

**EAST CONTRA COSTA FIRE PROTECTION DISTRICT  
BOARD OF DIRECTORS**

**Meeting Date:** January 13, 2021

**Subject/Title:** Authorizing the Fire Chief to Execute an Agreement with City of Oakley Regarding Development Impact Fees, Waiver of Claims Under Station 55 Agreement, Transfer of Real Property and Coordination on Land Use and Station Development

**Submitted by:** Brian Helmick, Fire Chief

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**RECOMMENDATION FOR ACTION**

Staff recommends that the East Contra Costa Fire Protection District (District) Board of Directors (Board) adopt a resolution authorizing the Fire Chief to execute a memorandum of understanding with the City of Oakley (Oakley) regarding impact fees; a waiver of claims under the Station 55 Agreement; transfer of Real Property at Live Oak Avenue and Neroly Road; and coordination on land use and station development.

**STRATEGIC INITIATIVE**

East Contra Costa Fire Protection District Strategic Plan 2019-2023 and Implementation Action Plan (IAP):

- Goal A: Ensure financial stability and sustainability
  - Strategy A4: Partner with local jurisdictions to identify and secure future station sites and needed funding mechanisms which may include both capital and operating contributions.

**PREVIOUS ACTION**

On September 12, 2018, the District entered into a "Cooperative Funding Agreement Between the City of Oakley and the East Contra Costa Fire Protection District Regarding the Construction of Fire Station #55" (Station 55 Agreement) by which the City of Oakley agreed to transfer certain rights to Station 55, located at 3200 East Cypress Road in Oakley, to the District after its construction.

On March 11, 2020, the Board adopted a "Development Impact Fee Study Final Report" recommending levels for fire facility impact fees that will fully mitigate the impacts of new development on fire protection services.

**SUBJECT BACKGROUND**

The District currently operates three stations, including one station (Station 53) within Oakley. The District needs six stations to provide service to its current service population at levels consistent with national standards, and anticipates that it will need an additional three stations to provide service at levels consistent with national standards to its service population at buildout. Staff anticipates that operations at two more stations will be necessary in Oakley: Station 55 and a yet-to-be-built Station 57.

In 2001, Oakley adopted fire facility impact fees to provide capital funding for fire protection services, though Oakley has not updated the fees since their adoption, and Oakley's current rates are far below those recommended by the District's fee study.

### **Station 55 Agreement & District Letter**

The City designed and constructed the structure for Station 55, though additional funds will be necessary to furnish the structure, and fund the personnel necessary to staff it. The District provided funding to the City for the design and construction of Station 55 pursuant to the Station 55 Agreement. As part of the Station 55 Agreement, the City agreed not to take any action that has the effect of repealing, suspending, or reducing or waiving payments of its fire facilities impact fees without consulting with the District and making findings regarding the effects of such actions on the fire protection within the City.

On October 8, 2020, the Board sent a letter to Oakley alleging that Oakley's historic practices relating to development impact fees exacerbates the District's service deficit, and that Oakley has failed to comply with its obligations under the Station 55 Agreement. In particular, the letter alleged that Oakley violated the Station 55 Agreement by its adoption of (a) the "Development Agreement Between the City of Oakley and NP Oakley, LLC Regarding Oakley Logistics Center 6000 Bridgehead Road" (Logistics Center DA) on December 18, 2019, that froze fire facility impact fees at the rates in effect on December 17, 2019, and (b) a "Resolution of the City Council of the City of Oakley Continuing the City's Non-Residential Development Fee Incentive Program" (Incentive Program Resolution) on February 11, 2020, that suspended impact fees for commercial development within Oakley. Oakley has issued several statements responding to the District's letter, in particular denying that adoption of the Logistics Center DA violated the Station 55 Agreement.

The District's letter also raised various concerns regarding lack of communication and coordination between District and Oakley staff in the land use and impact fee administration process. The District's letter included a series of requests to the City, which are detailed in Attachment A.

### **Ongoing Efforts to Resolve District Concerns**

Staff and legal counsel from the District and Oakley have met multiple times to resolve the concerns raised in the District's letter. As further detailed in Attachment A, most of the outstanding issues have been resolved. In particular, Oakley has taken the following steps:

- Transferred to the District all impact fees collected to date, and begun providing a monthly accounting of impact fees collected;
- Ceased its fire facility impact fee incentive program for nonresidential development;
- Implemented measures allowing for greater coordination between District and Oakley staff in the land use planning process;
- Formed an ad hoc committee of the City Council to meet with an hoc committee of the District's Board on regional support for the District; and
- Appointed a liaison to attend District Board meetings.

District staff has been informed that, in the coming month, Oakley staff intend to place the following items on its City Council's agenda that will resolve additional outstanding District concerns:

- January 26:
  - Introduce ordinance authorizing transfer of impact fee revenue to the District;

- February 9:
  - Adopt ordinance authorizing transfer of impact fee revenue to the District;
  - Hold public hearing and adopt resolution increasing Oakley's fire facility impact fees to the levels proposed in the District's Fee Study, and approving an impact fee administration agreement;
  - Approve execution of the Memorandum of Understanding described below.

Staff continues to work with Oakley on several additional matters, achieving demonstrable progress over the past few months, including towards:

- Transfer of rights from Oakley to the District under the Station 55 design-build agreement;
- Transfer of Station 55 property from Oakley to the District;
- Amend joint community facilities agreement for Oakley community facilities district 2018-1 to clarify reporting requirements;
- Explore mechanisms to require new development in Oakley to contribute revenue for ongoing operating costs of providing fire protection services

**Proposed Memorandum of Understanding**

Staff and legal counsel have negotiated terms for a memorandum of understanding (MOU) with Oakley that will resolve a number of outstanding issues from the District's letter on fire impact fees and related topics, and more particularly provide that:

**1. The District will waive all claims under the Station 55 Agreement as of the date of execution.**

In light of the progress that the District and Oakley have made towards resolving the issues underlying the District's October 8 letter, the MOU would include a waiver of claims by the District under the Station 55 Agreement, including claims relating to Oakley's adoption of the Logistics Center DA and the Incentive Program Resolution.

**2. Oakley will give to the District a property at Live Oak Avenue and Neroly Road (or proceeds from the sale of such property) to be credited towards future property costs for Oakley stations**

Oakley owns an approximately 1.07 acre property northeast of Live Oak Avenue and Neroly Road (Property). See Attachment B. This parcel initially was purchased by a predecessor fire service agency but was transferred to Oakley as part of a land swap to facilitate construction of the District's Station 53. The District's most recent Future Fire Station Location Assessment Study identifies the Property as a potential site for future Station 57, though it notes that the Property is not large enough to completely satisfy the District's needs. The MOU would commit Oakley to transfer this Property, or the proceeds from sale of the Property, to the District. If the District and/or Oakley chooses to sell the Property, proceeds from the sale would be credited to Oakley as a contribution (adjusted for inflation) towards the acquisition of property for Station 57.

Furthermore, the MOU will provide that the City will assist the District in securing land or funding for future fire stations within Oakley if the Property is insufficient. This is consistent with Oakley's past practices. For example, Oakley previously obtained the property for Station 55 through a development agreement, and has imposed development impact fees to mitigate the capital impacts of future development on fire protection services.

### **3. Memorialization of Mechanisms for Oakley/District Collaboration in Land Use Processes**

The District and Oakley desire to better collaborate in land use processes to ensure that District staff have adequate notice and ability to provide input on projects being planned for construction in Oakley, and Oakley staff have time to properly consider the District's input. District and Oakley staff have delineated several protocols to improve cooperation. For example, the Fire Chief now attends department head meetings with the Oakley City Manager, and the Fire Marshall is attending the Oakley Planning/Community Development staff meetings. The MOU would memorialize these mechanisms to ensure that they remain in place.

District staff and legal counsel are currently working with Oakley staff and legal counsel to finalize language for the MOU. As previously noted, Oakley intends to bring the MOU to its City Council for approval on February 9. Delegating authority to the Fire Chief to execute the MOU in a form approved by legal counsel will allow staff and counsel to finish the negotiations with Oakley, and will facilitate Oakley proceeding with its related agenda items over the next month. District staff and legal counsel also intend to work with the Board's regional funding ad hoc committee to finalize the MOU language. The MOU will not be effective unless and until Oakley approves the increases in fire protection impact fees (as currently planned for February 9).

#### **FISCAL IMPACT**

The exact fiscal impact of authorizing execution of the MOU is partially uncertain and partially incalculable. The District cannot quantify the value of the inter-agency good will and cooperation the MOU reflects.

Under the MOU, the District would acquire a Property with an estimated value of \$200,000-\$300,000, or proceeds from the sale thereof. At the same time, the District would waive claims relating to the adoption of the Logistics Center DA, which could be valued at over \$450,000 if the District were able to successfully pursue all legal remedies; however, pursuit of the claim also could result in no award for the District as well as substantial legal and other costs for one or both parties.

Attachment: A: Status of District Demands  
B: Map of Live Oak/Neroly Property  
Resolution

**Attachment A: STATUS OF DISTRICT DEMANDS TO CITY OF OAKLEY**

	<b>REQUEST</b>	<b>STATUS</b>
1. Station 55 Agreement Performance	City to transfer to District copies of all Station 55 plans	Complete
	City to transfer to District grant deed for Station 55 property	Oakley has prepared draft grant deed for District approval
	City to transfer to District the following rights under the Design-Build Agreement for Station 55: <ul style="list-style-type: none"> <li>• Assignment of rights under Section 3.1.8 (rights to plans), 3.8 (warranties), 11.1.1 (indemnity), and 11.2.2 (insurance) of Design-Build Agreement, as well as all bonds</li> <li>• Evidence that a discretionary decision maker approved the design for the station or that the station was prepared in conformity with standards approved by a decision maker exercising discretionary authority</li> <li>• Copies of all certificates, permits, and licenses</li> <li>• Copies of all warranties</li> </ul>	District has prepared draft agreement for Oakley approval
2. Impact Fees	City to transfer to District all fire facility impact fees currently held by the City	Complete
	City to provide accounting of all impact fees collected since completion of Station 55	Complete
	City to provide monthly transfers of impact fees collected and accounting for the same	Ongoing
	Resolution of claims for waiver of impact fees/future impact fee increases	Proposed in MOU
3. Information Requests	City to provide the following information to the District: <ul style="list-style-type: none"> <li>• Confirm whether the City entered into any development agreements executed, extended, or amended since September 12, 2018, other than the Logistics Center DA</li> <li>• Copies of the formation and annexation documents for all community facilities districts supporting fire protection services in the City</li> <li>• Information on how rates were calculated for CFD 2018-1</li> <li>• CFD 2018-1 annual report</li> </ul>	Complete, except for certain CFD rate calculation information
4. Fee Incentive Program	City to repeal its nonresidential development fee incentive program with respect to fire facility impact fees	Oakley has begun collecting development impact fees on nonresidential projects

5. Fee Update	City to update all of its fire facility impact fees to a level consistent with the District's Development Impact Fee Study	Oakley staff and counsel have indicated plan to introduce ordinance relating to fee collection on 1/26/21, and propose adoption of impact fees at rates proposed by District on 2/9/21
6. Collaboration	City and District to establish a protocol for collaborating during the City's land use entitlement process	Proposed in MOU
7. CFDs	City to enact measures requiring that all new development participate in a CFD or an equivalent mechanism to provide for fire protection operating funding	In progress

**Attachment B**

**MAP OF LIVE OAK AVENUE / NEROLY ROAD PROPERTY**

Map Satellite

Strike 3 Baseball Academy

Quail Glen Dr

Jane Ln

Leila Ct

Connie Ct

Gold Run Ct

Bobwhite Ct

Live Oak Ave

Knox Ln

Knox Ln

1

Neroly Rd

Live Oak Ave

Via Delta de Anza Trail

Via Delta de Anza Trail

Via Del

Laurel Rd

Neroly Rd

Live Oak Ave

Laurel Rd

Google

Laurel Ridge Community

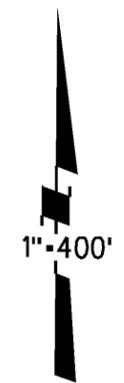
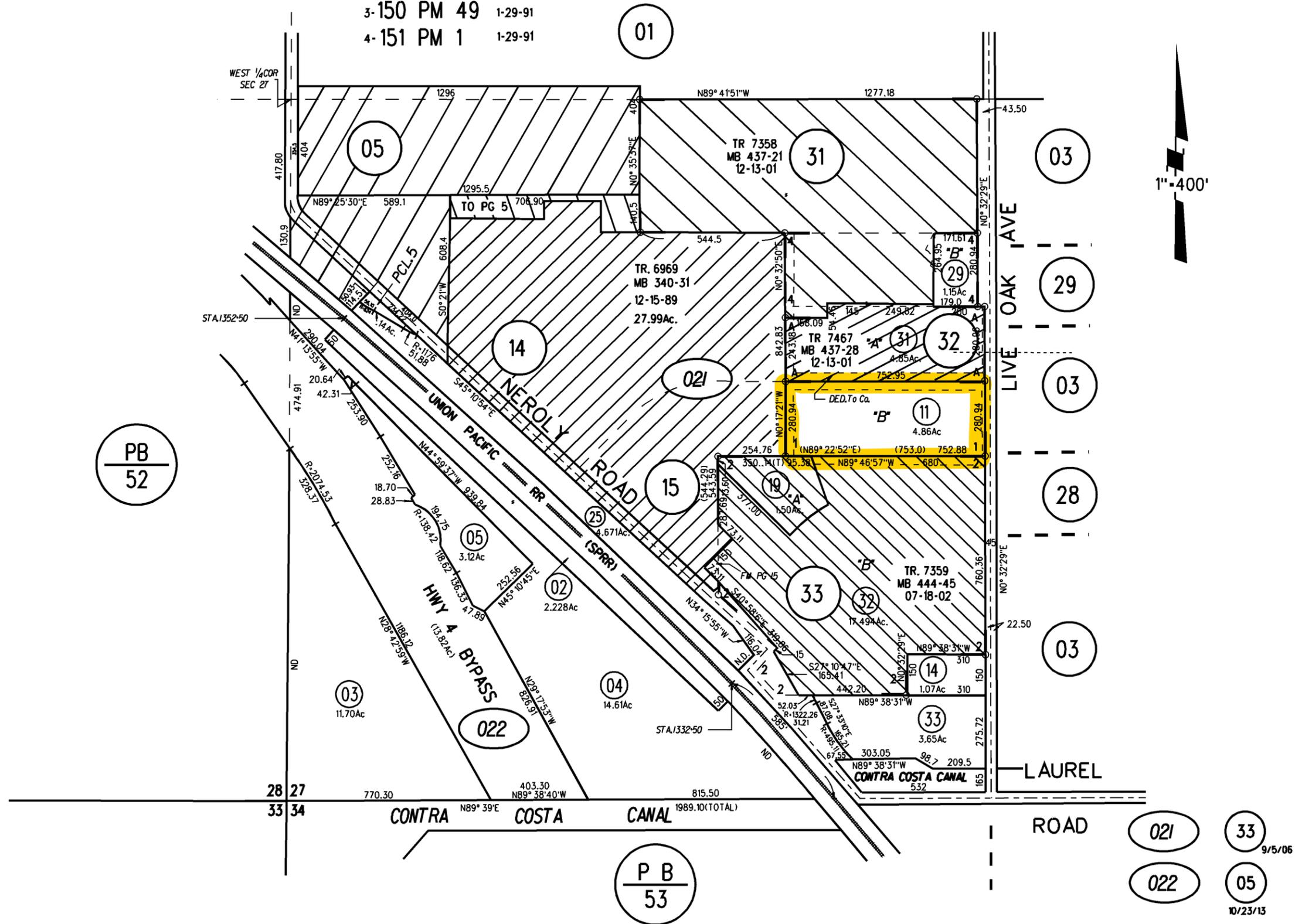
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SW 1/4 SEC 27 T2N R2E MDBM

- 1- 106 PM 42 8-3-83
- 2- 146 PM 49 5-24-90
- 3- 150 PM 49 1-29-91
- 4- 151 PM 1 1-29-91



NOTE: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE INFORMATION DELINEATED HEREON. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL LOT SPLIT OR BUILDING SITE ORDINANCES.

**EAST CONTRA COSTA FIRE PROTECTION DISTRICT  
BOARD OF DIRECTORS  
STATE OF CALIFORNIA**

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**RESOLUTION NO. 2021-\_\_**

**AUTHORIZING THE FIRE CHIEF TO EXECUTE  
A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF OAKLEY REGARDING  
DEVELOPMENT IMPACT FEES, WAIVER OF CLAIMS UNDER STATION 55 AGREEMENT,  
TRANSFER OF CERTAIN REAL PROPERTY AND COORDINATION ON LAND USE AND  
STATION DEVELOPMENT**

**WHEREAS**, the East Contra Costa Fire Protection District (District) provides fire protection and emergency response services throughout its service area, which includes the City of Oakley (Oakley); and

**WHEREAS**, anticipated new development in the District's service area will require the District to construct new facilities and purchase new equipment to provide service to the new residents and structures, including completing Station 55 and building a new Station 57 in Oakley; and

**WHEREAS**, on September 12, 2018, the District entered into a "Cooperative Funding Agreement Between the City of Oakley and the East Contra Costa Fire Protection District Regarding the Construction of Fire Station #55" (Station 55 Agreement) by which Oakley agreed to transfer to the District certain rights relating to Station 55, and made various commitments relating to its development impact fees; and

**WHEREAS**, on October 8, 2020, the Board sent a letter to Oakley alleging that Oakley's historic practices relating to development impact fees exacerbate the District's service deficit, and that Oakley has failed to comply with its obligations under the Station 55 Agreement, and requesting that Oakley take certain steps to address the District's concerns (District Letter); and

**WHEREAS**, District staff and counsel have worked extensively with Oakley staff and legal counsel to resolve many of the concerns raised in the District Letter, including issues relating to administration of Oakley's current fire facility impact fees, and greater coordination in Oakley's land use processes; and

**WHEREAS**, the District and Oakley continue to make progress on the remaining issues detailed in the District Letter, including making plans for the Oakley City Council to consider increases in its fire facility impact fees to the level recommended in the District's Development Impact Fee Study Final Report, as adopted by the District Board of Directors on March 11, 2020 (District Fee Study); and

**WHEREAS**, the District and Oakley mutually desire to adopt a memorandum of understanding (MOU) to memorialize additional commitments that will further address the concerns raised in the District Letter; and

**WHEREAS**, under the proposed MOU:

1. Oakley will give to the District a property at Live Oak Avenue and Neroly Road, designated by the Contra Costa County Assessor as Parcel Number 041-021-014 (Property), or proceeds from the sale of such Property, to be credited towards future property costs for fire station(s) in Oakley;
2. Oakley will assist the District in securing land/funding for future fire stations within Oakley if the Property, or the proceeds from the sale of the Property, are insufficient to secure the property necessary to construct Station 57;
3. Oakley and the District will memorialize mechanisms for City/District collaboration in land use process;
4. The District will waive all claims under Station 55 Agreement as of the date of execution; and

**WHEREAS**, staff and legal counsel are currently working to prepare a draft of the MOU, to take effect once Oakley has increased its fire facility impact fees to the levels required by the District Fee Study; and

**WHEREAS**, staff recommends that the Board of Directors authorize the Fire Chief to execute an MOU containing the terms set forth above in a form approved by legal counsel.

**NOW, THEREFORE BE IT RESOLVED** that the Board of Directors of the East Contra Costa Fire Protection District hereby authorizes the Fire Chief to execute an MOU containing the terms set forth in this Resolution in a form approved by legal counsel; and

**BE IT FURTHER RESOLVED**, that the Board authorizes the Fire Chief to take all actions necessary and proper to implement the proposed MOU.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the East Contra Costa Fire Protection District at a regular meeting held on the 13th day of January, 2021 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Brian J. Oftedal  
President, Board of Directors

ATTEST:

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Regina Rubier  
Clerk of the Board