



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
May 6, 2015**

TO: Mayor and City Council
FROM: Michael Chandler, Senior Management Analyst
SUBJECT: Department of Water Resources Access Agreement
DATE: April 21, 2015

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to execute an Access Agreement with the California Department of Water Resources.

BACKGROUND

The California Department of Water Resources (“DWR”) has operated a monitoring station (“Station”) at the northwestern end of the City’s Fishing Pier adjacent to the Martinez Marina since May 1983. The Station is critical for DWR to collect data necessary to maintain compliance with various water quality objectives.

Severe fire damage to the Fishing Pier in August 2014 resulted in temporary loss of access and power to the Station. During the course of the subsequent maintenance and repairs, the City and DWR initiated discussions regarding the need for a formal access agreement between the parties. During this process, DWR also agreed to reimburse the City’s electrical restoration expense of \$2,585. The attached Agreement for Access and Reimbursement of Expenses (“Access Agreement”) sets forth terms and conditions between the parties, including the following:

- Grants DWR permission to access the Fishing Pier for the purpose of operating, maintaining, and collecting data from its Station.
- Initial term of 12 months (January 1, 2015 to December 31, 2015), with an automatic one-year renewal unless either party provides 60-day notice of intent not to renew.
- DWR agrees to reimburse the City \$2,585 for the electrical restoration expense.
- Provision for mutual indemnification, hold harmless, and insurance clauses to current standard.

FISCAL IMPACT:

The Access Agreement will result in a reimbursement to the City of \$2,585.

ACTION:

Motion adopting a resolution authorizing the City Manager to execute an Access Agreement with the California Department of Water Resources.

Attachments:

Resolution

Attachment A – Access Agreement

Exhibit A – Area Map of Metering Station

Exhibit B – State of California Notice of Self-Insurance

APPROVED BY:



Rob Braulik, City Manager

RESOLUTION NO. -15

**AUTHORIZING THE CITY MANAGER TO EXECUTE
AN ACCESS AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF WATER RESOURCES**

WHEREAS, the California Department of Water Resources (“DWR”) has operated a monitoring station (“Station”) at the northwestern end of the City’s Fishing Pier adjacent to APN No. 373-250-003-2 (“the Property”); and

WHEREAS, the continued operation of and data collection from the Station is critical for DWR to maintain compliance with various water quality objectives; and

WHEREAS, the City recognizes the value and importance of the Station and desires to facilitate DWR’s continued operation thereof; and

WHEREAS, the City’s Fishing Pier was damaged by fire in August 2014, resulting in loss of access and electrical service to the Station; and

WHEREAS, the City obtained competitive bids for the costs associated with the pier repairs and restoration of the electrical service to the Station; and

WHEREAS, DWR desires to reimburse the City for the costs associated with the restoration of the electrical service to the Station in the amount of Two Thousand Five Hundred Eighty Five dollars (\$2,585.00); and

WHEREAS, the City and DWR agree that an Agreement for Access and Reimbursement of Expenses (“Access Agreement”) between the parties is warranted in order to establish clear terms and conditions for DWR’s use of the Property to access, operate, maintain, and collect data from the Station, as well as to reimburse the City’s aforementioned expense for restoration of the electrical service; and

WHEREAS, said Access Agreement shall be for a term of twelve (12) months, beginning on January 1, 2015 and ending on December 31, 2015, with an option for an automatic one-year extension unless either party notices its intent not to renew with at least sixty (60) days notice prior to the end of the term.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Martinez hereby authorizes the City Manager to execute an Access Agreement with the California Department of Water Resources in the form attached hereto as Attachment A.

* * * * *

I HEREBY CERTIFY the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 6th day of May, 2015, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

ATTACHMENT A

AGREEMENT FOR ACCESS AND REIMBURSEMENT OF EXPENSES

This Agreement for Access and Reimbursement of Expenses between the City of Martinez (City) and the Department of Water Resources (DWR) allows DWR: (i) to access, operate, maintain, and collect data from an existing water information monitoring station, known as the Martinez Monitoring Station (the Station), located on City property identified as an above-water pier adjacent to Assessor's Parcel No. 373-250-003-2 in Contra Costa County (the Property), and shown on the attached Exhibit A; and (ii) to reimburse the City for DWR's share of costs incurred to repair electrical facilities necessary to operate the Station.

WHEREAS, DWR has operated the Station on the Property since May 1983 pursuant to the following documents: Department of the Army Permit 12154-10, City of Martinez Resolution 71-78, and San Francisco Bay Conservation and Development Commission Permit M78-81;

WHEREAS, the continued operation of and data collection from the Station is necessary for DWR to maintain compliance with water quality objectives set forth by the State Water Resources Control Board Decision 1641 and the Interagency Ecology Program;

WHEREAS, City recognizes the value and importance of the Station and the critical nature of this location and desires to facilitate DWR's continued operation thereof;

WHEREAS, City suffered fire damage to the pier structure that provides access to the Station and to the electrical conduits providing power solely to the Station on August 11, 2014;

WHEREAS, City has obtained competitive bids for the costs associated with the repair of the pier structure and electrical conduits providing power to the Station;

WHEREAS, City has completed the repairs to the walkway and electrical conduits providing power to the Station;

WHEREAS, DWR desires to reimburse City for the costs associated with the repairs to the electrical conduit because repairs are necessary for DWR's continued access, maintenance, and data collection at the Station.

Now theretofore, the parties agree as follows:

- A. City grants permission to DWR to access the Property for the purpose of operating, maintaining and collecting data from the existing Station and for no other purpose.
- B. The Term of this Access Agreement shall be twelve months, beginning on January 1, 2015 and ending on December 31, 2015. The Term hereof shall be automatically renewed for an additional one year period annually unless either party gives notice to the other party of intent not to renew at least sixty (60) days prior to the expiration of the term. Any party may terminate this Agreement without fault or penalty upon providing a ninety (90) day written notice to the other the other party. The respective rights granted to each party under this Agreement are individual and independent.
- C. All notices pursuant to this Agreement shall be addressed as set forth or as either party may subsequently designate by written notice and shall be sent through the United States mail or by personal delivery:

Department of Water Resources
Attn: Real Estate Branch Chief
1416 9th Street, Room 425
Sacramento, CA 95814

City of Martinez
Attn: City Manager
525 Henrietta Street
Martinez, CA 94553

- D. DWR agrees to reimburse the City the sum of Two Thousand Five Hundred Eighty Five dollars (\$2,585.00) for costs associated with the repairs of the above mentioned electrical conduits

ATTACHMENT A

- E. DWR, consistent with Water Code Sections 260 and 11578, shall defend, indemnify and hold harmless City, its officials, officers, agents and employees for any damage proximately caused by reason of DWR's uses authorized by this Agreement. City shall defend, indemnify, save, protect, and hold harmless DWR, its officers, agents, and employees, from any and all loss, liability, expense, claims, costs, suits and damages, including reasonable attorney's fees, arising out of or connected with the City's use of the pier structure. This section E shall survive termination of this Access Agreement.
- F. DWR shall maintain during the term hereof liability and worker's compensation coverage relating to all activities of DWR at the Property. DWR shall deliver to City certificates and endorsements of insurance or self-insurance as set forth:

a. Workers' Compensation Insurance to cover the employees of DWR as required by the Labor Code of the State of California for all employees performing work at the Property. DWR will also require all contractors and subcontractors performing work at the Property to maintain during the term of all such work worker's compensation coverage for all of the contractor/subcontractors' employees. Each Workers' Compensation policy shall be endorsed with the provision that it will not be canceled or altered without first giving thirty (30) days prior notice to Lessor.

Said Worker's Compensation policy shall have the following endorsement:

"All rights of subrogation are hereby waived against the City of Martinez, its officers and employees when acting within the scope of their appointment or employment".

b. Commercial General Liability Insurance or self-insurance coverage including personal injury and property damage coverage for all activities of DWR, its board, officers, agents, employees and contractors arising out of or in connection with the Premises, written on a commercial general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, products liability and completed operations, X,C,U hazards, vehicle coverage and non-owned auto liability coverage in an amount no less than \$2 million dollars combined single limit personal injury and property damage for each occurrence.

Each such policy shall be endorsed with the following specific language:

- (i) The City of Martinez is named as additional insured for all liability arising out of the work performed by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents, and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly, or indirectly, relating to the actions of DWR relating to the Property.
- (ii) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.
- (iii) The insurance provided is primary and no insurance held or owned by the City shall be called upon to contribute to a loss.
- (iv) The coverage provided by this policy shall not be canceled without thirty (30) days' prior written notice given to the City.

c. Exhibit B shall meet the insurance requirement by the City for DWR. All contractors and subcontractors shall maintain Worker's Compensation and Commercial General Liability Insurance as stated in Section F, Subsections a and b.

- G. DWR shall be solely responsible for any and all maintenance of the Station and shall keep and maintain same in a safe and sanitary condition at all times during the Term hereof.

DEPARTMENT OF WATER RESOURCES

CITY OF MARTINEZ

Recommended for Approval:

Delia Grijalva, Associate Right of Way Agent Date

Anna Tequida, Senior Right of Way Agent Date

Approved by:

Approved by:

Linus A Paulus, Chief
Acquisition and Appraisal Section Date

Rob Braulik, City Manager Date

Approved as to Legal Form and Sufficiency

Approved as to Legal Form and Sufficiency

Karin Shine, Senior Attorney
Office of the Chief Counsel Date

Veronica A. F. Nebb
Sr. Assistant City Attorney Date

EXHIBIT A

STATE TIDE LAND LEASES

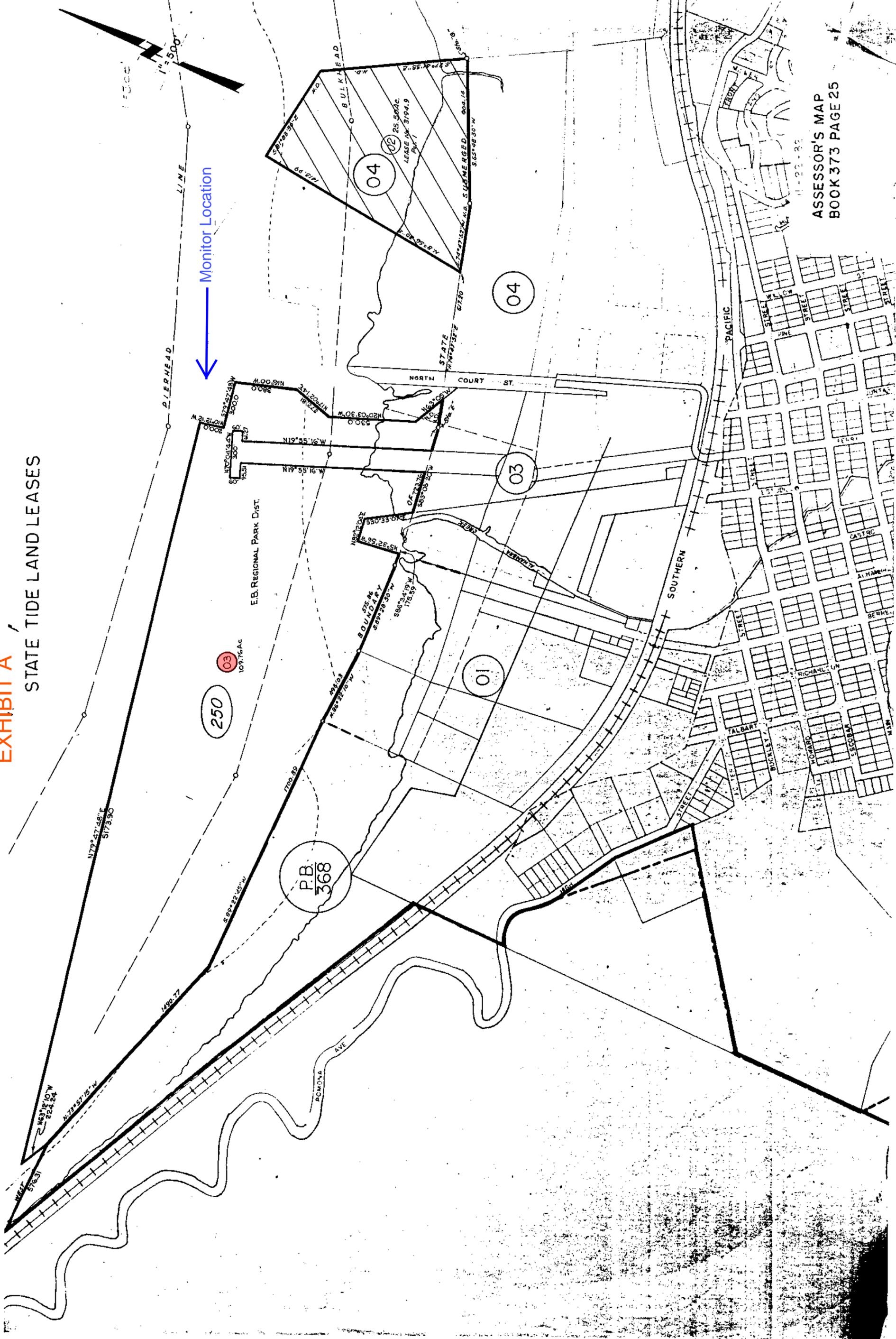


EXHIBIT B

July 1, 2014

**STATE OF CALIFORNIA
PUBLIC LIABILITY AND WORKERS' COMPENSATION INSURANCE
FISCAL YEAR JULY 1, 2014 / JUNE 30, 2015**

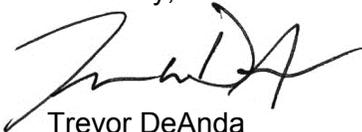
To Whom It May Concern:

The State of California has elected to be self-insured for general liability exposures. (Gov. Code section 990, et. seq.) Under this form of insurance, the State and its employees (as defined in Section 810.2 of the Government Code) are insured for any tort liability that may develop through the carrying out of official State activities and operations. All general liability tort claims against the State of California should be presented to the Victim Compensation and Government Claims Board, P.O. Box 3035, Sacramento, CA 95812-3035. (Gov. Code section 900, et. seq.) Internet link: www.vcgcb.ca.gov.

In addition, the State of California has elected to be insured for its motor vehicle liability exposures through a self-insurance program, administered by the Office of Risk and Insurance Management. Under this program, the Office of Risk and Insurance Management administers liability claims arising out of the operation of motor vehicles. This self-insurance program and the protection it affords applies to vehicles owned and leased by the State of California. All motor vehicle liability tort claims against the State of California should be presented to the Office of Risk and Insurance Management, P.O. Box 989052 MS-403, West Sacramento, CA 95798-9052, (800) 900-3634.

The State of California has a Master Agreement with the State Compensation Insurance Fund regarding workers' compensation benefits for all state employees, as required by the Labor Code.

Sincerely,



Trevor DeAnda
Assistant Risk Analyst
(916) 376-5305
trevor.deanda@dgs.ca.gov