



FINANCE COMMITTEE AGENDA

Tuesday, May 26, 2020

8:30 AM

Teleconference Dial-in Number: (714) 671-3685

Participant Code: 706-668-78

Direct Dial Extension: 1113

MEMBERS: Mayor Marty Simonoff and Council Member Cecilia Hupp
ALTERNATE: Council Member Christine Marick

This meeting is being conducted consistent with Governor Newsom's Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic. The Finance Committee Meeting will be held on May 26, 2020 at 8:30 AM via a teleconference call and the public is welcome to participate. The Dial-in Number is (714) 671-3685 and the Participant Code is 706-668-78. The agenda packet can be viewed on the City of Brea's website at <https://www.ci.brea.ca.us/509/Meeting-Agendas-Minutes>. Hard copies of the agenda packet are available via USPS with proper notice by calling (714) 990-7676.

Materials related to an item on this agenda submitted to the Finance Committee after distribution of the agenda packet are available for public inspection in the third floor lobby of the Civic & Cultural Center at 1 Civic Center Circle, Brea, CA during normal business hours. Such documents may also be available on the City's website subject to staff's ability to post documents before the meeting.

CALL TO ORDER / ROLL CALL

1. Matters from the Audience

CONSENT

2. Approval of Minutes of May 12, 2020 Meeting

Attachments

05-12-2020 Minutes

DISCUSSION

NOTE: This agenda is subject to amendments up to 72 hours prior to the meeting date.

3. Lease Agreement between the City of Brea and the Tomlinson Families for use of California Domestic Water Company Stock

Attachments

Agreement - 8 Shares

Agreement - 180 Shares

4. Schedule Next Meeting: June 9, 2020

cc: Mayor Pro Tem Steven Vargas

Council Member Glenn Parker

Special Accommodations

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (714) 990-7757. Notification 48 hours prior to the meeting will enable City staff to make reasonable arrangements to ensure accessibility. (28 CFR 35.102.35.104 ADA Title II)

City of Brea

FINANCE COMMITTEE COMMUNICATION

FROM: Bill Gallardo

DATE: 05/26/2020

SUBJECT: Approval of Minutes of May 12, 2020 Meeting

Attachments

05-12-2020 Minutes



FINANCE COMMITTEE MINUTES

**Tuesday, May 12, 2020
8:30 AM**

Teleconference Dial-in Number: (714) 671-3685

Participant Code: 633-672-10

Direct Dial Extension: 1113

This meeting was conducted consistent with Governor Newsom's Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic. The Finance Committee Meeting was held via a teleconference call at which time the public was welcome to participate.

CALL TO ORDER / ROLL CALL

ATTENDEES: Council Member Cecilia Hupp, Council Member Christine Marick, Chris Emeterio, Rudy Correa, Michael Ho, Faith Madrazo, Sean Matlock, Alicia Brenner, Brian Ingallinera and Gillian Lobo

1. Matters from the Audience – *None*.

CONSENT

2. Approval of Minutes of April 28, 2020 Meeting – *Receive and file*.

DISCUSSION

3. Professional Services Agreement with Kimley-Horn for Environmental Phase of Imperial Highway (SR-90) at 57 Freeway Southbound On-Ramp Interchange Improvement Project (CIP 7306) – *Committee discussed item and recommended including proposal cost information for Michael Baker International firm within City Council staff report. Recommended for City Council approval.*
4. Revise Scope of Work for Pump Replacement and Enclosures at Carbon Canyon Booster Stations 2 & 3 Projects; Add New CIP Project for Carbon Canyon Booster Pump Station No. 2 and Restroom at Olinda Ranch Park; and Approve Professional Services Agreement with NV5 for Design Services – *Recommended for City Council approval.*
5. Fiscal Year 2020-21 Refuse Rates – Informational (Faith Madrazo) – *Receive and file.*
6. Schedule Next Meeting: Tuesday, May 26, 2020

Meeting adjourned: 8:34 a.m.

cc: Mayor Marty Simonoff
Mayor Pro Tem Steven Vargas
Council Member Glenn Parker

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 05/26/2020

SUBJECT: Lease Agreements between the City of Brea and the Tomlinson Families for use of California Domestic Water Company Stock

RECOMMENDATION

Approve lease agreements

BACKGROUND/DISCUSSION

For about the last 39 years, the City of Brea has leased water shares from the Tomlinson Families, who currently own 188 shares of California Domestic Water Company (Cal Domestic) stock. The lease of these shares allows the City to purchase Cal Domestic water to supplement the water the City of Brea imports from the Municipal Water District of Orange County (MWDOC). The Cal Domestic water is less costly to purchase than the water provided by MWDOC and, as such, the City seeks to secure the rights to purchase this water whenever possible.

There are two agreements for this transaction. One agreement is for eight (8) shares and the other agreement is for one hundred and eighty (180) shares. The individual Tomlinson family members are named within each respective agreement. Both current lease agreements were executed in March 2001 and expire on June 30, 2020. Staff is recommending to enter into agreements with the Tomlinson Families effective July 1, 2020 through June 30, 2035 in order to formalize the use of this water stock and ensure that the water rate payers of the City of Brea receive the best possible value.

SUMMARY/FISCAL IMPACT

Approval of these Lease Agreements will result in long-term savings to the water rate payers of the City of Brea. The savings will vary each year based on the cost of water from Cal Domestic and MWDOC. Based on the projected rates for FY 2020-21, the net savings is projected to be approximately \$29,000. Payment for leasing of shares will come from the Water Fund and there is no impact to the General Fund. The methodology for calculation of annual lease payment amount is included in Exhibit A of the agreements.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Rudy Correa, Interim Water Superintendent

Concurrence: Tony Olmos, P.E., Public Works Director

Attachments

Agreement - 8 Shares

Agreement - 180 Shares

LEASE OF USE OF WATER INCIDENT TO OWNERSHIP OF EIGHT SHARES OF
CALIFORNIA DOMESTIC WATER COMPANY STOCK

This lease ("Lease") is made and entered into effective July 1, 2020 by and among the City of Brea, a California municipal corporation ("City" hereinafter) and the William M. Tomlinson, II Irrevocable Trust (hereinafter referred to as "Tomlinson").

A. WHEREAS, Tomlinson owns Eight (8) shares of stock in the California Domestic Water Company, a mutual water company ("Water Company" hereinafter), and Tomlinson has historically leased those shares to City on an annual basis; and

B. WHEREAS, the prior lease between the parties dated July 1, 2001 will expire by its terms as of June 30, 2020, and City's final annual rent payment thereunder is to be made to Tomlinson by July 30, 2020; and

C. WHEREAS, the parties desire to enter into a new lease to afford City access to purchase, from Water Company, additional water from the San Gabriel River System.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein, the parties hereto agree as follows:

1. Lease. Tomlinson hereby leases to City, and City leases from Tomlinson, the use of water incident to the ownership of 8 shares of Water Company stock owned by Tomlinson. City shall pay all assessments imposed on those 8 shares during the term hereof.

2. Term. The term of this Lease shall be fifteen (15) years (July 1-June 30) commencing on July 1, 2020 and concluding on June 30, 2035.

3. Rent. City shall pay rent to Tomlinson for the use of the water incident to the shares within thirty (30) days of the conclusion of each fiscal year (July 1-June 30) ("FY" hereinafter) during the term hereof. The amount of rent due and payable for any given FY shall be calculated as follows:

a. There shall be derived the total of City's annual cost items related to its lease of the stock during the FY, as follows:

- (i) All assessments imposed and/or levied on the 8 shares and paid by City; plus
- (ii) Water Company's charges paid by City for the water delivered by Water Company to City incident to the 8 shares; plus
- (iii) City's costs of pumping water so delivered by Water Company for delivery to City's water customers.

b. Determine the amount of water in acre-feet ("AF") that City had available from the 8 shares as per the allocation per share by Water Company for the FY and

determine the cost that the Metropolitan Water District of Southern California ("MWD") would have charged City as of June 30 of the FY for the amount of water available from Water Company based on the 8 shares.

c. The cost derived under 3.a above shall be deducted from the value calculated under 3.b above. The annual rent due under this Lease for the FY shall be seventy-five percent (75%) of the resulting value.

d. The minimum annual rent per share during the term of this Lease is One Hundred Dollars (\$100.00) per share, which is Eight Hundred Dollars (\$800.00) total per year for the 8 shares.

e. The method of calculation of annual rent under this Section 3 is illustrated in Exhibit A attached hereto and incorporated herein by this reference.

4. Payment of Rent. All rent payable hereunder shall be paid to Tomlinson, Post Office Box 759, Brea, California, 92822-0759, or at such other address of which City is made aware in writing by the Tomlinsons pursuant to Section 8 hereof.

5. No Evidence of Fair Market Value. City is leasing the use of the water incident to ownership of the stock for the purpose of providing a supply of water to City from the San Gabriel River. City and Tomlinson agree that this Lease does not reflect market income or value for the substantial assets of Water Company, including its pumping, storage and distribution facilities, real estate, or improvements. City agrees that this lease of the use of water incident to the stock is not a transaction within the meaning of Sections 814 through 819 inclusive of the California Evidence Code. City represents, warrants and agrees that the terms of this transaction shall not be used, for any purpose (including leases of stock from third parties) in calculating the fair market value of either the water or the stock, whether as a comparable transaction or as a part of the income approach to value. City agrees that the terms of this transaction shall not be used as evidence in any proceeding, and that the transaction shall be excluded from evidence under Section 822(a)(1) or (2) of the California Evidence Code.

6. Disposition of Water Company; Early Termination. In the event that over fifty-one percent (51%) of the stock of Water Company is acquired, or Water Company is merged or its assets are sold, this Lease shall terminate early without any liability to either Tomlinson or City. Upon termination, City shall have no claim for compensation as against Tomlinson and City shall not be entitled to any compensation or consideration from the sale, merger, or acquisition. City shall pay a pro rata share of annual rent under Sections 3 and 4 hereof based on how much of the FY has passed when early termination occurs under this Section 6.

7. Title. Tomlinson shall retain all right, title and interest in and to the subject shares of stock, including, but not limited to, the right to vote those shares in reference to the governance of Water Company and any other corporate matter requiring a vote of shareholders. By executing this Lease, City hereby waives any right it may have to assert now or in the future, that the water made available to it pursuant to this Lease has been dedicated to public use either expressly, impliedly, or by operation of law. The parties agree that no water right shall accrue in favor of City by its use of water incident to the shares of stock subject to this Lease.

8. Notices. All notices or other communications required or desired to be given under this Lease shall be in writing and shall be hand-delivered, or sent by the United States Postal Service with tracking or other delivery confirmation. Each such notice or communication shall be deemed to be duly given when delivered. Each such notice or communication shall be addressed as follows, or to such other address as a party may designate by written notice to the other party:

If to City:	William Gallardo, City Manager 1 Civic Center Circle Brea, CA 92821
With a copy to:	Tony Olmos, Public Works Director 1 Civic Center Circle Brea, CA 92821
If to Tomlinson:	William M. Tomlinson Tomlinson Management, Inc. P.O. Box 759 Brea, CA 92822-0759
With a copy to:	Alfred E. Smith, Esq. Nossaman LLP 777 Figueroa St., 34 th Floor Los Angeles CA, 90017

9. Entire Agreement. This Lease contains the entire understanding between the parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations. This Lease cannot be amended or modified except in writing signed by both parties.

10. No Waiver. Any failure or delay on the part of either party to exercise any right under this Lease shall not constitute a waiver of the right, and shall not preclude such party from exercising or enforcing the right, or any other provision of this Lease, on any subsequent occasion.

11. Mutual Drafting. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Lease. Therefore, this Lease shall be deemed to have been negotiated and prepared jointly by the parties and shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party.

12. Headings; Section References. Captions and headings appearing in this Lease are inserted solely as reference aids for ease and convenience; they shall not be used in construing the intent or effect of such provisions.

13. Binding Effect. This Lease shall be binding on and inure to the benefit of the parties, and their respective successors and assigns.

14. Attorney's Fees. In the event a dispute arises concerning this Lease, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs, attorney's fees and other related expenses.

15. Governing Law. This Lease has been prepared, negotiated and executed in, and shall be construed in accordance with the laws of, the State of California.

16. Execution in Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same agreement.

17. Authority and Signatures. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective party.

[SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties have entered into this Lease, effective
July 1, 2020.

CITY OF BREA

By: Marty Simonoff
Its: Mayor

Dated: _____, 2020

Attest: Lillian Harris-Neal
Its: City Clerk

Dated: _____, 2020

**WILLIAM M. TOMLINSON, II
IRREVOCABLE TRUST**



William M. Tomlinson

Dated: May 21, 2020

Exhibit A

1. Example Calculation. If in a hypothetical FY,

- Assessments are imposed and/or levied and paid by City in the amount of \$25.00/share;
- Water Company's charges paid by City for water delivered by Water Company to City incident to the shares are \$6,000.00;
- City's costs of pumping the water delivered by Water Company to City for delivery to City's customers are \$75.00/AF for 12 AF;
- City had 1.5 AF available per share, or 12 AF total incident to the 8 shares, per the allocation by Water Company; and
- MWD would have charged \$1,078.00/AF as of June 30;¹

then the calculation of annual rent under the Lease for the hypothetical FY would be as follows:

<u>Calculation under 3.a</u>		
3.a(i)	\$25.00/share x 8 shares =	\$200
3.a(ii)	Total Water Company charges paid by City for water delivered incident to the shares =	\$6,000
3.a(iii)	\$75.00/AF x 12 AF delivered =	<u>\$900</u>
		\$7,100
<u>Calculation under 3.b</u>		
	\$1,078.00/AF x 12 AF available =	\$12,936
<u>Calculation of annual rent under 3.c</u>		
3.b		\$12,936
3.a		<u>(\$7,100)</u>
		\$5,836
Annual rent for the FY = 75% x \$5,836 =		\$4,377.00

2. Accounting. Along with its annual payment of rent under Sections 3 and 4 of this Lease, City shall provide a written annual accounting to the Tomlinsons with the information shown above. Upon request by the Tomlinsons, City shall provide any additional information or documentation necessary to support its calculations.

¹ MWD Full-Service Treated Tier 1 rate in effect as of June 30, 2020 is \$1,078/AF.

LEASE OF USE OF WATER INCIDENT TO OWNERSHIP OF 180 SHARES OF
CALIFORNIA DOMESTIC WATER COMPANY STOCK

This lease ("Lease") is made and entered into effective July 1, 2020 by and among the City of Brea, a California municipal corporation ("City" hereinafter) and FC & MK Tomlinson, LLC (hereinafter referred to as "the Tomlinsons").

A. WHEREAS, the Tomlinsons own One Hundred Eighty (180) shares of stock in the California Domestic Water Company, a mutual water company ("Water Company" hereinafter), and the Tomlinsons have historically leased those shares to City on an annual basis; and

B. WHEREAS, the prior lease between the parties, dated July 1, 2001 will expire by its terms as of June 30, 2020, and City's final annual rent payment thereunder is to be made to the Tomlinsons by July 30, 2020; and

C. WHEREAS, the parties desire to enter into a new lease to afford City access to purchase, from Water Company, additional water from the San Gabriel River System.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein, the parties hereto agree as follows:

1. Lease. The Tomlinsons hereby lease to City, and City leases from the Tomlinsons, the use of water incident to the ownership of 180 shares of Water Company stock owned by the Tomlinsons. City shall pay all assessments imposed on those 180 shares during the term hereof.

2. Term. The term of this Lease shall be fifteen (15) years (July 1-June 30) commencing on July 1, 2020 and concluding on June 30, 2035.

3. Rent. City shall pay rent to the Tomlinsons for the use of the water incident to the shares within thirty (30) days of the conclusion of each fiscal year (July 1-June 30) ("FY" hereinafter) during the term hereof. The amount of rent due and payable for any given FY shall be calculated as follows:

a. There shall be derived the total of City's annual cost items related to its lease of the stock during the FY, as follows:

- (i) All assessments imposed and/or levied on the 180 shares and paid by City; plus
- (ii) Water Company's charges paid by City for the water delivered by Water Company to City incident to the 180 shares; plus

(iii) City's costs of pumping water so delivered by Water Company for delivery to City's water customers.

b. Determine the amount of water in acre-feet ("AF") that City had available from the 180 shares as per the allocation per share by Water Company for the FY and determine the cost that the Metropolitan Water District of Southern California ("MWD") would have charged City as of June 30 of the FY for the amount of water available from Water Company based on the 180 shares.

c. The cost derived under 3.a above shall be deducted from the value calculated under 3.b above. The annual rent due under this Lease for the FY shall be seventy-five percent (75%) of the resulting value.

d. The minimum annual rent per share during the term of this Lease is One Hundred Dollars (\$100.00) per share, which is Eighteen Thousand Dollars (\$18,000.00) total per year for the 180 shares.

e. The method of calculation of annual rent under this Section 3 is illustrated in Exhibit A attached hereto and incorporated herein by this reference.

4. Payment of Rent. All rent payable hereunder shall be paid to the Tomlinsons, Post Office Box 759, Brea, California, 92822-0759, or at such other address of which City is made aware in writing by the Tomlinsons pursuant to Section 8 hereof.

5. No Evidence of Fair Market Value. City is leasing the use of the water incident to ownership of the stock for the purpose of providing a supply of water to City from the San Gabriel River. City and the Tomlinsons agree that this Lease does not reflect market income or value for the substantial assets of Water Company, including its pumping, storage and distribution facilities, real estate, or improvements. City agrees that this lease of the use of water incident to the stock is not a transaction within the meaning of Sections 814 through 819 inclusive of the California Evidence Code. City represents, warrants and agrees that the terms of this transaction shall not be used, for any purpose (including leases of stock from third parties) in calculating the fair market value of either the water or the stock, whether as a comparable transaction or as a part of the income approach to value. City agrees that the terms of this transaction shall not be used as evidence in any proceeding, and that the transaction shall be excluded from evidence under Section 822(a)(1) or (2) of the California Evidence Code.

6. Disposition of Water Company. In the event that over fifty-one percent (51%) of the stock of Water Company is acquired, or Water Company is merged or its assets are sold, this Lease shall terminate without any liability to either the Tomlinsons or City. Upon termination, City shall have no claim for compensation as against the Tomlinsons and City shall not be entitled to any compensation or consideration from the sale, merger, or acquisition. City shall pay a pro rata share of annual rent under Sections 3 and 4 hereof based on how much of the FY has passed when early termination occurs under this Section 6.

7. Title. The Tomlinsons shall retain all right, title and interest in and to the subject shares of stock, including, but not limited to, the right to vote those shares in reference to the governance of Water Company and any other corporate matter requiring a vote of shareholders. By executing this Lease, City hereby waives any right it may have to assert now or in the future, that the water made available to it pursuant to this Lease has been dedicated to public use either expressly, impliedly, or by operation of law. The parties agree that no water right shall accrue in favor of City by its use of water incident to the shares of stock subject to this Lease.

8. Notices. All notices or other communications required or desired to be given under this Lease shall be in writing and shall be hand-delivered, or sent by the United States Postal Service with tracking or other delivery confirmation. Each such notice or communication shall be deemed to be duly given when delivered. Each such notice or communication shall be addressed as follows, or to such other address as a party may designate by written notice to the other party:

If to City: William Gallardo, City Manager
1 Civic Center Circle
Brea, CA 92821

With a copy to: Tony Olmos, Public Works Director
1 Civic Center Circle
Brea, CA 92821

If to the Tomlinsons: John Tomlinson
P.O. Box 759
Brea, CA 92822-0759

With a copy to: Alfred E. Smith, Esq.
Nossaman LLP
777 Figueroa St., 34th Floor
Los Angeles CA, 90017

9. Entire Agreement. This Lease contains the entire understanding between the parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations. This Lease cannot be amended or modified except in writing signed by both parties.

10. No Waiver. Any failure or delay on the part of either party to exercise any right under this Lease shall not constitute a waiver of the right, and shall not preclude such party from exercising or enforcing the right, or any other provision of this Lease, on any subsequent occasion.

11. Mutual Drafting. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Lease. Therefore, this Lease shall be deemed to have been

negotiated and prepared jointly by the parties and shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party.

12. Headings; Section References. Captions and headings appearing in this Lease are inserted solely as reference aids for ease and convenience; they shall not be used in construing the intent or effect of such provisions.

13. Binding Effect. This Lease shall be binding on and inure to the benefit of the parties, and their respective successors and assigns.

14. Attorney's Fees. In the event a dispute arises concerning this Lease, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs, attorney's fees and other related expenses.

15. Governing Law. This Lease has been prepared, negotiated and executed in, and shall be construed in accordance with the laws of, the State of California.

16. Execution in Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same agreement.

17. Authority and Signatures. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective party.

[SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties have entered into this Lease, effective July 1, 2020.

CITY OF BREA

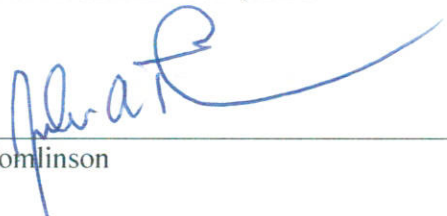
By: Marty Simonoff
Its: Mayor

Dated: _____, 2020

Attest: Lillian Harris-Neal
Its: City Clerk

Dated: _____, 2020

FC & MK TOMLINSON, LLC



John Tomlinson

Dated: May 21, 2020

Exhibit A

1. Example Calculation. If in a hypothetical FY,

- Assessments are imposed and/or levied and paid by City in the amount of \$25.00/share;
- Water Company's charges paid by City for water delivered by Water Company to City incident to the shares are \$135,000.00;
- City's costs of pumping the water delivered by Water Company to City for delivery to City's customers are \$75.00/AF for 270 AF;
- City had 1.5 AF available per share, or 270 AF total incident to the 180 shares, per the allocation by Water Company; and
- MWD would have charged \$1,078.00/AF as of June 30;¹

then the calculation of annual rent under the Lease for the hypothetical FY would be as follows:

<u>Calculation under 3.a</u>		
3.a(i)	\$25.00/share x 180 shares =	\$4,500
3.a(ii)	Total Water Company charges paid by City for water delivered incident to the shares =	\$135,000
3.a(iii)	\$75.00/AF x 270 AF delivered =	<u>\$20,250</u>
		\$159,750
<u>Calculation under 3.b</u>		
	\$1,078.00/AF x 270 AF available =	\$291,060
<u>Calculation of annual rent under 3.c</u>		
3.b		\$291,060
3.a		<u>(\$159,750)</u>
		\$131,310
Annual rent for the FY = 75% x \$131,310 =		\$98,482.50

2. Accounting. Along with its annual payment of rent under Sections 3 and 4 of this Lease, City shall provide a written annual accounting to the Tomlinsons with the information shown above. Upon request by the Tomlinsons, City shall provide any additional information or documentation necessary to support its calculations.

¹ MWD Full-Service Treated Tier 1 rate in effect as of June 30, 2020 is \$1,078/AF.