

MEMORANDUM OF UNDERSTANDING (PARK IMPACT FEES)

This Memorandum of Understanding ("MOU") is effective as of July 8, 2021, and is between THE CITY OF CAMARILLO, a California municipal corporation ("City") and the Pleasant Valley Recreation and Park District, a California recreation and park district ("District").

RECITALS

A. Camarillo Municipal Code ("CMC") Chapter 16.52 establishes park impact fees for new non-subdivision residential developments and new or expanded non-residential development. The park impact fees were established pursuant to a nexus study conducted by the District that included the requisite findings under the Mitigation Fee Act for imposing such fees.

B. Pursuant to CMC section 16.52.090, the City will impose the park impact fees and the District will receive and administer the park impact fees in accordance with a written memorandum of understanding. In consideration of the City's establishment of the park impact fees, the District has represented and warranted to the City that the District will comply with all the requirements of the Mitigation Fee Act (Government Code section 66000 and following) and will defend, indemnify, and hold harmless the City and its members from any claims or liability against the City related to CMC Chapter 16.52 and the imposition, management, and refunding of such park impact fees.

C. This MOU serves as that written memorandum of understanding between the City and the District that addresses the respective roles and responsibilities of each party, to memorialize the District's obligations to comply with the Mitigation Fee Act, the use of such park impact fees, under CMC Chapter 16.52, towards addressing impacts to park and recreational facilities within the City, and the District's obligations to defend, indemnify, and hold harmless the City from claims related to such park impact fees.

AGREEMENT

1. Term. The term of this MOU commences on the date first set forth above and continues in full force and effect unless terminated by either party with 30 days' written notice.

2. City's Role and Responsibilities.

2.1. Establishment of Park Impact Fees. The City has established park impact fees for new or expanded facilities in accordance with CMC Chapter 16.52.

2.2. Notification related to Refunds. The City will notify the District of any claims for refunding park impact fees and will coordinate with the District of processing such refunds.

2.3. Annual Review and Reporting. With the assistance of the District, the City will facilitate the annual review and report required by the Mitigation Fee Act.

2.4. Five-Year Review and Reporting. With the assistance of the District, the City will facilitate the five-year review and report required by the Mitigation Fee Act.

2.5 City Notification to District. The City will use reasonable efforts to notify the District about proposed changes to ordinance(s) or resolution(s) governing the collection of the park impact fees, and of project conditions for the payment of park impact fees.

3. District's Roles and Responsibilities.

3.1. Compliance with Mitigation Fee Act. District represents and warrants that District will comply with all applicable provisions of the Mitigation Fee Act, including but not limited to, Government Code sections 66001, 66006, and 66008.

3.2. New Obligations and Updated Data. District will stay informed of and ensure its compliance with any new obligations arising from the collection of the park impact fees, including but not limited to amendments to the Mitigation Fee Act and court decisions interpreting it or any new city ordinance(s) or resolution(s) governing the collection of the park impact fees. District will regularly update its nexus studies to support the collection of the park impact fees as required by law.

3.3. Amount of Park Impact Fees. The park impact fees will be calculated by the District and paid directly to the District's Administrative Services Manager or their designee from the developer or its agent in accordance with CMC section 16.52.040. The District must sign and date a form of receipt to be established to the satisfaction of the City that documents receipt of payment of such park impact fees for the project.

For individual projects, the District will calculate the park impact fees associated with such project as a condition of approval and provide the City with notification of the calculation of the applicable park impact fees associated with the project.

3.4. Collection. If any park impact fee is owed by a particular developer and is not paid, District bears full responsibility for collection of park impact fees owed from the developer and will not seek recovery of such fees from the City.

3.5. Deposit, Segregation, Investment and Disbursement of Fees. District represents and warrants that all park impact fees received by District, together with any interest and/or temporary investments, must be maintained and accounted for in accordance with the Mitigation Fee Act. Specifically, pursuant to Government Code section 66006, the District must deposit the collected park impact fees in a separate account to avoid commingling of the fees and any interest must remain in that separate account. While the District may temporarily invest the collected fees, the proceeds of that investment must be deposited in accordance with the requirements of the Mitigation Fee Act. The District may not use any park impact fees for District general revenue purposes.

3.6. Limitations on Use of Park Impact Fees. Park impact fees may not be used to fund parkland acquisition or the renovation of existing facilities that do not add new service capacity. Projects funded by the park impact fees must include either new facilities or expanded facilities within existing parks. If the park impact fees are to be used for the renovation of existing

facilities, they must be used in proportion to the amount that expanding service capacity represents as a part of the total project budget.

Park impact fee revenue can be used to cover fee impact program administration costs such as collection, documentation, annual reporting requirements, five-year report requirements, periodic nexus studies, and other costs reasonably related to compliance with the Mitigation Fee Act, if so permitted by the Mitigation Fee Act and such costs are supported by nexus studies.

3.7. Refunds. After receiving notification of a refund of park impact fees from the City, the District will be responsible for refunding such fees in accordance with CMC section 16.52.060, the Mitigation Fee Act, or in accordance with any other applicable law.

3.8. Nexus Study and Government Code section 66001 findings. District is responsible for providing the City with data to ensure compliance with the finding requirements under California Government Code section 66001 to support the establishment of the park impact fees.

3.9. Annual Review and Reporting. District represents and warrants that it will assist the City with complying with the annual reporting and finding requirements under California Government Code section 66006. The District must submit any necessary supporting documentation required by the annual review procedures no later than 90 days after the last day of each fiscal year of City, and no later than 60 days before a City public meeting required under Government Code section 66006, to the City, and take all necessary steps to provide such information for the City to consider and make available such information at an open and public meeting within the time required by law. Prior to requesting City to hold a public meeting to consider the annual report, the District's Board of Directors will independently consider and approve any such necessary supporting documentation and submit its action and findings with its request to the City. District must promptly provide any additional information City requests relevant to the annual report. Based on the information District provides, City may consider the information and the District's annual report, in accordance with Government Code section 66006.

3.10. Five-Year Review and Reporting. District represents and warrants that it will comply, and assist the City with complying, with the five-year reporting and finding requirements under California Government Code section 66001(d). District must submit any necessary supporting documentation and proposed findings required no later than 90 days after the last day of each fiscal year of City, and no later than 60 days before the public meeting required under Government Code section 66006, to the City, and will take all necessary steps to provide such information for the consideration by City an open and public meeting within the time required by law. Prior to requesting City to make the five-year findings, the District's Board of Directors will independently consider and approve any such necessary supporting documentation and proposed findings and submit its action and findings with its request to the City. District must promptly provide any additional information City requests relevant to the five-year findings. Based on the information District provides, City will consider the information and make findings, if appropriate, under Government Code section 66001(d)(1).

District acknowledges that the unexpended portion of park impact fees, and any interest accrued thereon, for which need cannot be demonstrated pursuant to Government Code section 66001, will be refunded by the District to the then current record owner or owners of lots or units of the development project or projects on a prorated basis.

3.11. Administration Costs. District represents and warrants that a four percent administration cost may be collected to cover the costs associated with managing, collecting, maintaining, and administering the park impact fees. District will retain two percent and remit to City two percent of the park impact fees paid to and received by the District. The two percent administration cost will be paid by District to City annually, concurrently with the annual review and report documentation referenced in Section 3.9.

3.12. Accounting and Audit. District must account for and expend fees in compliance with Government Code sections 66006, 66008, and 66011, including ensuring that the requisite public notice is provided. District has the sole responsibility to account for the expenditure of fees and perform at its own expense any audit required under the Mitigation Fee Act or as requested by the City. To the extent District needs information from City to comply with Government Code section 66006(b), District may request the information from City in writing and provide City with no less than 30 days to respond.

If any audit relating to City's creation of fees on behalf of District is requested under Government Code section 66006(d) or section 66023, City, in its sole discretion and subject to the limitation in section 66023(c), may elect to: (1) perform the audit and be reimbursed by the District for the costs and staff time incurred in undergoing the audit if the costs cannot be recovered from the person requesting the audit pursuant to section 66023(b); or (2) contract with an independent auditor for any audit related to fees collected or disbursed under this MOU and if the auditor fees are not covered by Government Code section 66023(b), District will reimburse City for all of the uncovered fees and costs charged by the independent auditor. District must promptly respond to all requests for information made by City in relation to any audit.

3.13. Indemnification. District agrees to accept all responsibility for loss or damage to any person or entity, including City, and to indemnify, hold harmless, and release City, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including District, that arise out of, pertain to, or relate to District's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this MOU, and the City's establishment, collection, or refunding of park impact fees under CMC Chapter 16.52. District agrees to provide a complete defense for any claim or action brought against City based upon a claim relating to such District's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this MOU the City's establishment, collection, or refunding of park impact fees under CMC Chapter 16.52. District's obligations apply whether or not there is concurrent or contributory negligence on City's part, but to the extent required by law, excluding liability due to City's conduct. District specifically represents and warrants that District as the recipient of the park impact fees is solely responsible for the payment of any claims against the City involving any refund or improper collection of those park impact fees.

4. Governing Law. This MOU is governed by and will be construed in accordance with the laws of the State of California without regard to principles of conflict of laws.

5. No Assignment. This MOU is not assignable either in whole or in part without the written consent of the other party.


6. Counterparts. This MOU may be executed in two or more counterparts, each of which will be an original, but all of which will constitute one and the same instrument. Signatures

transmitted by facsimile or electronic means will be valid and binding and considered original signatures for all purposes.

7. Entire MOU. This MOU reflects the entire agreement between the parties, and supersedes all prior proposals, agreements, and understandings between the parties. No modification will be valid without an express written amendment.

THE UNDERSIGNED AUTHORIZE REPRESENTATIVES of the parties have caused this MOU to be executed as set forth below.

CITY OF CAMARILLO
a California Municipal Corporation


Charlotte Craven, Mayor
DATE: 07 / 13 / 2021

**PLEASANT VALLEY RECREATION AND
PARK DISTRICT**
a California Recreation and Park District


Mark Malloy, Chair
DATE: 07 / 08 / 2021

ATTEST:


Jeffrie Madland, City Clerk

ATTEST:


Secretary

APPROVED AS TO FORM:
BURKE, WILLIAMS & SORENSEN, LLP


Brian A. Pierik, City Attorney

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SENT

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VIEWED

07 / 09 / 2021
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SIGNED

07 / 09 / 2021
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18:21:47 UTCViewed by Brian Pierik (bpierik@bwslaw.com)
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COMPLETED

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The document has been completed.