Environmental Impact Report (RUFER), prepared pursuant to CEQA.

F. On February 14, 2023, the Planning Commission adopted Resolution No. 10215, to not recommend approval of the requested General Plan amendments, rezoning amendments (including adoption of the draft Master Plan), and development agreement for the Faria/Southwest Hills Annexation project.

G. On February 17, 2023, the Developer filed an appeal of the Planning Commission’s determination to not recommend approval of the Project.

H. On April 17, 2023, the City Council adopted Resolution Nos. 23-14270 and 23-14271, approving (1) the General Plan amendments requested for the project; and (2) a petition for annexation into the City, the CCWD service area and DDSD service area.

I. On May 1, 2023, the City Council adopted Ordinance No. 23-1508, approving (1) amendment of the pre-zoning designations of the Project Site from HPD and OS to RS-4-P and OS-P Districts, with a Master Plan Overlay (-P) in place of the previously proposed Interim Study Overlay (-S) District; and (2) the Faria/Southwest Hills Master Plan. The approvals and development policies described in these Recitals, together with this Agreement, are collectively referred to herein as the **“Project Approvals.”**

J. City has determined that the Project presents certain public benefits and opportunities which are advanced by City and Developer entering into this Agreement. This Agreement will, among other things, require conditions of approval and other exactions resulting in:

1. Developer’s commitment that it will comply with Pittsburg Municipal Code (PMC) 18.86.080 by paying fees in lieu of constructing affordable housing units, as set forth in Section 3.09 of this Agreement.

2. The inclusion of the Project Site into the City’s existing Community Facilities District 2007-1 and a lighting and landscaping district or similar assessment district, at no cost to the City, in order to provide funding for certain landscape and lighting costs, as set forth in Section 5.06 of this Agreement. Developer shall fund all costs associated with creation and annexation into CFDs.

3. The expansion of the City’s Southwest Pittsburg Geologic Hazard Abatement District (the “Southwest Pittsburg GHAD”) or the establishment of a new GHAD, at no cost to City or any GHAD, to provide for, among other things, geologic hazard abatement, maintenance of detention basins, grassland maintenance, fire protection, erosion control within portions of the project Site, as set forth in Section 5.05 of this Agreement.

4. The inclusion of the Project Site into the City’s existing police services Community Facilities District 2004-1, at no cost to the City, in order to provide for police and other emergency services to the Project Site, as set forth in Section 5.07 of this Agreement.

5. The inclusion of the Project Site into the City’s existing fire services Community Facilities District 2017-1, at no cost to the City, in order to provide emergency fire services to the Project Site, as set forth in Section 5.08 of this Agreement.

6. Payment of an In-Lieu Parkland Dedication Fee, as applicable and approved by the City, in order to fund the development of public park facilities, as more particularly set forth in Section 5.09 of this Agreement.

7. Contribution to the City of the sum of Two Million Dollars (\$2,000,000) for improvements to existing community facilities or for reimbursement of City expenses related to the construction of community facilities, including but not limited to, the California Theater, sports facilities, or the Marina Center, as more particularly set forth in Section 3.15 below.

K. In exchange for the benefits to City described in the preceding Recital I and others set forth herein, Developer will receive by this Agreement assurances that it may

proceed with the long-term phased development of the Project in accordance with the “Applicable Law” (defined herein), and therefore desires to enter into this Agreement.

L. The City Council, after conducting a duly noticed public hearing, has found that this Agreement is consistent with the General Plan and has conducted all necessary proceedings in accordance with the City’s rules and regulations for the approval of this Agreement.

M. The City Council, on May 1, 2023, at a duly noticed public meeting adopted Ordinance No. 23-1507, approving and authorizing the execution of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and obligations set forth herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS

“**Administrative Agreement Amendment**” shall have that meaning set forth in Section 7.02 of this Agreement.

“**Administrative Project Amendment**” shall have that meaning set forth in Section 7.01 of this Agreement.

“**Agreement**” shall mean this development agreement.

“**Applicable Fees**” shall have that meaning set forth in Section 3.04 of this Agreement.

“**Applicable Law**” shall have that meaning set forth in Section 6.03 of this Agreement.

“**Buildout**” shall mean the City’s issuance to Developer of the last certificate of occupancy required for any portion of the Project Site.

“**Certificate of Annexation**” shall mean the certification of completion of annexation issued by the Executive Officer of the Contra Costa County Local Agency Formation Commission.

“**CEQA**” shall mean the California Environmental Quality Act, Public Resources Code § 21000, et seq.

“**Changes in the Law**” shall have that meaning set forth in Section 6.07 of this Agreement.

“**City**” shall mean the City of Pittsburg, a California municipal corporation.

“**Complaining Party**” shall have that meaning set forth in Section 10.01 of this Agreement.

“**Day**” or “**days**” shall mean calendar day or calendar days.

“Default Notice” shall have that meaning set forth in Section 10.01 of this Agreement.

“Defaulting Party” shall have that meaning set forth in Section 10.01 of this Agreement.

“Deficiencies” shall have that meaning set forth in Section 9.02(a) of this Agreement.

“Developer” shall mean Faria Land Investors, LLC, a California limited liability company.

“Effective Date” shall have that meaning set forth in Section 2.01 of this Agreement.

“Fair Share” shall mean the proportionate share which the Developer, or other party, shall bear of the improvement, facility, or structure which is providing service to the Project, Developer or other party. The term “fair share” or similar terms used herein are not intended by the parties to this Agreement to impose a different or higher burden of proof on the City as to its fees, charges, or other exactions, than exists under applicable State or federal law.

“Funding Mechanisms” shall have that meaning set forth in Section 3.08 of this Agreement.

“General Plan” shall mean the local planning document adopted by the City of Pittsburg pursuant to Government Code section 65300 et seq., as may be amended from time to time.

“HCP” shall mean the East Contra Costa County Habitat Conservation Plan.

“Judgment” shall have that meaning set forth in Section 9.02(a) of this Agreement.

“LLD” shall have that meaning set forth in Section 5.06 of this Agreement.

“Non-Assuming Transferee” shall have that meaning set forth in Section 8.03 of this Agreement.

“Notice of Compliance” shall have that meaning set forth in Section 8.04 of this Agreement.

“Periodic Review” shall have that meaning set forth in Section 10.03 of this Agreement.

“Police Services District” shall have that meaning set forth in Section 5.07 of this Agreement.

“Project” shall have that meaning set forth in Recital D of this Agreement.

“Project Approvals” shall have that meaning set forth in Recitals A through G of this Agreement.

“Project Site” shall have that meaning set forth in Recital C of this Agreement.

“Public Improvements” shall have that meaning set forth in Article XI of this Agreement.

“Subsequent Approvals” shall mean those certain other land use approvals, entitlements, and permits other than the Project Approvals that are necessary or desirable for the Project. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals, tentative subdivision maps, final subdivision maps, design review approvals, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps, PD Plans, rezonings, general plan amendments, development agreements, permits, subdivisions and any amendments to, or repealing of, any of the foregoing.

“Term” shall have that meaning set forth in Section 2.02 of this Agreement.

“Transfer Agreement” shall have that meaning set forth in Section 8.02(a) of this Agreement.

If any capitalized terms contained in this Agreement are not defined above, then any such terms shall have the meaning otherwise ascribed to them in this Agreement.

ARTICLE II EFFECTIVE DATE; TERM

Section 2.01 **Effective Date**. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the **“Effective Date”**).

Section 2.02 **Term**. The term of this Agreement shall commence upon the Effective Date and continue for a period of thirty-five (35) years (the **“Term”**).

ARTICLE III OBLIGATIONS OF DEVELOPER

Section 3.01 **Obligations of Developer Generally**. The parties acknowledge and agree that the City’s agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer’s agreement to perform and abide by its long-term covenants and obligations, as set forth herein. As material consideration for the long-term assurances and vested rights provided by this Agreement and as a condition of approval to one or more of the Project Approvals, Developer agrees to each of the following:

Section 3.02 **Facility Reserve Charges**. Developer agrees to pay City’s Facility Reserve Charges (“FRC”) as set or modified by the City Council from time to time. Developer shall reserve the right to review any FRC Fee Study conducted by the City.

Section 3.03 **Water Infrastructure**. Developer shall comply with the current Water System Master Plan, as may be amended from time to time. Construction timing of required facilities shall be determined by the City Engineer.

Section 3.04 **Applicable Fees**. City may levy development fees and charges during the term of this Agreement relative to the development of the Project Site which are in force and effect as of the Effective Date, as more particularly described and according to the payment schedule set forth on **Exhibit B** (“**Applicable Fees**”). Unless otherwise provided in this

Agreement, no development fees, or charges, or categories thereof, shall be imposed on the Project other than those fees (including categories within such fees), and charges identified as Applicable Fees on **Exhibit B**, which exhibit shall exclusively govern the Applicable Fee payment schedule. The parties agree that any and all Project development fees, charges or exactions related to schools, fire prevention, water, sewer, stormwater, and storm drainage facilities, which are to be paid by Developer directly to third-party governmental agencies, are not subject to or within the scope of this Agreement whether such third-party charges exist or are subsequently imposed by such third parties, whether directly upon Developer or through City. This provision shall not be construed to benefit any Non-Assuming Transferees, as such term is defined in herein.

Section 3.05 **Applicable Fee Adjustments.** Developer shall pay fees and charges consistent with Section 3.04 above, and the applicable adjustments currently authorized with such fees, and as modified from time to time by the City, whether such adjustment or modification is an increase or decrease. Developer retains the right to challenge the imposition of any new fees not referenced in this Agreement or the modification, amendment or adjustment of the fees set forth in Sections 3.02, 3.03 and all Applicable Fees pursuant to Government Code § 66000 *et seq.*, not already authorized by ordinances, resolutions, or policies in place at the time of this Agreement's execution. Should the City Council approve a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.

Section 3.06 **City Local Traffic Mitigation Fee.** Developer shall pay the City Local Traffic Mitigation Fee (LTMF), which fee is necessary to finance unmet City traffic improvement needs in the amount in effect as of the Effective Date and subject to adjustment in accordance with Resolution No. 07-10917 with credit for certain improvements constructed by Developer per Section 4.04 below. If the City Council approves a new AB 1600 fee study and/or authorizes a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.

Section 3.07 **Regional Traffic Fee.** Developer shall pay the East Contra Costa Regional Fee and Financing Authority (ECCRFA) Regional Transportation Development Impact Mitigation Fee (PMC Chapter 15.102; the "RTDIM") amount in effect when the Developer obtains a building permit. The RTDIM will be automatically increased or decreased on January 1 of each year based on the percent change in the Engineering News Record Construction Costs Index-San Francisco Bay Area for the one-year period ending Sept. 30 of the preceding year. Developer shall pay the fees prior to issuance of a Building Permit. If no Building Permit is required, then Developer shall pay the fees at a time consistent with PMC Section 15.102 in the amount in effect when the Project commences pursuant to PMC Section 15.102.

Section 3.08 **Fees, Assessments and/or Taxes to be Paid by Developer.**

Developer agrees to pay its fair share of any levies imposed by any assessment district, landscaping and lighting district, community facilities district, tax-exempt financing mechanisms, or other funding mechanisms related to public safety; traffic; sewer; water; fire; the prevention, mitigation, abatement, or control of geologic hazards; or other infrastructure improvements (including, without limitation, design, acquisition, construction and maintenance costs) (collectively, "**Funding Mechanisms**") within the Project Site, provided that such Funding Mechanism is referenced herein and/or was legally created pursuant to applicable law.

Section 3.09 **Affordable Housing.**

Pursuant to PMC section 18.86.080(c), Developer shall pay to the City fee(s) in lieu of constructing affordable units (the "In Lieu Fee"). The In Lieu Fee(s) shall be set by the City by resolution or other action of the City Council and may be amended from time to time so that the fee amounts are equal to the cost of developing a comparable market rate unit on-site and may be amended from time to time.

The In Lieu Fee(s) shall be paid upon issuance of the first building permit for the Project. If the Developer elects to construct the project in phases pursuant to Section 6.08 of this Agreement and building permit(s) are issued for only part of the Project, the In Lieu Fee(s) amount shall be based only on the number of units then permitted for construction and shall be due payable upon issuance of the first building permit for each phase.

The Developer shall be required to pay the In Lieu Fee(s) established by City Council resolution and in effect at the time each building permit is issued. The Developer hereby agrees not to contest the current In Lieu Fee(s) or changes to the established In Lieu Fee(s) for the duration of this Agreement. For purposes of fee calculation, Developer shall pay the In Lieu Fee(s) for an "Owner Project."

(a) **Inclusionary Housing Ordinance.** Notwithstanding any provision of this Agreement, in the event that the City has rescinded its previously adopted inclusionary housing ordinance and not replaced it with another affordable housing or similar ordinance, or such ordinance has been declared illegal, Developer shall not be obligated to comply with the provisions for affordable housing set forth in this Agreement.

Section 3.10 **C.3 Facilities.** The Developer shall submit a complete Stormwater Control Plan and Report for each phase of the Project. Developer may construct or participate in the funding of offsite C.3 facilities on land owned by the City or others, if available, provided the construction of such off-site facilities is consistent with the then current Regional Water Quality Control Board permit and approved by the City Engineer. The C.3 treatment facility(ies) shall be adequately sized to treat the stormwater runoff from the associated drainage management areas and supporting calculations and plans shall be submitted to the Engineering Division for review prior to issuance of a grading permit. In the event it is determined that the runoff cannot be treated off-site, the Developer shall treat the runoff, or a portion thereof, onsite at a facility adequately sized and designed to meet the treatment and flow control needs. The treatment facility(ties) shall be constructed with each respective phase of the project, as approved by the City Engineer in writing. Should the C.3 regulations be revised in the future such that the size of the facilities may be decreased, Developer shall have the right to reduce the size of the proposed facilities following written approval by the City

Manager and may seek entitlements to develop the eliminated property(ies). Any allowed offsite facilities constructed for compliance with C.3 provisions shall be completed prior to the final inspection or certificate of occupancy required for the last phase of construction.

Section 3.11 **Security Improvements.**

(a) Developer shall pay to the City the actual cost incurred by the City (not to exceed an amount equal to Two Hundred Thousand Dollars [\$200,000] increased annually by the Construction Cost Index by Engineering News-Record, with the first increase implemented in January 2023 reflecting 2022 increases) towards funding the acquisition and installation of security camera(s) in the southwest Pittsburg area. The security cameras will be installed at the discretion and under the supervision of the City's Police Chief. Developer shall pay such costs within thirty (30) days of receipt of invoice.

(b) Developer shall install a basic home security system in the Project homes (defined herein as, at a minimum, entry sensors on the first-floor windows and doors, as well as any required appurtenances necessary for proper function, including but not limited to base stations and keypads). Developer shall provide one year of professional monitoring service to new homeowners. The monitoring service shall be at the election of the new homeowner.

Section 3.12 **School Facilities Impact Mitigation.** Developer shall pay in lieu school impact fees in accordance with Government Code §§ 65995 et seq.

Section 3.13 **Installation of Full Trash Capture Devices.** Developer shall install full trash capture devices in all inlets within the project site that discharge directly to the City's storm drain conveyance system without prior treatment. The full trash capture device installed shall be chosen from the State Water Board's approved list of devices.

Section 3.14 **Single-story homes.** Developer agrees that at least five percent (5%) of the single-family homes within the Project shall be single story. The design and amenities of the single-story homes shall be consistent with the remaining homes in the Project.

Section 3.15 **Community Benefit Payment.** Upon the earlier of: 1) issuance of the 100th development permit (including but not limited to grading and building permits), 2) two (2) years of issuance of the first development permit, or 3) five (5) years of the date of this Agreement, Developer shall contribute the sum of Two Million Dollars (\$2,000,000; increased annually by the Construction Cost Index by Engineering News-Record, with the first increase implemented in January 2023 reflecting 2022 increases) to the City for improvements to existing community facilities or for reimbursement of City expenses related to the construction of community facilities, including but not limited to, the California Theater, sports facilities, or the Marina Center. The location and scope of improvements shall be at the sole discretion of the City and shall be subject to CEQA review, as applicable.

Section 3.16 **Monument Signs.** Within three hundred and sixty (360) days from the issuance of the Certificate of Annexation, Developer shall, at a cost not to exceed One Hundred Thousand Dollars (\$100,000.00; increased annually by the Construction Cost Index by Engineering News-Record, with the first increase implemented in January 2023 reflecting 2022 increases), install decorative non-electronic monument signs identifying entry into the City of

Pittsburg at one or more of the following locations: (i) Southside of State Route 4, west of the San Marco Villas apartments; (ii) East side of Bailey Road, on APN: 092-030-011; and (iii) East side of Kirker Pass/Railroad Avenue, north of the Pittsburg City limits. The City shall determine the final design and location of the monument signs in its sole discretion and shall procure the land (fee title or easement) where the monument signs will be installed, if necessary. The City shall promptly review and process the proposed signage plans submitted by Developer and agrees that such signs shall all be similar in size and style. The City shall reserve the right to dedicate the entire amount to the installation of fewer than the three signs noted above, and neither the Developer or City shall be obligated to install any further signage.

Section 3.17. **Interconnection Point.** Upon receipt by Developer of a written notice from the City of an interconnection point near the Project, Developer shall install the necessary conduit within the Project joint trenches to allow for the installation of necessary electrical infrastructure to be installed, operated and maintained by the Pittsburg Power Company (PPC). All electrical service to the Project will be provided by the PPC. Nothing herein shall limit or delay Developer from proceeding with development of its Project.

Section 3.18. **Enhanced Infrastructure Financing District (“EIFD”).** City may, at its sole discretion, pursue the establishment of an EIFD within the City as a mechanism for, among other things, funding infrastructure improvements within the City that serve the Project and may also serve other properties. Developer agrees to use its best reasonable efforts to support the City’s establishment of an EIFD provided such EIFD does not increase the applicable tax rate for the Project.

Section 3.19. **Establishment of maintenance or similar types of districts.** Upon establishment by the City of maintenance or similar types of districts to help fund the maintenance of Project specific infrastructure, Developer shall agree to annex any then undeveloped portion of the Project into said districts. Nothing herein shall prohibit Developer from reviewing, commenting on or opposing the proposed assessments associated with the establishment of such districts.

Section 3.20 **Complete Streets.** Developer shall ensure all improvements to public streets are developed and designed pursuant to Contra Costa Transportation Authority’s (CCTA) “complete streets” guidelines.

Section 3.23 **Mitigation Measures.** Developer shall implement, at its sole cost, all mitigation measures contained within the final Mitigation Monitoring and Reporting Program (“MMRP”) adopted by the City Council on April 17, 2023.

Section 3.24 **Minimum Lot Size.** Developer shall have a lot size of at least 6,000 square feet for any development occurring within the master plan area, including as requested through any subsequent entitlements.

ARTICLE IV OBLIGATIONS OF CITY

Section 4.01 **Obligations of City Generally.** The parties acknowledge and agree that Developer’s agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer’s decision to process the siting of the Project in the City,

is a material consideration for City's agreement to perform and abide by the long-term covenants and obligations of City, as set forth herein.

Section 4.02 **Availability of Public Services.**

(a) General. To the extent permitted by law and consistent with its authority, City shall reserve such capacity for water services as may be necessary to serve the Project. This reservation of water infrastructure capacity shall be assured for the Term to the extent consistent with applicable law.

(b) Construction Water. City shall make construction water available to the Project allowing the Project access to the City's existing water supply infrastructure, at a location reasonably determined by the City, at Developer's cost and on those terms and conditions and charges customarily applied by City to similar projects consistent with City standards. Developer shall provide backflow prevention for all points of connection to the City's potable supply system and the volume of water consumed shall be tracked with the use of a City-issued hydrant meter. City shall also allow Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer's use in any and all Project grading and construction operations, as long as such water is unrelated to potable use.

Section 4.03 **Developer's Right to Rebuild.** City agrees that Developer, in Developer sole's discretion, may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, force majeure, acts of terrorism, or damage to work in progress by reason of fire, floods or other casualties. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA and this Agreement.

Section 4.04 **Reimbursement of Infrastructure Costs.**

(a) Reimbursement. Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, the off-site water tank, pump station, sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project's fair share obligation for such infrastructure, City shall reimburse Developer for the City's portion of such costs (including any management fees provided for in this Agreement), subject to City's prior verification through inspection of the construction that is subject to such reimbursement and upon final acceptance of the infrastructure by the City. This reimbursement shall be paid within sixty (60) days after City's final acceptance or at such other time as mutually agreed upon in writing by the parties. Developer shall be entitled to a management fee of five percent (5%) for City's share of approved infrastructure costs, including but not limited to design and special inspection costs. The management obligations of Developer hereunder shall include contracting and managing the construction of the infrastructure, retaining copies of records, photographs and "as built" for the improvement(s) as well as attending meetings and providing necessary reports as reasonably requested by City.

(b) City's Authorization of Reimbursement. Notwithstanding any other provision of this Section, or of this Agreement, or of VTM provisions, City shall not be responsible to reimburse or credit Developer for any costs, including as referenced in Section 4.04(a) herein, unless prior to Developer incurring any costs for which Developer will request reimbursement from City, Developer shall first provide written documentation as to the work to be performed, the estimated costs thereof, including a not-to-exceed cap, and such other details as reasonably requested by the City Manager, and the City Manager approves the proposed costs and related work. If the City Manager fails to respond within thirty (30) days of its receipt of such estimated costs, Developer shall provide a second written notice to the City Manager and to the City Engineer, if neither responds within thirty (30) days of the City's receipt of the second request, the request shall be deemed approved. The City Manager shall have the discretion to require Developer to obtain competitive bids on any work for which Developer may request reimbursement or credit from the City where the total cost (not just the City's share) of that work is One Hundred Thousand Dollars (\$100,000) or more. City shall also have the opportunity to inspect any and all infrastructure during its construction, as well as to review any work product for which Developer requests reimbursement or credits. If mutually agreed by the parties in writing, any reimbursement due Developer pursuant to this Agreement may be satisfied by City in the form of credits, which can actually be used by Developer to offset Developer's payment of any Applicable Fees. In the event there are not enough credits to fully satisfy the reimbursement due to Developer, and subject to the terms of the mutual agreement between the parties referenced in the prior sentence, City shall reimburse Developer within thirty (30) days of invoicing.

Section 4.05 Park In-Lieu Fees. Developer and City agree that the park in-lieu fee amount will be Ten and 89/100ths Dollars (\$10.89) per square foot (unless City adopts a lower fee in which case the lower fee shall apply), increased annually by the Construction Cost Index by Engineering News-Record, with the first increase implemented in January 2023 reflecting 2022 increases.

ARTICLE V COOPERATION — IMPLEMENTATION

Section 5.01 Processing Application for Subsequent Approvals. The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions:

(a) Standard of Review. By adopting 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 discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law, as defined below, and are not inconsistent with the Project Approvals as set forth above, and meet the intent and comply with any City adopted Designed Guidelines, as applicable. To the extent permitted by law, City shall not use its discretionary authority in considering these Subsequent Approval applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals. Developer agrees that

development under this Agreement shall comply with provisions reflected in Uniform Codes (whether building, fire, plumbing, or other applicable uniform codes) which may be adopted subsequent to the Effective Date of this Agreement.

(b) **Basis for Denial.** City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below in Section 6.03, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or as is necessary to make this Subsequent Approval consistent with the Project Approvals. If City denies any application for a Subsequent Approval, City shall specify in writing the reasons for such denial and may suggest a modification which would be approved by City.

Section 5.02 **Timely Submittals by Developer.** Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.

Section 5.03 **Timely Processing by City.** Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, (i) providing at Developer's expense and subject to Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section 5.03, Developer's reimbursement to City for such services shall be made in amount equal to City's actual costs of providing such services, in accordance with standard City practice.

Section 5.04 **Other Government Permits.** At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request and sole expense of Developer, use its best efforts to ensure the timely availability of such permits and approvals.

Section 5.05 **Southwest Hills Geologic Hazard Abatement District (GHAD).**

Developer agrees to take all steps necessary to either expand the existing Southwest Pittsburgh Geologic Hazard Abatement District (the "Southwest Pittsburgh GHAD") or to establish a new GHAD, at no cost to City or to the GHAD, to provide for, among other things, geologic hazard abatement, maintenance of detention basins, grassland maintenance, fire protection, and erosion control within portions of the Project Site. City shall cooperate with Developer in these efforts. Unless otherwise required by law, the parties intend that the Project Site shall be assessed by the Southwest Pittsburgh GHAD or a new GHAD upon the respective GHAD's acceptance of the GHAD Area identified in the Project Approvals.

Section 5.06 **Lighting and Landscaping District.**

(a) At the request of City, Developer shall cooperate in and not challenge the formation of a new lighting and landscaping district, community facilities district, or similar assessment mechanism established for the purposes of maintaining lighting and landscaping improvements throughout the Project, that City determines is needed to fund landscape and lighting maintenance and to ensure the orderly development of the Project. Any and all costs associated with the establishment of this district shall be borne by City. In the event the City does not establish a new district prior to issuance of a building permit for one or more phases of the Project, Developer agrees to annex the Project Site into the City's existing Lighting and Landscaping District, as established pursuant to City Resolution No. 88-7324. The parties agree that the lighting and landscaping district assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of the parks.

(b) Developer agrees to annex the Project Site into the City's Community Facilities District 2007-1 for park maintenance and the City's Community Facilities District 2016-1 for maintenance of C.3 facilities and, to the extent permitted by law, that the Project shall be assessed in a manner consistent with the provisions herein.

(c) Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps.

Section 5.07 **Police Services CFD.** Developer agrees to annex the Project Site into the City's existing police services Community Facilities District 2004-1, as adopted pursuant to Resolution No. 04-10071 (the "**Police Services District**") at no cost to the City, in order to provide for police and other emergency services to the Project Site. This process shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. Each legal residential lot located on the Project Site will be required to pay the levy by the Police Services District no earlier than the issuance of a building permit for such lot.

Section 5.08 **Fire Services CFD.** Developer agrees to annex the Project Site into the City's existing fire protection services Community Facilities District 2017-1, as adopted pursuant to Resolution No. 17-13311 (the "Fire Facilities and Fire Safety and Emergency

Services District”) at no cost to the City, in order to provide for fire protection services in the City for the Contra Costa Fire Protection District and acquisition or replacement of equipment primarily situated in the fire stations located in the City. This annexation process shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, for each phase of the development after the recordation of a final map for such phase and prior to issuance of the first building permit in such phase. Each legal residential lot located on the Project Site will be required to pay the levy by the Fire Services District no earlier than the issuance of a building permit for such lot.

Section 5.09 **Parkland Dedication In-Lieu Fee.** Developer shall meet its Park Dedication requirements with either a dedication of land or payment of an in-lieu fee, or combination of both in accordance with PMC 17.32.020 Park Dedication.

Section 5.10 **Assessment Districts or Other Funding Mechanisms.**

(a) City understands that City’s long-term assurances to Developer concerning fees, taxes and assessments related to the Project are a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay the fees, taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts or other Funding Mechanisms, as defined in Sections 3.08 and 5.06 of this Agreement, covering all or any portion of the Project site. Notwithstanding the foregoing, Developer retains all its rights to oppose the formation or proposed assessment of any new assessment district, Funding Mechanism, or any and all increases thereto, or to request or pursue assessment credits or reductions, unless otherwise provided for herein or unless such assessment, Funding Mechanism or related increases are in place and legally effective as of the date of this Agreement’s Effective Date.

(b) At the request of Developer, City shall cooperate in the formation of, or annexation to, those assessment districts, landscaping and lighting districts, community facilities districts, tax-exempt financing mechanisms, or other Funding Mechanisms that Developer and City determine are needed to fund infrastructure improvements and to ensure the orderly development of the Project, at no cost to the City. City shall diligently and expeditiously process applications by Developer necessary to establish such Funding Mechanisms as long as (i) the application complies with law, (ii) is consistent with City’s standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City, and which will result in no commitment of City. City shall diligently seek to sell any bonds to be issued and secured by such assessments upon the best terms reasonably available in the marketplace. Any and all costs associated with this Section shall be borne and/or advanced by Developer.

Section 5.11 **Warranty Bonds.** Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property or open space dedications) pursuant to this Agreement shall be accompanied by a one (1) year warranty bond in a form and in an amount, and with a surety acceptable to City, or otherwise as determined in the applicable Subdivision Improvement Agreement.

ARTICLE VI STANDARDS, LAWS AND PROCEDURES GOVERNING THE PROJECT

Section 6.01 **Vested Right to Develop.** Developer shall have a vested right to develop the Project on the Project Site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.

Section 6.02 **Permitted Uses Vested by This Agreement.** The permitted uses of the Project Site; the density and intensity of use of the Project Site; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.

Section 6.03 **Applicable Law.** “**Applicable Law**” shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approvals, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying any new rules, regulations, official policies, standards, and specifications that do not conflict with those rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.

Section 6.04 **Uniform Codes.** Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City’s then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.

Section 6.05 **Moratorium and Conflicting Enactments.** To the extent consistent with State Law, if any ordinance, resolution or other measure is enacted, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer

reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.

Section 6.06 Life of Subdivision Maps, Development Approvals, and Permits.

To the extent consistent with Applicable Law, the term of any subdivision map or any other map, permit, rezoning or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the duration of this Agreement, including any extensions. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable development moratorium (including, but not limited to, a water or sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Project. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable court order or other legal requirement prevents the processing of any Subsequent Approval or prevents any Project development activities

Section 6.07 State and Federal Law. As provided in California Government Code § 65869.5, if any state or federal laws or regulations, enacted after this Agreement's Effective Date prevent or preclude compliance with one or more provisions of this Agreement ("**Changes in the Law**"), such provision of the Agreement shall be modified or suspended as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article V and Section 10.05. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically required by State or Federal laws and regulations.

Section 6.08 Timing of Project Construction and Completion.

(a) Project Phasing. The Project may be built in phases in response to then-existing market conditions over the Term of the Agreement. Except as otherwise specifically provided by this Agreement with respect to Project infrastructure timing, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular period of time, and City shall not impose such a requirement on any Project Approval. However, Developer shall substantially complete construction of any approved off-site improvements that were a part of any phase of the Project that received permits for construction, or bond for such improvements, to the satisfaction of the City Engineer, prior to Developer commencing construction of any subsequent phases of the Project. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market demand, interest rates, competition and other similar factors.

(b) The parties agree that Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time, and Developer shall determine which part of the Project Site to develop first, and at Developer's chosen schedule. In particular, and not in limitation of any of the foregoing, since 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 consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. Developer's rights under this Section 6.08(b) shall be subject to the requirement that adequate infrastructure to serve each phase of the Project is constructed concurrently with such phase. The City Manager shall reasonably determine what infrastructure will be required to serve each phase of the Project, which determination shall be consistent with Applicable Law.

(c) Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.

Section 6.09 **Exempting Fees, Mitigation Measures and Similar Requirements Imposed by Outside Agencies.** Notwithstanding any other provision of this Agreement, the City agrees to exclude Developer from any and all discretionary collection agreements regarding fees, mitigation measures and similar requirements including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or on the Project Site after the Effective Date through the Term of this Agreement. This Section 6.09 shall not prohibit the City from imposing on Developer any fee, mitigation measure or similar requirement or obligation that is required by a local or regional agency in accordance with local, regional, State or Federal obligations and implemented by the City in cooperation with such local, regional, state or federal agency, provided such fee, mitigation measure or similar requirement or obligation is imposed in a similar manner on similarly situated properties within the City as, for example, collection of the Regional Transportation Development Impact Fee.

Section 6.10 **City's Joint-Inspection Jurisdiction.** Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.

ARTICLE VII AMENDMENT

Section 7.01 **Amendment to Project Approvals, Subsequent Approvals.** To the extent permitted by State and Federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:

(a) **Administrative Project Amendments.** Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City Manager or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable uniform codes and State or Federal law. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire Project, consistent with this Agreement and Applicable Law, and will result in no new significant environmental impacts not addressed and mitigated in the EIR, the amendment shall be

determined to be an “**Administrative Project Amendment**” and the City Manager or his/her designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.

(b) Non-Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

Section 7.02 **Amendment of this Agreement.** This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, as follows:

(a) Administrative Agreement Amendments. The City Manager, or his/her designee, may, except to the extent otherwise required by law, enter into certain amendments of this Agreement on behalf of the City as long as any such amendment does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) monetary contributions by Developer (“**Administrative Agreement Amendment**”), and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. For purposes of this Section 7.02(a), the term “substantially affect” shall be evaluated in the context of the entire Project.

(b) Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, whether done administratively or not, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by both parties.

(c) Amendment Limitations. In consideration of the scope of the benefits to City set forth in this Agreement, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to the impacts on City directly attributable to such amendment.

ARTICLE VIII ASSIGNMENT, TRANSFER AND NOTICE

Section 8.01 **Assignment of Interests, Rights and Obligations.** Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.

Section 8.02 **Transfer Agreements.**

(a) In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a “Non-Assuming Transferee” (as defined in Section 8.03), Developer and the transferee shall enter into a written agreement (a “**Transfer Agreement**”) regarding the respective interests, rights and obligations of Developer and the transferee in and under the Agreement, the Project Approvals, and the Subsequent Approvals. Such Transfer Agreement may (i) release Developer from obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations, (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred and (iii) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment.

(b) Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City’s prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within thirty (30) days of a written request by Developer for City’s consent shall be deemed City’s approval of the Transfer Agreement in question. City may refuse to give its consent only if, in light of the proposed transferee’s reputation and financial resources, such transferee would not in City’s reasonable determination be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent to a proposed transferee pursuant to this Section 8.02(b) if such transferee has a net worth of at least Ten Million Dollars (\$10,000,000) increased annually by the Construction Cost Index by Engineering News-Record, with the first increase implemented in January 2023 reflecting 2022 increases and documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa County, Developer shall automatically be released from those obligations assumed by the transferee therein.

(c) Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer’s obligations under this Agreement shall be attributed to Developer, nor may Developer’s rights hereunder be canceled or diminished in any way by any breach or default by any such person.

Section 8.03 **Non-Assuming Transferees.** Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with (i) any single residential parcel conveyed to a purchaser, (ii) any property transferred as fewer than ten (10) lots to a single retail builder or (iii) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school or other nonresidential uses. The transferee in such a transaction and its successors ("**Non-Assuming Transferees**") shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this Section 8.03 shall exempt any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.

Section 8.04 **Notice of Compliance Generally.** Subject to City's finding that the facts contemplated by clauses (i) through (iii) herein are true and accurate, within thirty (30) days following any written request which Developer may make from time to time, City shall execute and deliver to Developer (or to any party requested by Developer) a written "**Notice of Compliance**," in recordable form, duly executed and acknowledged by City, that certifies that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default, and (iii) any other information reasonably requested by Developer. City's failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.

ARTICLE IX COOPERATION IN THE EVENT OF LEGAL CHALLENGE

Section 9.01 Cooperation.

(a) Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, as well as staff and City Attorney time spent in regard to defense of the action or proceeding and any award of fees against the City. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and

Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein.

(b) Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.

(c) The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.

Section 9.02 **Cure; Reapproval.**

(a) If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or any portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgment (a "**Judgment**") in such action or proceeding (based on procedural, substantive or other deficiencies, hereinafter "**Deficiencies**"), the parties agree to use their respective best efforts to sustain and reenact or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise:

(i) If any Judgment requires reconsideration or consideration by City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement and the Judgment. Upon the parties' cure of such Deficiencies, City shall then take steps consistent with the Judgment necessary to review and consider the readoption or reenactment of this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof.

(ii) Acting in a manner consistent with the intent of this Agreement or a Judgment includes, but is not limited to, recognizing that the parties intend that Developer may develop a single-family residential unit project, and adopting such ordinances, resolutions, and other enactments, including but not limited to a general plan amendment, rezoning, vesting subdivision map approvals, development plan approvals, PD Plan approvals, design review, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, final development plans, development agreements, permits, resubdivisions, and any amendments

to, or repealing of, any of the foregoing as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgment.

(b) The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.02, which shall survive such invalidation, nullification or setting aside.

ARTICLE X

DEFAULT; REMEDIES; TERMINATION

Section 10.01 **Defaults.** Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (the “**Complaining Party**”) (unless such period is extended by mutual written consent), shall constitute a default under this Agreement. The Complaining Party’s notice (“**Default Notice**”) shall specify the nature of the alleged failure and, may specify the manner in which the failure satisfactorily may be cured by the other party (the “**Defaulting Party**”). Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable date following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than thirty (30) days after the Defaulting Party’s receipt of the Default Notice), the Defaulting Party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30-day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within one hundred twenty (120) days after the Notice of Default is given. Complaining Party shall not send notice to any third party, including, but not limited to, bonding and surety companies, until such time as the cure opportunities set forth above have expired unless otherwise required by applicable law. Upon the occurrence of a default under this Agreement, the Complaining Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party shall take no further action.

Section 10.02 **Termination.** If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. As used herein, a finding of materiality shall be based on the effect of the default in relation to the size and scope of the Project. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing,

and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter; provided, however, that if Developer files an action to challenge City's termination of this Agreement within such 60-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

Section 10.03 **Periodic Review.**

(a) **Conducting the Periodic Review.** Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement. This review (the "**Periodic Review**") shall be conducted by the City Manager or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code § 65865.1. Developer also agrees to pay City annually the greater of Five Thousand Dollars (\$5,000) or the actual cost of Periodic Review Fee (not to exceed Ten Thousand Dollars (\$10,000)). The Five Thousand Dollars (\$5,000) shall be increased annually thereafter by the Construction Cost Index by Engineering News-Record, with the first increase implemented in January 2023 reflecting 2022 increases. Such Periodic Review Fee shall only be paid in the years in which a Periodic Review is actually conducted.

(b) **Notice.** At least ten (10) days prior to the Periodic Review, and in the manner prescribed in Article XII of this Agreement, City shall deposit in the mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer's performance hereunder. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Such response shall be made to the City Manager.

(c) **Good Faith Compliance.** During the Periodic Review, the City Manager shall review Developer's good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that Developer has not complied with such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code §§ 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally by Developer and City.

(d) **Failure to Properly Conduct Periodic Review.** If, after thirty (30) days following Developer's notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall be conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.

(e) Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.

Section 10.04 **Excusable Delay; Extension of Time of Performance.** In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer's actions or inactions and beyond Developer's control. Upon the properly noticed request of either party hereto, as required by Section 13.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon in writing.

Section 10.05 **Legal Action.** 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, or enforce by specific performance the obligations and rights of the parties hereto. Developer specifically agrees that it has no authority under this Agreement or otherwise to seek monetary damages against the City for any alleged default or breach of this Agreement by the City and agrees that in no event shall monetary damages be available against the City for any alleged default or breach by the City.

Section 10.06 **California Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 10.07 **Resolution of Disputes.** With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and

that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provisions of this Section 10.07 may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. Nothing in this Section 10.07 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.

Section 10.08 **Attorneys' Fees.** In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.

Section 10.09 **Default by City or Developer.** In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law, except that Developer specifically agrees that it has no authority under this Agreement or otherwise to seek monetary damages against the City for any alleged default or breach of this Agreement by the City and agrees that in no event shall monetary damages be available against the City for any alleged default or breach by the City.

ARTICLE XI NO AGENCY, JOINT VENTURE OR PARTNERSHIP

It is specifically understood and agreed to by and between the parties hereto that unless otherwise expressly provided herein (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer. The City agrees that Developer's obligations under this

Agreement related to the construction of Project water, sewer and drainage infrastructure improvements, the grading and construction of traffic improvements, and the grading and construction of any other public improvements (collectively, the “**Public Improvements**”) are all public works of improvement the City is requiring as a condition of regulatory approval of the Project and that the Project is an otherwise private development. The City further agrees that it will contribute no more money, or the equivalent of money, to the overall Project than is required to construct the Public Improvements and that City maintain no proprietary interest in the overall Project.

ARTICLE XII

SUBSEQUENT APPROVAL REVIEW, TRAIL CONNECTIONS, SCHOOL JURISDICTION

Section 12.01 **Review of Subsequent Approval Entitlement Applications.** City and Developer agree that the Project shall encourage hillside ‘estate’ development to the greatest extent possible in an effort to maximize property values and create a diverse housing product in the City of Pittsburg. The Developer has proposed a base zoning designation of RS-4 (Single Family Residential, 4,000 square foot minimum lot size) and the corresponding development standards as outlined in the Master Plan to allow for a certain amount of flexibility in development of the hillside areas. The Parties further acknowledge the importance of review of Subsequent Approvals by the City Council. As such, the Parties agree that the City Manager may, at his/her discretion, elect to have to any entitlement application(s) necessary for Subsequent Approvals related to the Project brought before the Planning Commission also be brought before the City Council, and that the City Manager may take all necessary steps, including but not limited to, filing any appropriate documentation, to implement this section.

Section 12.02 **Trail Connections.** Developer acknowledges that East Bay Regional Park District (“EBRPD”) anticipates creating a Concord Hills Regional Park (“Regional Park”) adjacent to the Property. Developer shall provide one or more trails and one or more staging areas within the Project which will be designed to connect with the Regional Park trail network west of the Project should one be developed. The location, size and timing of the construction of such trail(s) and staging area(s) will be subject to City approval and coordination with EBRPD.

Section 12.03 **School District Jurisdiction.** At no cost to Developer, Developer shall support and cooperate with any effort made by the Pittsburg Unified School District and the Mt. Diablo Unified School District to amend the school district boundaries for the Project.

Section 12.04 **Active Transportation Plan.** Developer shall comply with the guidance and provisions of the current Pittsburg Active Transportation Plan, as may be amended, in its build-out of the Project.

ARTICLE XIII MISCELLANEOUS

Section 13.01 **Incorporation of Recitals and Introductory Paragraph.** The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

Section 13.02 **Enforceability.** City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code § 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement and applicable law shall prevail.

Section 13.03 **Findings.** City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.

Section 13.04 **Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.

Section 13.05 **Other Necessary Acts.** Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Section 13.06 **Construction.** Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 13.07 **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

Section 13.08 **Covenants Running with the Land.** All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall

constitute covenants running with the land pursuant to California law including, without limitation, California Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.

Section 13.09 **Notices.** Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by email to the City Manager and City Attorney (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by email transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's email program. Notices transmitted by email after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to: City Manager
City of Pittsburg
Civic Center
65 Civic Avenue
Pittsburg, CA 94565-2830

With Copies to: City Attorney
City of Pittsburg
Civic Center
65 Civic Avenue
Pittsburg, CA 94565-2830

If to Developer, to: Albert D. Seen0, III
Faria Land Investors, LLC
4021 Port Chicago Hwy.
Concord, CA 94520

With Copies to: Faria Land Investors, LLC
Attn: Legal Department
4021 Port Chicago Hwy.
Concord, CA 94520

Section 13.10 **Entire Agreement, Counterparts and Exhibits.** This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of 30 pages and four exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of any provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

EXHIBIT A - Legal Description
EXHIBIT A-1 - Project Site Diagram
EXHIBIT B - Applicable Fees

Section 13.11 **Recordation of Development Agreement.** Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.

[SIGNATURES FOLLOW ON NEXT PAGE]

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IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

CITY:

CITY OF PITTSBURG,
a California municipal corporation

By: _____
Name: Garrett Evans
Title: City Manager

APPROVED AS TO FORM:

By: _____
Donna Mooney
City Attorney

DEVELOPER:

FARIA LAND INVESTORS, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION

ALL THAT REAL PROPERTY SITUATE IN THE UNINCORPORATED AREA OF COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTH $\frac{1}{2}$ OF SECTION 21, A PORTION OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 21, A PORTION OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 22, A PORTION OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 22, THE SOUTH $\frac{1}{2}$ OF THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 22, A PORTION OF THE NORTH $\frac{1}{2}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 26, A PORTION OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 27, A PORTION OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 27, AND A PORTION OF THE NORTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 27, TOWNSHIP 2 NORTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

- 1) BEGINNING AT A FOUND 1 $\frac{1}{2}$ " IRON PIPE MARKING THE CORNER COMMON TO SECTIONS 22,23,27 AND 26 OF TOWNSHIP 2 NORTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN, THENCE ALONG THE NORTH LINE OF SECTION 27 NORTH 89°56'06" WEST, 653.54 FEET;
- 2) THENCE LEAVING SAID NORTH LINE OF SECTION 27 SOUTH 01°26'50" WEST, 3316.70 FEET;
- 3) THENCE SOUTH 89°56'06" EAST, 644.83 FEET;
- 4) THENCE NORTH 89°45'21" EAST, 291.51 FEET TO A POINT ON THE WEST LINE OF BAILEY ROAD;
- 5) THENCE ALONG SAID WEST LINE OF BAILEY ROAD SOUTH 33°13'31" WEST, 404.32 FEET;
- 6) THENCE, ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 1475.12 FEET, THROUGH A CENTRAL ANGLE OF 03°50'00", AND AN ARC LENGTH OF 98.69 FEET ;
- 7) THENCE SOUTH 37°03'31" WEST, 97.74 FEET;

- 8) THENCE LEAVING SAID WEST LINE OF BAILEY ROAD AND ALONG THE EASTERN BOUNDARY LINE OF THE CONCORD NAVAL WEAPONS STATION NORTH 52°20'22" WEST, 6233.43 FEET;
- 9) THENCE NORTH 38°16'33" WEST, 6785.55 FEET;
- 10) THENCE LEAVING SAID WESTERN BOUNDARY LINE SOUTH 89°29'22" EAST, 1437.03 FEET;
- 11) THENCE SOUTH 02°58'12" WEST, 1329.22 FEET;
- 12) THENCE SOUTH 89°33'06" EAST, 4513.63 FEET;
- 13) THENCE NORTH 30°17'54" EAST, 142.10 FEET;
- 14) THENCE NORTH 70°28'54" EAST, 285.70 FEET;
- 15) THENCE NORTH 53°20'54" EAST, 159.30 FEET;
- 16) THENCE NORTH 72°50'54" EAST, 90.00 FEET;
- 17) THENCE NORTH 80°51'54" EAST, 288.83 FEET;
- 18) THENCE SOUTH 00°15'18" WEST, 384.12 FEET;
- 19) THENCE SOUTH 89°53'46" WEST, 270.25 FEET;
- 20) THENCE SOUTH 00°16'15" WEST, 1324.40 FEET;
- 21) THENCE NORTH 89°55'11" EAST, 231.00 FEET;
- 22) THENCE SOUTH 00°16'15" WEST, 1966.94 FEET;
- 23) THENCE SOUTH 89°58'17" EAST, 2618.12 FEET;
- 24) THENCE SOUTH 00°36'28" WEST, 657.34 FEET TO THE **POINT OF BEGINNING.**

CONTAINING 606.9 ACRES OF LAND, MORE OR LESS.

THIS DESCRIPTION OF LAND IS NOT A LEGAL PROPERTY DESCRIPTION AS DEFINED IN THE SUBDIVISION MAP ACT AND MAY NOT BE USED AS THE BASIS FOR AN OFFER FOR SALE OF THE LAND DESCRIBED

END OF DESCRIPTION



EXHIBIT A-1

PROJECT SITE DIAGRAM



JUNE 23, 2020

GENERAL NOTES:

1. OWNER:	FARIA LAND INVESTORS INC. 4061 PORT CHICAGO HIGHWAY, SUITE H CONCORD, CA. 94524-4113 (925) 682-6419
2. CIVIL ENGINEER:	HARRISON & ASSOCIATES 23555 YONAH VALLEY ROAD SUITE C WALNUT CREEK, CA 94598 (925) 937-9333
3. TOTAL AREA:	606.3 AC
4. ASSESSORS PARCELS:	097-190-002 & -006 097-190-002 097-200-002 & -003 097-230-004 097-240-002 097-230-008

$$1'' = 400'$$

400 0 200 400 800
(IN FEET)
1 INCH = 400 FT.

	UNDEVELOPED AREA (INCLUDES TEMPORARY CRAVING AREA)	=265.31± AC
	AREA OF DEVELOPMENT	=209.06± AC (3-5 DU/AC)
	AREA OF DEVELOPMENT	=131.98± AC (1-3 DU/AC)
	150' RIDGELINE BUFFER	
	PITTSBURG-CONCORD RIDGELINE	

EXHIBIT B
APPLICABLE FEES

Building Division

Row #	Fee Description
1	Building Permit Fee Minimum
2	Building Permit Fees (Alterations and Repairs)
3	Building Permits Fees (New Commercial)
4	Building Permits Fees (New Industrial)
5	Building Permits Fees (New SFR Dwellings)
6	Building Permits Fees (New SFR Private Garages)
7	Building Permits Fees (New SFR decks / porches)
Above SFR valuation calculation to remain constant. Table B to be adjusted by the prior year ENR 20-City Construction Cost Index every January 1st.	
8	Reroof (Residential) - 1st 20 square
9	Reroof (Residential) - each additional 10 square
10	Reroof (Commercial)
	All Inclusive Permit Fees:
11	All Inclusive Permit Fees (Kitchen Alteration)
12	All Inclusive Permit Fees (Bathroom Alteration)
13	All Inclusive Permit Fees (Bathroom Alteration Each Additional)
14	All Inclusive Permit Fees (Window/Door Replacement)
15	All Inclusive Permit Fees (Window/Door Replacement)
16	All Inclusive Permit Fees (Window Replacement)
17	Plumbing Fee (Primary)
18	Plumbing Fee (Supplemental)
19	Water Heater Replacement
20	Re-piping - Supply Lines
21	Sewer Line Repair/Replace
22	Conversion to Tankless Water Heater Permit
23	Seismic Gas Valve
24	Electrical Fee (Primary)
25	Electrical Fee (Supplemental)
26	Electrical Service Upgrade - (200 amps or <)
27	Electrical Service Upgrade - (> 200 amps)
28	New Service (Pedestal)
29	Temporary Power
30	E. V. Charger - Residential
31	E. V. Charger - Commercial
32	Mechanical Fee (Primary)

33	Mechanical Fee (Supplemental)
34	Accessory Dwelling Units
35	Junior Accessory Dwelling Units
Mechanical Permits - Residential (Single-family and duplexes)	
36	Heating and/or Cooling Equipment (including ducts)
37	Wall Furnace
38	Kitchen Hood and Bathroom Vents
Mechanical Permits - Commercial & Multi-Family	
39	HVAC Unit (includes all associated sub-permits)
40	Air Handler Unit
41	Vent System
42	Exhaust Hood Replacement
43	Insulation/ Energy Fee Per New Construction > 500 sf.
44	Swimming Pool Permit (Residential Fee)
45	Swimming Pool Permit (Commercial Fee)
46	Sign Permit (New Installation)
47	Sign Replacement (Channel Signage)
48	Sign Replacement (Channel Signage)
49	Sign Replacement (Monument Signage)
50	Sign Replacement (Projecting Signage)
51	Sign Replacement (Transom Signage)
52	Sign Replacement (Freestanding Signage)
53	Demolition (Residential)
54	Demolition (Commercial)
55	Moved Building Permit / Manufactured Home
56	Solar Building Permit-Solar Panels & Pool Heaters
57	Solar Building Permit-Solar Panels & Pool Heaters
58	Solar Building Permit-Solar Panels & Pool Heaters
59	Commercial Photovoltaic Permit
Plan Review Fees:	
60	Building Plan Review Fee
61	Expedited Plan Review
62	Foundation Only
63	Review In Excess of (2)
64	Fire and Termite Repair w/ Scope of Work
65	Energy Plan Review Fee (Commercial - New Construction)
66	Energy Plan Review Fee (Residential - New Construction)
67	Energy Plan Review Fee (Residential - Development Model)
68	Plumbing Plan Review Fee
69	Electrical Plan Review Fee
70	Mechanical Plan Review Fee
71	Swimming Pool Plan Review Fee (Custom)

72	Swimming Pool Plan Review Fee (Standardized Plans and Calculations)
73	Over Counter Plan Review Fee
74	Production Housing - Plan Review Fee
Residential Rental Property Inspection Fee Schedule:	
75	Initial Annual Inspection Fee and Registration Fee
76	Annual Program Fee
77	Annual Program Fee Completed Electronically (On Line)
<i>An initial verification inspection is conducted at the first time a property is placed into inventory. A renewal inspection is conducted each year thereafter or on the fourth year for properties that are self inspected by the owner.</i>	
Additional Inspection Fees:	
78	Building
79	Plumbing, Electrical, Mechanical, etc.
80	Requested Special Inspection
81	Code Compliance Permit (Residence)
82	Code Compliance Permit (Commercial)
83	Code Compliance Permit (Work without a permit)
84	Code Compliance Permit (Work without a permit)
85	Stop work fee
86	Code Compliance Permit (Reinstate Expired Permit - Final Inspection Only)
87	Code Compliance Permit (Reinstate Expired Permit - Second Inspection due to corrections)
88	Code Compliance Permit (Reinstate Expired Permit - Inspections beyond final remaining)
89	30 day Temporary Certificate of Occupancy
90	Garage Conversion
Administrative Fees:	
91	Fire Protection Collection Fee
92	Fire District Facilities Admin Fee (Single Family)
93	Fire District Facilities Admin Fee (Multi-Family)
94	Fire District Facilities Admin Fee (Office)
95	Fire District Facilities Admin Fee (Commercial)
96	Fire District Facilities Admin Fee (Industrial)
Other Fees:	
97	Water Meter – Purchase
98	Construction Water – pre-metered internal use
99	Copies
100	Document Imaging Fee (Subdivisions = BP Models Only)
101	Document Imaging Fee (Building Permit Fee)
102	Accessibility Fee (Non-Res Building Permit Fee)
103	NPDES Management Fee (Building Permit Fee)
104	Release of Tax Lien
105	Postage / Handling – Permits
106	Inspection outside of normal business hours

107	Re-inspection Fee
108	Inspections for which no fee is specifically indicated
109	Technology fee of permit and R.I.P enrollment fees
Building Standards Administration Fee (Mandated by State of California)	
110	Permit Valuation - \$1 - \$25,000
111	Permit Valuation - \$25,001 - \$50,000
112	Permit Valuation - \$50,001 - \$75,000
113	Permit Valuation - \$75,001 - \$100,000
114	Every \$25,000 or fraction thereof above \$100,000
Strong Motion Instrumental and Seismic Hazard Mapping (Mandated by State of California)	
115	Category 1 (Residential 1 - 3 stories Building Permits over \$5,000)
116	Category 2 (Commercial and Residential over 3 stories Building Permits over \$2,381)
117	Category 1 Permits under \$5,000 and Category 2 Permits under \$2,381

Building Division - Table I

Plumbing Permit Fees - California Plumbing Code (C.P.C.)

Row #	Fee Description
Permit Issuance	
1	Filing Fee
2	Filing Fee (Supplementary)
Plan Review	
3	Plan review fees for plumbing work shall be equal to 100% of Plumbing Permit
4	Additional plan review required by changes, additions or revisions to approved plans shall be assessed hourly
5	When plan check goes beyond a second review the applicant may be charged for subsequent reviews on an hourly basis or per the consultant's fee.
System Fee Schedule	
6	Residential construction (SFR and MFR > 500 sq. ft.
7	Commercial construction - Complete Building
8	Commercial construction - Shell only
9	Commercial construction - Vanilla Shell only
10	Commercial construction - Tenant Improvement
11	Commercial construction - Tenant Improvement (Restaurant)
12	Alterations or Additions residential and commercial
13	Trade Specific (Plumbing Only)
Other Inspection And Fees	
14	Inspection outside of normal business hours
15	Re-inspection Fee
16	Inspections for which no fee is specifically indicated

Building Division - Table II

Electrical Permit Fees - California Electrical Code (C.E.C.)

Row #	Fee Description
Permit Issuance	
1	Filing Fee
2	Filing Fee (Supplementary)
Plan Review	
3	Plan review fees for electrical work shall be equal to 100% of Electrical Permit
4	Additional plan review required by changes, additions or revisions to approved plans shall be assessed hourly
5	When plan check goes beyond a second review the applicant may be charged for subsequent reviews on an hourly basis or per the consultant's fee.
System Fee Schedule	
6	Residential construction (SFR and MFR > 500 sq. ft.
7	Commercial construction - Complete Building
8	Commercial construction - Shell only
9	Commercial construction - Vanilla Shell only
10	Commercial construction - Tenant Improvement
11	Commercial construction - Tenant Improvement (Restaurant)
12	Alterations or Additions residential and commercial
13	Trade Specific (Electrical Only)
Other Inspection And Fees	
14	Inspection outside of normal business hours
15	Re-inspection Fee
16	Inspections for which no fee is specifically indicated

Building Division - Table III

Mechanical Permit Fees - California Mechanical Code (C.M.C.)

Row #	Fee Description
Permit Issuance	
1	Filing Fee
2	Filing Fee (Supplementary)
Plan Review	
3	Plan review fees for electrical work shall be equal to 100% of Mechanical Permit
4	Additional plan review required by changes, additions or revisions to approved plans shall be assessed hourly
5	When plan check goes beyond a second review the applicant may be charged for subsequent reviews on an hourly basis or per the consultant's fee.
System Fee Schedule	

6	Residential construction (SFR and MFR > 500 sq. ft.
7	Commercial construction - Complete Building
8	Commercial construction - Shell only
9	Commercial construction - Vanilla Shell only
10	Commercial construction - Tenant Improvement
11	Commercial construction - Tenant Improvement (Restaurant)
12	Alterations or Additions residential and commercial
13	Trade Specific (Mechanical Only)
Other Inspection And Fees	
14	Inspection outside of normal business hours
15	Re-inspection Fee
16	Inspections for which no fee is specifically indicated

Building Division - Table IV

Fees Collected For Other Agencies & Departments

Row #	Fee Description
Water Meter Purchase (City of Pittsburg Public Works)	
AMR Meters:	
1	5/8" x 3/4"
2	1-inch
3	1 1/2-inch
4	2-inch
5	1 1/2-inch turbine
6	2-inch turbine
7	3-inch turbine
8	4-inch turbine
Non-AMR Meters:	
9	5/8" x 3/4"
10	1-inch
11	1 1/2-inch
12	2-inch
Other Meters (not listed above)	
<i>Fees shall increase each July 1st based on the April twelve month average percentage increase in the San Francisco-Oakland-San Jose All Urbank Workers Consumer Price Index.</i>	
Fire Protection Facilities Fee (Contra Costa County Fire Protection District) - Effective November 1, 2019 (Contra Costa County Ordinance No. 2019-21)	
Residential	
13	Single-Family

14	Multi-Family
Nonresidential	
15	Office
16	Commercial
17	Industrial
Fire Protection Facilities Deferred Fee (Contra Costa County Fire Protection District) - Effective June 18, 2007 (Resolution 07-10816)	
Residential	
18	Single-Family
19	Multi-Family
Nonresidential	
20	Office
21	Commercial
22	Industrial
Fire District Administration Fee (Contra Costa County Fire Protection District) - Effective November 1, 2019 (Contra Costa County Ordinance No. 2019-21)	
Residential	
23	Single-Family
24	Multi-Family
Nonresidential	
25	Office
26	Commercial
27	Industrial
Fire District Administration Fee (City of Pittsburg)	
28	Residential - Single-Family
29	Residential - Multi-Family
30	Nonresidential
Building Standards Administration Fee (Mandated by State of California)	
Permit Valuation	
31	\$1 - \$25,000
32	\$25,001 - \$50,000
33	\$50,001 - \$75,000
34	\$75,001 - \$100,000
35	Every \$25,000 or fraction thereof above \$100,000
Strong Motion Instrumentation and Seismic Hazard Mapping (Mandated by State of California)	
36	Category 1
37	Category 2
38	Category 1 Permits under \$5,000
39	Category 2 Permits under \$2,381

Planning

Row #	Fee Description
1	Accessory Dwelling Unit
2	Annexation Review
3	Appeal
4	Certificate of Compatibility (mobile/manufactured houses)
5	Commercial/Retail Permit
6	Design Review (administrative, awnings, color change)
7	Design Review (all other administrative)
8	Design Review - SFR Subdivision 5-50 Lots
9	Design Review - SFR Subdivision >50 lots
10	Design Review - MFR Base Fee 1-50 units
11	Design Review - MFR 50+
12	Design Review - New Wireless Telecomm Facility & Comm Bldg Remodel <5k s.f.
13	Design Review - Commercial Structure
14	Development Agreements
15	Environmental - Consultant Study (Pass Through)
16	Environmental - EIR (Pass Thru)
17	Environmental -Initial Study or Environmental Assessment
18	Environmental - Negative Declaration
19	Environmental - Notice of Determination (Pass Thru)
20	Environmental - F&G w/ND/no impacts (Pass Thru)
21	Environmental - F&G w/ND +impacts (Pass Thru)
22	Extension of Approval
23	Fence Height Exception/Tree Removal Permit
24	General Plan Amendment
25	Habitat Conservation Plan Administration
26	Home Occupation Permit
27	Minor Modifications - Existing wireless telecom facilities
28	Outdoor Dining Permit

29	Preliminary Plan Review
30	Rezoning Request
31	Sign Review - Freestanding (Admin)
32	Sign Review - Wall Sign (Admin)
33	Sign Review - Sign Program
34	Sign Review - Sign Exception
35	Sign Review - Temporary Signs
36	Sign Review - Billboard
37	Subdivision Minor
38	Special Projects
39	Subdivision Major
40	Temp Activity Permit
41	Use Permit - Existing Bldg & Non-sensitive
42	Use Permit - New Const and/or Sensitive
43	Variance Review – Standard
44	Zoning Administrator Approval (large day care home, small recycling facility, home occupation permit, telecommunications collocation)
45	Zoning Code Amendment
46	Zoning Compliance Letter
Planning Document Charges:	
47	Copy Fee - Black/White
48	Copy Fee - Color Print
49	General Plan Update
50	Penalty of Returned Checks

Engineering

(Fund 110 - General Fund)

Row #	Fee Description
1	Copies
2	Copies
3	Documents (36" wide paper)
4	Document (18" wide paper)
5	Construction Bid Packages
6	Parcel Map Waiver
7	Minor Subdivision Map Check
8	Major Subdivision Map processing fee - Base Fee
9	Subdivision Improvement Plan Check
10	Subdivision Improvement Inspection (\$0-\$500k)
11	Subdivision Improvement Inspection (\$500,001 - \$5M)
12	Subdivision Improvement Inspection (> \$5 million)
13	Encroachment Permit Plan Review
14	Encroachment Permit Inspection
15	Grading Plan Review
16	Grading Inspection
17	Development Agreement Preparation
18	Address Change/New Add.
19	Street Name Change
20	Flood Zone Verification
21	Transportation Permit (2 day permit)
22	Transportation Permit (Annual)
23	Plan Check - Single Parcel (SF)
24	Inspection - Single Parcel (SF)
25	Plan Check - Single Parcel (MF)
26	Inspection - Single Parcel (MF)

27	Plan Check - Single Parcel (Acreage)
28	Inspection - Single Parcel (Acreage)
29	Sewer Inspection Deposit
30	Storm Drain Inspection Deposit
31	Geographical Information System (Residential - Base)
32	Geographical Information System (Commercial)
NPDES Plan Review (SWPPP and/or C.3 Storm water Control Plan)	
33	10,000 sf to 1 acre or Risk Factor 1
34	>1 acre or Risk Factor 2 and 3
35	NPDES Inspection Risk Factor 1
36	NPDES Inspection Risk Factor 2 and 3
37	Work Without Permit Investigation
Engineering Document Charges	
38	Water Master Plan
39	Waste Water Master Plan
40	CIP (Capital Improvement Project)
41	Grading Erosion Sediment Ordinance
42	City's Specs and Details (Pkg. of 2)
43	City's Specs (Pkg. of 1)
44	City's Detail (Pkg. of 1)
45	Document Imaging Fees

A) When the developer submits plans, maps, or other documents for plan review, deposits equal to one half of the total estimated Engineering Improvements and or Grading Plan Review Fees shall be made to the Engineering Department. The Plan Check Fees are based upon the Engineer's Estimate, which shall also be provided at the time the plans are submitted. The deposit(s) shall be credited toward the final fee(s) as determined at engineering permit issuance based upon the final, approved Engineer's Estimate. The deposit shall be paid to the Engineering Department at the time of the developer's first plan submittal - (revised 2009)

B) A new three-tiered fee structure is ADOPTED. This will eliminate the previous 8.75% flat fee.

C) For estimates based on cubic yards of material to be moved, see Engineering Fees chart for alternative calculation.

D) These costs only represent the Engineering costs. This is a multi-department activity, which will be charged by an hourly rate from all participating

departments, which includes salary, benefits and overhead. A deposit may be required prior to beginning the work.

E) Transportation Permit Fee rate set by State of California in accordance with CVC 35795(b)(1).
F) The Countywide Construction General Permit for NPDES categorizes construction projects according to three risk levels according to project sediment risk and receiving water risk. Risk Level 1 are those projects issued permits by the Regional Water Quality Control Board prior to July 1, 2010. These projects are subject to minimum Best Management Practices (BMP) and visual monitoring only. Risk Level 2 projects have been determined to present a high sediment risk and low receiving water risk, or, a low sediment risk and high receiving water risk. Risk Level 3 projects have been determined to have both a high sediment risk and high receiving water risk. Risk Level 2 and 3 projects are required to implement BMPs and may be required to conduct sampling of storm water runoff to determine whether sediment and pH levels are within acceptable tolerances. If exceeded, the project site may be subject to more stringent controls and extended monitoring activities. Actual costs include staff time and time and materials for outside expenses. Surplus funds collected to be returned to applicant.

Additional deposits may be required.

G) MAJOR SUBDIVISION MAP PROCESSING FEE

<u>1ST - 3 FINAL MAP CHECKS</u>		<u>4TH Final Map Check</u>
5-50 LOTS	\$4,000	\$4,000 + \$800 each additional map check
51-150 LOTS	\$4,500	\$4,500 + \$1,065 each additional map check
151 OR MORE	\$5,000	\$5,000 + \$1,330 each additional map check

Note: If an Engineering study is contracted out (i.e., Traffic Study) on behalf of a project applicant, a 25% overhead charge may be used in lieu of staff time being tracked and charged directly.

Engineering GRADING FEE CHARGES

PLAN CHECK FEE:			
0-50 cy	\$328		
51 - 1,500 cu yd	\$589	0.1800 per cu yd	in excess of 50 cu yds
1501 - 5,000 cu yd	\$1,149	0.1600 per cu yd	in excess of 1,500 cu yds
5,001 - 10,000 cu yd	\$1,849	0.1400 per cu yd	in excess of 5,000 cu yds
10,001 - 100,000 cu yd	\$6,349	0.0500 per cu yd	in excess of 10,000 cu yds
100,001 - 200,000 cu yd	\$10,349	0.0400 per cu yd	in excess of 100,000 cu yds
200,001 - 1,000,000 cu yd	\$19,949	0.0120 per cu yd	in excess of 200,000 cu yds
1,000,001 cu yd AND OVER	\$19,949	0.0040 per cu yd	in excess of 1,000,000 cu yds

INSPECTION FEE:			
0-50 cy	\$344		
51 - 1,500 cu yd	\$721	0.2600 per cu yd	in excess of 50 cu yds
1501 - 5,000 cu yd	\$1,484	0.2180 per cu yd	in excess of 1,500 cu yds
5,001 - 10,000 cu yd	\$2,484	0.2000 per cu yd	in excess of 5,000 cu yds
10,001 - 100,000 cu yd	\$9,144	0.0740 per cu yd	in excess of 10,000 cu yds
100,001 - 200,000 cu yd	\$15,144	0.0600 per cu yd	in excess of 100,000 cu yds
200,001 - 1,000,000 cu yd	\$29,544	0.0180 per cu yd	in excess of 200,000 cu yds
1,000,001 cu yd AND OVER	\$29,544	0.0060 per cu yd	in excess of 1,000,000 cu yds

If grading quantity is not available in cubic yards, the charge will be as follows:

2.5% of the Engineer's estimate for Plan Check

3% of the Engineer's estimate for Inspection

Public Works - Water Service Charges

Row #	Fee Description
1	New Utility Account Set-up
2	Meter Shut Off and/or Meter Turn On
3	Meter Shut Off and/or Meter Turn On -for Pulled Meter
4	Meter Tampering fee
5	After hours turn-ons
6	Verify meter reads (VMR/AMR)
7	Fire hydrant meter - check or field read
8	Field Test - Water Meter
9	Sewer Back-up (customer's lateral)
10	Bacteriological Testing - first
11	Bacteriological Testing - additional
12	New Hydrant Account Set-up
13	NSF
14	ACH Reject
15	Credit Card Fraud
16	Write-off/Collection Processing
17	Meter Replacement due to tampering/damage
18	Illegal Hook-Up
19	Trip Charge
Effective February 2020, in accordance with Senate Bill 998 reconnection fee limits for low income customers (below the 200% federal poverty limit), the following fee charges as a result of low income customers being shut-off for non-payment shall be established as follows:	
20	Meter Shut Off (low income only)
21	Meter Turn On (low income only)
22	Meter Turn On-After Hours (low income only)



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Directing the City Engineer to Prepare and File an Annual Report for the Oak Hills Landscaping and Lighting Assessment District 1988-02 for Fiscal Year 2023/24

MEETING DATE: May 1, 2023

EXECUTIVE SUMMARY

Directing the City Engineer as the Engineer of Work to prepare and file the Engineer's Report is the first of three steps in the annual renewal process for the Oak Hills Landscaping and Lighting Assessment District 1988-02. Upon receipt and approval of the Engineer's Report, the City Council may order assessments to be placed on the County tax roll. Revenue collected through this district is necessary to fund landscaping and lighting operations in the Oak Hills area.

FISCAL IMPACT

The fiscal impact of levying Fiscal Year 2023/24 assessments will be determined during the Engineer's Report review. For Fiscal Year 2022/23, the projected assessments collected are projected to be \$34,036.

RECOMMENDATION

City Council approve the attached resolution directing the City Engineer to prepare and file the Fiscal Year 2023/24 report for the Oak Hills Landscaping and Lighting Assessment District 1988-02.

BACKGROUND

In June 1988, the City Council confirmed the Engineer's Report, ordered improvements, and levied the first annual assessment for District 1988-02. Since then, the funds collected annually support landscaping and lighting operations in the Oak Hills area. Services include the following:

Street median and right-of-way landscaping maintenance;
Street tree maintenance;
Sidewalk repair related to street tree damage; and
Street light energy costs and maintenance.

SUBCOMMITTEE FINDINGS

This item was not reviewed by a subcommittee.

STAFF ANALYSIS

State statute mandates an annual renewal of assessments in District 1988-02. The first step is for the City Council to direct the City Engineer to prepare and file an annual report. The report will be submitted for City Council consideration in June.

Following preparation of the annual Engineer's Report, the City Council will consider adoption of a resolution of intention to levy and collect assessments within the district. In July, the City Council will hold a public hearing prior to considering confirming the district and levying the annual assessments.

ATTACHMENTS: Resolution

Report Prepared By: Sharon Paz, Administrative Analyst II

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Directing the City Engineer to Prepare)
and File an Annual Report for the Oak Hills) RESOLUTION NO. 23-
Landscaping and Lighting Assessment)
District 1988-02 for Fiscal Year 2023/24)

WHEREAS, the Oak Hills Landscaping & Lighting Assessment District 1988-02 was established by the City Council and approved by property owners; and

WHEREAS, the City has levied assessments on property in this district to pay for improvements therein; and

WHEREAS, Section 22622 of the California Streets and Highways Code requires the City Council to annually adopt a resolution generally describing any proposed new improvements or any substantial changes in existing improvements to be included for the determination of annual assessments levied for any existing assessment district created under the Landscaping and Lighting Act of 1972; and

WHEREAS, Section 22622 further requires that the City Council order the preparation of an Engineer's Report prior to declaring their intention to levy annual assessments for any district.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds that there are no proposed new improvements or any substantial changes in the existing improvements to the Oak Hills Landscaping & Lighting Assessment District 1988-02, and directs John Samuelson, City Engineer, to prepare and file with the City Clerk an annual report in accordance with Section 22622 of the Act.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 1st day of May 2023, by the following vote:

AYES:
 NOES:
 ABSTAINED:
 ABSENT:

Shanelle Scales-Preston, Mayor

ATTEST:

Alice E. Evenson, City Clerk