

City of Piedmont
COUNCIL AGENDA REPORT

DATE: June 20, 2023

TO: Mayor and Council

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Consideration of Naming Rights Agreements for the Piedmont Community Pool Project

RECOMMENDATION

Authorize the City Administrator to execute agreements with major donors to the Piedmont Community Pool Project in substantially the same form as the proposed City of Piedmont Naming Agreement, and in conformance with City Council Policy No. 7: Acceptance of Donations & Naming of City-Owned Facilities.

BACKGROUND

With the passage of Measure UU in 2020, the City of Piedmont is constructing the Piedmont Community Pool, located at 777 Magnolia Avenue. In December of 2022, the City Council awarded the construction contract for the project. At that time, the project budget was set at \$28,891,000, including a sum of \$2,100,000 as an embedded fundraising goal for Piedmont Recreational Facilities Organization (PRFO) yet to be achieved.

PRFO was founded in 2004 and is a 501(c)(3) focused on public recreational facilities that serve residents of Piedmont. PRFO actively collaborates with the City to identify, advocate for, and support funding projects that invest in healthy spaces. Early in the development process, PRFO pledged its support to the Community Pool project. At the City Council meeting on June 5, 2023, PRFO announced its successful campaign and presented a symbolic \$2,100,000 check to the City.

While the vast majority of donations are contributed to PRFO, which are then donated to the City, certain major donors secured through PRFO will make direct payments to the City. These parties have been extended the opportunity for naming rights associated with various facility features. Amenities associated with naming rights include the competition pool, activity pool, multipurpose room, and pavilion.

The attached Naming Agreement template was developed in consultation with the City Attorney. Primary elements of the agreement are the naming right fee, use, term and location/s, early termination and right of first refusal provisions.

The City is in the final stages of negotiations and the first contributions are anticipated within 60 days. Approval of the template Naming Agreement will enable the City to work within a defined framework and directly receive funds in advance of project completion.

FISCAL CONSIDERATIONS

Donor contributions associated with naming rights are currently estimated at a total of \$1,000,000 and are included in the \$2,100,000 goal established at the time of project award.

CITY ATTORNEY REVIEW

The City Attorney has reviewed and approved the template Naming Rights Agreement as to form.

ATTACHMENT:

- A. Template Agreement

EXHIBIT A
NAMING RIGHTS AGREEMENT
BETWEEN
THE CITY OF PIEDMONT
AND
[Name]

This NAMING RIGHTS AGREEMENT (the “Agreement”) is made as of _____, 2023 by and between _____ and the City of Piedmont (the “City”). The City and _____ are sometimes individually referred to as a “Party” and collectively as “Parties.”

R E C I T A L S

- A. City is the owner of certain real property located at 777 Magnolia Avenue, Assessor Parcel Number [APNs], Piedmont, California (“Property”).
- B. As a result of the passage of Measure UU in 2020, the City is currently in the process of developing an aquatics facility, the “Piedmont Community Pool” on the Property, which will include amenities such as a competition pool, activity pool, multipurpose room, and pavilion.
- C. On May 2, 2022, the City Council adopted Policy No. 7, “Acceptance of Donations & Naming of City-Owned Facilities.”
- D. The Parties wish to enter into a naming rights agreement pursuant to which the City will grant _____ temporary naming rights to name _____ as the _____ in exchange for certain benefits as set forth herein.

A G R E E M E N T

In consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Grant of Naming Rights.

- a. Grant. The City hereby grants _____ rights to name the area depicted in Exhibit A during the Term of this Agreement as _____ (the “Name”). The Name will be depicted in locations as depicted in Exhibits # and # to this Agreement, which is attached hereto and incorporated herein by reference. Any additional benefits or rights granted to _____ under this Agreement beyond those specified in this Section 1.a must be mutually agreed upon in writing by the Parties, and are subject to the payment of additional consideration in an amount agreed to by the Parties.
- b. Right of First Refusal. The City will provide _____ with the opportunity to negotiate and enter into a new Naming Rights Agreement prior to any decision to

change the name of the [AMENITY]. The City will provide written notice to _____ that they have ninety (90) days to negotiate additional or extended rights to the name [AMENITY]. If, following notice, the Parties do not reach an agreement for extended or additional naming rights within ninety (90) days, the City will be free to solicit, receive, and negotiate naming rights with third parties, and to change the name of [AMENITY].

2. Naming Rights Fee. In consideration of the naming rights granted by the City in Section 1 of this Agreement, _____ agrees to pay the City the amount of _____ dollars (\$), with the payment of _____ dollars (\$) to occur by the date of _____.
3. Use of Payments. The payments shall be used exclusively for the Property.
4. Term. Unless the City sooner terminates this Agreement pursuant to Section 5 below, this Agreement shall terminate on the _____ anniversary of the date that the Piedmont Community Pool first opens to the public ("Term").
5. Early Termination.
 - a. In the event that during Term of this Agreement, and following receipt of full payment from _____, the Pavilion is damaged, destroyed, or ceases to exist prior to the expiration of the Term of this Agreement, the grant of naming rights specified in Section 1 under this Agreement will cease, and the Agreement will be terminated. In the event of termination of the Agreement pursuant to this Section 5.a, the City shall not be required to return any portion of the naming rights fee provided to the City pursuant to Section 2 above.
 - b. In the event the _____ elects to sooner terminate this Agreement prior to the expiration date, the City shall not be required to return any portion of the naming rights fee already received pursuant to Section 2 above, and _____ shall pay the City for any and all losses, costs, damages, and/or expenses incurred by the City in connection with such early termination, including, but not limited to, costs incurred for removing the depictions of the Name on the Property.
 - c. The City may terminate this Agreement upon the occurrence of the following:
 - i. In the event that _____ fails to make the naming rights fee payment due under this Agreement pursuant to Section 2 above, and such default is not

cured within ten (“10”) business days following the date of written notice of default by the City; or

- ii. In the City Council’s reasonable opinion, at any time during the Term of this Agreement, the Name has developed or acquired a negative connotation.
 - d. In the event of early termination pursuant to this Section 5, the City shall have no further obligation or liability under this Agreement, and shall not be required to return any portion of the naming rights fee paid pursuant to Section 2 above.
- 7. Time of Essence. Time shall be of the essence of each provision of this Agreement.
 - 8. Governing Law. The laws of the State of California shall govern this Agreement.
 - 9. Entire Agreement. This Agreement and all exhibits attached and any documents incorporated in this Agreement contain the entire agreement between the Parties and shall supersede any and all prior agreements, oral or written, between the Parties. This Agreement cannot be altered or otherwise modified except by a written amendment executed by both Parties.
 - 10. Exhibits. The Exhibits attached hereto are incorporated into and made a part of this Agreement.
 - 11. Written Notices. Any notice required to be given under this Agreement must be given by personal service, email, fax or by deposit of the notice in the custody of the United States Postal Service or its successor, first class postage prepaid, addressed to the party to be served as follows:

City:

Attention: City Administrator
120 Vista Avenue
Piedmont, CA 94611
Email: rbayonmoore@piedmont.ca.gov

Donor:

[INFORMATION]

The parties may designate alternate persons to receive notice on their behalf as necessary. Notices will be deemed given as of the date of personal service, email or fax or three days after deposit of the notice in the custody of the Postal Service.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first written above.

CITY: _____:

CITY OF PIEDMONT, a California
municipal corporation

By:

By:

Rosanna Bayon Moore, City
Administrator

Name:

Title:

APPROVED AS TO FORM:

By:

Michelle Marchetta Kenyon, City
Attorney

ATTEST:

By:

John O. Tulloch, City Clerk