



**Date:** March 7, 2016  
**To:** Mayor and City Council  
**From:** Tim Tucker, City Engineer  
**Subject:** CCWD Water Exchange Agreement

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### **Recommendation**

- A. Adopt resolution authorizing City Manger to execute the Agreement between the Contra Costa Water District (CCWD) and the City of Martinez for Temporary Use of Treated Water Capacity; and
- B. Adopt resolution authorizing the Mayor to execute an Easement Agreement with Contra Costa Water District (CCWD) for the Pacheco Boulevard potable water intertie.

### **Background**

Treated water interties between adjoining water agencies can provide critical reliability in the event of emergencies or other events affecting one of the agency's ability to provide water to their customers. Over the years the City has entered into two separate agreements with CCWD (previously known as Contra Costa County Water District).

In 1972 the two agencies entered into a Memorandum of Understanding to establish a method, for mutual benefit, to connect by intertie so that either agency could provide water to the other in the case of an emergency. "Emergency" definition included "acts of God" or "events beyond the control of the utility." As part of this agreement the "endangered" utility would pay for the water used at the rate paid by other water customers of the water supplying utility.

In 1977 the two agencies entered into a separate agreement whereby Martinez would provide (wheel) treated water to Port Cost and Contra Costa Water District would reimburse the City with treated water from time to time at other intertie locations. No money is exchanged as part of this agreement.

### **Discussion**

Currently the City is performing major renovations to the Water Treatment Plant as part of the Seismic Upgrade Project. It is anticipated the Treatment Plant will be shut down for approximately three weeks in April of this year. It is likely future upgrades at the Water Treatment Plant will require further shutdowns. The existing agreements with CCWD do not cover shutdowns for planned critical work and the providing of treated water at interties needed during these shutdowns.

Attached is a proposed Temporary Use of Treated Water Capacity Agreement. Each party would have the ability to utilize surplus treatment capacity in the other's system in the event of an emergency or to support planned critical work that requires an alternative treatment source. Deliveries of treated water would occur through existing interties between the District and City distribution systems.

The amount of capacity available, schedule, and reimbursement plan would be confirmed in writing prior to deliveries. If approved, the two Parties agree, subject to the terms and conditions of the Agreement, to utilize surplus capacity in their respective treatment and distribution facilities to provide water service to the other Party in the event of an Emergency or to facilitate Planned Critical Work. The agreement:

- Sets the threshold by which this agreement would become effective
- Establishes the means for determining fair compensation
- Allows for the exchange of water in-lieu of payment
- Provides for the cost share of intertie construction and upgrades
- Provides for indemnification for both agencies

The agreement has been reviewed and approved as to form by the respective legal counsel of both agencies. CCWD Board of Directors approved the agreement on March 2, 2016.

*Interties:* The City has three intertie locations with CCWD. The intertie at the Water Treatment Plant is being upsized to increase capacity. A trailer mounted piping, valves and meter manifold is being built so that the Glacier Drive intertie can be used. No improvements are needed on the Elderwood Drive Intertie. Once completed, the City will have the capacity to share up to seven million gallons per day with CCWD. During normal winter use or under emergency conservation restrictions the City will be able to continue to provide an adequate supply of water to our customers. Staff will need to submit a standard CCWD Water Main Extension Agreement to complete the work.

*Easement:* The Pacheco Boulevard Intertie is located on the Water Treatment Plant site. The Intertie consists of both City and CCWD owned facilities. CCWD indicates no easement exists for their facilities on our property. They request we execute a standard CCWD Easement Agreement as part of the upgrade of the current Pacheco Intertie planned as part of our Seismic Upgrade Project.

### **Fiscal Impact**

Water supplied by this agreement will be reimbursed to the providing agency for the actual cost of supplying the water (wholesale cost of water, treatment cost and pumping costs.) Should water be needed in excess of 60 days per year, the providing agency will also be entitled to wear and tear and debt service fair share costs.

The cost for purchasing treated, rather than raw water, for the April shutdown is estimated to be \$40,000 and will be paid out of existing Water Treatment Plant Seismic Upgrade Project funds (C7042).

### **Attachments**

1. Easement Agreement
2. Resolutions

**APPROVED BY:**   
Interim City Manager

# CONTRA COSTA WATER DISTRICT

## Water Main Extension Agreement

### (Applicant Installed)

Contra Costa Water District (District) and the undersigned Applicant for Water Main Extension (Applicant) hereby agree as follows:

1. Exhibit A attached to and made a part of this Agreement describes generally certain water mains and appurtenances, hereinafter called the "facilities", which Applicant desires to have installed.
2. Said facilities shall be installed by the Applicant using materials supplied by the District. The installation work shall be performed by a properly licensed Contractor approved in writing by District prior to commencement of work. The installation of the facilities is a public work as defined in section 1720 (c) of the California Labor Code. The Applicant and its contractors and subcontractors are required to pay all workers employed thereon the general prevailing wage rates and to comply with other applicable provisions of Chapter 1, Part 7, Division 2 of the Labor Code. All work shall be performed to the satisfaction of District in accordance with District's Plans and Specifications which shall be obtained by Applicant from District prior to commencement of any installation work hereunder.
3. The materials to be supplied by District are generally described in Exhibit A which also sets forth District's estimate of the total cost to District of supplying said materials and performing services required in connection with their installation by Applicant in order that District may furnish water services to Applicant.
4. Upon signing this Agreement, Applicant will pay to District the total estimated cost figures set out on Exhibit A. Upon completion of said installation and acceptance of same by District, as hereinafter provided, District will compute its total actual cost of providing said materials and services. If said total actual cost is less than said estimate, District will refund the difference to Applicant. If said total actual cost exceeds said estimate, the difference will be paid promptly by Applicant to District. District's computation of total actual costs shall be final and binding upon the parties.
5. Unless Applicant commences construction of facilities within thirty (30) days from the date this Agreement is executed by District, District may, at its sole discretion, terminate this Agreement by giving Applicant written notice of said termination. Upon termination by District, District shall refund all funds deposited by Applicant pursuant to Paragraph 4 hereof, less actual costs incurred by District prior to date of said termination.
6. Materials furnished by District shall be delivered to Applicant at District's corporation yard at such times, as Applicant shall specify following receipt of materials by District. Risk of loss or damage to such materials shall pass to Applicant immediately upon pick-up at the time and place of delivery. District shall not be liable for delays in delivery of materials resulting from labor disturbances or causes beyond its control, including, without limitation, delays caused by District's suppliers, acts of God, wars, civil disturbances or riots.
7. All risk of loss and damage to said water facilities is assumed by Applicant until the completed facilities are accepted by District. District may defer its acceptance until any streets, sidewalks, sewers, or other improvements in or

near which said facilities may be installed are accepted for maintenance by the government authority or public agency to which such improvements are or will be dedicated for or committed to public. Applicant will promptly reimburse to District all costs incurred by District for repair, replacement or maintenance of said water service facilities prior to acceptance of same by District.

8. Upon completion of installation of said facilities and the acceptance thereof by District, all right, title and interest in and to said facilities shall become and thereafter remain the property of District and shall thereafter be operated and maintained by District and shall become merged with and be a part of District's water distribution facilities. District shall have no obligation to furnish water service to Applicant until District has accepted the completed facilities as aforesaid and all sums due District hereunder have been paid by Applicant.

9. In the event of default or delay in the payment of any sum provided in this Agreement to be paid to District, District shall have the right to refuse or discontinue water service through said facilities.

10. Applicant agrees to indemnify and hold District harmless, to the extent allowed by law, from and against any and all loss, damage, liability, claims, demands, causes of action, or judgments connected in any way with the installation of the water service facilities provided herein, including, without limitation, any such loss, damage, liability, claims, demands, causes of action or judgments for personal injuries or death as may be asserted, made or brought by or on behalf of any employee of Applicant or Applicant's contractor or any subcontractor employed in connection with said installation. Applicant shall require its contractor and all subcontractors to similarly indemnify and agree to hold District harmless prior to the time any such contractors commence work.

11. Prior to the commencement of any installation work hereunder, Applicant shall do or cause to be done the following:

(a) Procure a comprehensive builder's risk and public liability insurance policy. Said policy shall be satisfactory to District as to form and amount of coverage and shall be placed with a carrier or carriers licensed to do business in the State of California. The policy shall name District as an additional named insured and shall cover Applicant's contractual liability to District hereunder. A certificate of insurance shall be delivered to District which shall include a statement that 30 days written notice will be given by the carrier to District prior to any cancellation of or material change in said policy.

(b) Furnish District with a Surety bond in a form and with sureties satisfactory to District in the amount stated on Exhibit A securing the faithful performance of the installation work to be performed hereunder.

12. Following completion and acceptance of said installation, Applicant shall furnish District with copies of contractor's invoices. District then will provide water service through said facilities in accordance with its rules and regulations and rates and charges from time to time in effect. Applicant acknowledges receipt of a copy of, and agrees to be bound by and comply with, District's main extension policies and its rules and regulations and any subsequent revisions and amendments hereto.

13. After the installation is completed, the Applicant shall promptly send to District evidence in a form satisfactory to District of Applicant's cost incurred in said installation.

14. Applicant agrees to grant District in form satisfactory to District such easements as are required by District in connection with said installation for the furnishing of water service hereunder.

15. This agreement shall bind and benefit the successors, assigns, personal representatives and heirs of the parties hereto. However, this Agreement shall not be assigned by Applicant, in whole or in part, without the prior written consent of the District.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the

\_\_\_\_\_ day of \_\_\_\_\_, 2016

**City of Martinez**  
Applicant (Individual, Partnership, Corporation)

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print or type name and title

(SEAL) - (For use by Corporate Applicants)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or type name and title

**CONTRA COSTA WATER DISTRICT**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Stephen J. Welch, Assistant General Manager

## **Exhibit “A”**

### **Martinez Water Treatment Plant Intertie:**

Upgrade the existing intertie at the Martinez Water Treatment Plant at 3003 Pacheco Boulevard from 6-inch to 10-inch. The work generally includes the demolition of the 6-inch intertie, removing existing 6-inch to 10-inch reducer on 10-inch service lateral, install new 10-inch elbows, risers, meters, valves and backflow preventers as shown on the CCWD approved Water Treatment Plant Intertie plan.

### **Glacier Drive Intertie:**

Connect CCWD and City of Martinez intertie located in the eastern sidewalk of 255 Glacier Drive service lines. The work generally includes the removal of existing blow-off valves then connecting the two service lines with a trailer mounted manifold consisting of pump, new 10-inch elbows, risers, meters, valves and backflow preventers as shown on the CCWD approved Glacier Drive Intertie plan.

**RESOLUTION NO. -16**

**AUTHORIZING CITY MANGER TO EXECUTE THE AGREEMENT BETWEEN  
THE CONTRA COSTA WATER DISTRICT (CCWD) AND THE CITY OF MARTINEZ  
FOR TEMPORARY USE OF TREATED WATER CAPACITY**

**WHEREAS**, Contra Costa Water District (CCWD) and the City of Martinez (City) Water Service area have adjoining boundaries; and

**WHEREAS**, three interties between the two potable water suppliers have been constructed in the past, and additional interties may be install in the future; and

**WHEREAS**, the City and CCWD entered into a Memorandum of Understanding on April 5, 1972 to establish potable water distribution interconnections to deliver water to either agency in an emergency; and

**WHEREAS**, the City and CCWD entered into an agreement dated May 10, 1977 for the exchange of water between the City and CCWD for CCWD's service to the Port Costa Water System (the "Water Exchange Agreement"), whereby CCWD provides treated water to the City without any payment in a like amount that the City provides CCWD's customers in Port Costa; and

**WHEREAS**, the City and CCWD now find it in their best interest to enter into this Agreement effective on the date of approval this resolution, in order to further define terms for potable water deliveries during emergencies and Planned Critical Work; and

**WHEREAS**, the City Attorney has reviewed and approved to form the proposed Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Martinez that the City Manager is herby authorized to sign the Agreement between the Contra Costa Water District (CCWD) and the City of Martinez for Temporary Use of Treated Water Capacity is authorized to sign.

**BE IT FURTHER RESOLVED** the City Manager is authorized to execute extensions to said agreement provided no major terms are added, deleted or changed to said Agreement subject to City Attorney approval to form; and

**BE IT FURTHER RESOLVED** staff is authorized to execute a standard CCWD Water Main Extension Agreement to complete the intertie work at the Water Treatment Plant and Glacier Drive interties.

\* \* \* \* \*

**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 16<sup>th</sup> day of March, 2016, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

**RESOLUTION NO. -16**

**AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT AGREEMENT WITH CONTRA COSTA WATER DISTRICT (CCWD) FOR THE PACHECO BOULEVARD POTABLE WATER INTERTIE**

**WHEREAS**, City of Martinez (City) and Contra Costa Water District (CCWD) own and operates portions of a potable water intertie located on the City owned Water Treatment Plant property, Assessor Parcel Number 378-110-012, more commonly known as 3003 Pacheco Boulevard (Site); and

**WHEREAS**, the City and CCWD entered into a Memorandum of Understanding on April 5, 1972 to establish potable water distribution interconnections to deliver water to either agency in an emergency; and

**WHEREAS**, the City and CCWD constructed and improved said intertie in the 1970's and early 1980's; and

**WHEREAS**, the City and CCWD are currently in the process of upgrading the intertie as part of the City's Water Treatment Plant Seismic Upgrade Project; and

**WHEREAS**, CCWD has requested the City execute an Easement Agreement with CCWD where non currently exists; and

**WHEREAS**, the purpose of this easement is to install, operate, maintain, repair and replace water utility materials and equipment, including, without limitation; pipes, valves, meters, meter boxes, fire hydrants, protecting posts, rectifiers, power line poles and guys, air releases, blow-offs, backflow prevention devices and appurtenances.

**WHEREAS**, it has been determined the easement will not negatively impact the use of City owned property over which said easement exists.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Martinez the Mayor is authorized to sign Standard CCWD Easement Agreement for the Water Treatment Plant intertie.

\* \* \* \* \*

**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 16<sup>th</sup> day of March, 2016, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

**Agreement between the Contra Costa Water District and the City of Martinez for Temporary Use of Treated Water Capacity**

This Agreement is entered into this \_\_\_ day of \_\_\_\_\_ 2016, between the Contra Costa Water District (“CCWD”), a County Water District organized and existing under Division 12, commencing with section 30000 of the California Water Code, and the City of Martinez, a Municipal Corporation (“City”) (each a “Party” and collectively the “Parties”).

**1. RECITALS OF FACT**

- A. The City and CCWD entered into a Memorandum of Understanding on April 5, 1972 to establish potable water distribution interconnections to deliver water to either agency in an emergency.
- B. The City and CCWD entered into an agreement dated May 10, 1977 for the exchange of water between the City and CCWD for CCWD’s service to the Port Costa Water System (the “Water Exchange Agreement”), whereby CCWD provides treated water to the City without any payment in a like amount that the City provides CCWD’s customers in Port Costa.
- C. The City and CCWD now find it in their best interest to enter into this Agreement effective on the date first set forth above, in order to further define terms for potable water deliveries during emergencies and to support Planned Critical Work.

In recognition of the foregoing Recitals, the Parties agree as follows:

**2. CONDITIONS FOR USE**

- A. The Parties agree, subject to the terms and conditions of this Agreement, to utilize surplus capacity in their respective treatment and distribution facilities to provide water service to the other Party in the event of an Emergency or to facilitate Planned Critical Work, as those respective terms are defined below:

Emergency: An emergency is a shortage of water due to actual or imminent failure, or significant threat of failure, of transmission, storage or distribution facilities caused by a disaster such as, but not limited to, earthquake, flood, landslide, major conflagration, accident, or other event beyond the control of either Party which causes the demand for water to exceed the system capacity of either agency. Emergency does not mean a shortage of water due to high continuing demand or drought, and an intertie connection shall not be used as a standby or reserve source of water to meet the peak water requirements of either Party.

Planned Critical Work: Capital work scheduled to be performed by a Party on its water supply facilities that requires the use of an alternative water treatment source. Planned Critical Work shall not include routine or annual maintenance performed by either Party. Planned Critical Work is anticipated to occur at a frequency of no more than once in any five year period.

- B. Each Party shall make a good faith effort to make available to the other Party surplus treatment and distribution capacity during the duration of an Emergency or Planned Critical Work. However, each Party hereby acknowledges that there is no guarantee

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that surplus treatment or distribution capacity will be available to it in response to any request. No liability is assumed, or is to be derived, from this Agreement should either Party be unable to make surplus treatment or capacity available during all, or any portion of, the duration of an Emergency or Planned Critical Work. Further, each Party will determine, in its reasonable discretion, whether or not there is surplus treatment and distribution capacity available.

- C. Delivery of water under this Agreement does not constitute a capacity right and is not intended to support normal operations, or to be used in any way for peaking purposes or cost reduction. A separate agreement with terms mutually agreed to by both Parties would be required for normal service.

### **3. NOTIFICATIONS**

**Emergency:** A Party may request service under this Agreement, upon its determination that an Emergency exists within its service area. The other Party shall immediately respond with its determination regarding the existence of such Emergency, and, if there is concurrence as to the existence of an Emergency, whether surplus treatment and distribution capacity is available. Upon such determinations, emergency use may commence upon verbal approval from the supplying Party. Communication of requests between the Parties shall be made by the General Manager (CCWD) and the City Manager (City of Martinez) or their designated representatives.

**Planned Critical Work:** The General Manager (CCWD) or City Manager (Martinez), or their respective designee, will notify the other, in writing, of Planned Critical Work at least 30 days before such work commences (Work Notice). The supplying Party will determine whether there is surplus treatment and distribution capacity available and will, within 15 days, following the Work Notice, provide notification to the requesting Party of the availability of water during such Planned Critical Work. If surplus capacity is available the General Manager and City Manager, or their respective designee, must agree in writing on the maximum amount of capacity to be made available, delivery schedule, method and cost of reimbursement pursuant to Section 5 (Reimbursement) of this Agreement.

### **4. SCOPE OF WATER SUPPLY SERVICE.**

Each Party shall maintain any and all pipelines, pumps, valves, control devices, and meters that it requires for interconnection to control the volumes and pressures of treated water transferred between the Parties' systems. The supplying Party shall furnish to the receiving Party the quantities of treated water which the latter shall reasonably require during the Emergency or Planned Critical Work. The supply shall be interruptible subject to the determination of the supplying Party that the water is available under the circumstances then prevailing in its service area. The supplying Party, in its sole discretion, may suspend the delivery of water if it determines that water is not available for delivery, or that suspension of delivery is necessary due to its water supply operations, unplanned repairs to its system, possible endangerment of its water supply or facilities, or disasters or emergencies that may affect the supplying Party's delivery of water. Each Party shall be solely responsible for the water delivered to it hereunder from the Point of Delivery.

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**5. REIMBURSEMENT**

- A. The City and CCWD agree that the following method of reimbursement constitutes fair compensation for use of surplus treatment and distribution capacity. Each Party shall pay for use of capacity the actual fixed and variable costs for treating water and distributing water plus a facility rental fee and wear and tear. The rental and wear and tear fees will not apply for use of capacity that does not exceed 60 days in any Fiscal Year (July 1 through June 30). For purposes of this Agreement, a day of use is defined as any 24-hour period (from 12:01 am to 12:00 midnight) during which the Party uses capacity for any amount of time. For example, if the City uses CCWD capacity for 20 minutes during one 24-hour period, it will constitute a day of use. An example of CCWD's cost calculating methodology is provided in Exhibit 1, which is attached hereto and incorporated herein by reference. It is agreed by the Parties that the same methodology will be used to determine CCWD's reimbursement to the City, should CCWD receive water from the City under this Agreement.
- B. The supplying Party shall invoice the receiving Party monthly, as applicable, which shall be paid within 30 calendar days after receipt. All costs shall be based upon the operating budget in effect when the water is being treated and used.
- C. In lieu of payment, the supplying Party may agree to be compensated by receiving a like amount of water from the receiving Party through existing interconnections, as described in the Water Exchange Agreement dated May 10, 1977. For water deliveries exceeding the previous five year average annual use of the Port Costa intertie, the decision to receive reimbursement water in lieu of payment will be at the sole discretion of the supplying Party. The period for repayment by receipt of reimbursement water shall not exceed five years. Except as specifically stated herein, this Agreement does not alter the terms or otherwise effect the Water Exchange Agreement.
- D. If the City upgrades the capacity of the Pacheco intertie to support the Martinez Water Treatment Plant shutdown in 2016, CCWD will credit the City towards the purchase of any reimbursement water 50% of the costs to upsize the capacity of the intertie, with a not to exceed credit amount of \$30,000.

**6. POINT OF DELIVERY AND MEASUREMENT**

- A. The Point(s) of Delivery for water provided under this Agreement shall be the Elderwood, Pacheco, Glacier, or Port Costa intertie facilities, or such other Point(s) of Delivery as may be mutually agreed to by the respective staff of the City and CCWD.
- B. All deliveries through the Point(s) of Delivery will be metered using existing flow meters, and/or other measurement devices necessary or appropriate to determine the amount of water provided to the Point(s) of Delivery, as may be mutually agreed to by the respective staff of the City and CCWD.

**7. TERMINATION OR ASSIGNMENT OF AGREEMENT**

- A. Either Party may terminate this Agreement for convenience upon one hundred and eighty (180) days prior notice to the other Party. Termination of this Agreement will not

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relieve either Party of the obligation of settling any payment amount due under this Agreement. All reimbursement water or payment for water delivered under this Agreement must be provided to the supplying Party prior to the date of termination. Notice of termination shall be delivered by certified mail, return receipt requested addressed as follows:

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

Contra Costa Water District  
General Manager  
1331 Concord Ave.  
Concord, CA 94520

- B. This Agreement shall bind and benefit the respective successors and assigns of the Parties, provided however, that it shall not be assigned by either Party without the prior written approval of the other agency.

**8. DISPUTE RESOLUTION**

Any dispute occurring under this Agreement shall first be reviewed by the General Manager and City Manager, who shall meet and attempt to informally resolve the dispute. All payments must be made and responsibilities undertaken pending resolution of disputes by the Parties. In the event that the respective managers cannot resolve such disputes between them, then, upon one hundred (100) calendar days notice, the dispute may be submitted for mediation. If the dispute is not resolved through mediation, each Party shall have the right to pursue any remedies it may have in law or in equity. The Parties shall make good faith efforts to resolve all disputes related to this Agreement at the lowest possible cost, subject to the approval of their respective governing bodies. Each Party shall bear its own attorneys' fees and costs in all aspects of Dispute Resolution, except as may otherwise be required pursuant to Section 9 (Indemnification) of this Agreement. Unless the Parties agree upon an alternative forum of dispute resolution, any litigation concerning claims and disputes related to this Agreement shall be filed in and timely prosecuted to conclusion in the Superior Court in and for Contra Costa County, and each Party hereby waives its right to move to change venue.

**9. INDEMNIFICATION**

- A. The receiving Party shall indemnify, defend, and hold harmless the supplying Party, its directors, officers, agents, and employees from and against any and all losses, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of the transportation, storage, treatment, use or consumption of the water beyond the point of connection, or arising out of any interruption, suspension, adjustment, or termination of the water supply provided hereunder.
- B. Notwithstanding Section 9.A., each Party shall defend, indemnify and hold harmless the other Party, its officers, directors, employees and agents, from and against any and all losses, liability, expense, claims, costs, suits, and damages, including reasonable attorneys' fees, where such loss, cost or expense is caused, or claimed or alleged to be

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caused, by the sole negligence or willful misconduct of the indemnifying Party, or its officers, directors, employees or agents, or by a breach of any obligation of this Agreement by the indemnifying Party.

**10. EFFECT ON PRIOR AGREEMENTS**

- A. The provisions of this Agreement shall apply only to the delivery of water by either the City of CCWD which exceeds the five year average of annual Port Costa intertie use pursuant to the Water Exchange Agreement. This Agreement is supplemental to and shall not supersede the Water Exchange Agreement which shall remain in full force and effect in accordance with the terms thereof. The Water Exchange Agreement shall apply to all water delivery and use between the Parties relating to the delivery of water amounts up to the five year average of annual Port Costa intertie use.
- B. This Agreement is supplemental to and shall not supersede the Memorandum of Understanding entered into by the Parties on April 5, 1972, which shall remain in full force and effect in accordance with the terms thereof, except as its terms may conflict with the terms of this Agreement. In the event of a conflict in terms, the terms of this Agreement shall prevail..

**11. EXECUTION OF AGREEMENT, AMENDMENT, AND RELATED DOCUMENTS**

- A. This Agreement or any amendment hereto may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- B. This Agreement may be amended only by a written amendment signed by the duly authorized representatives of the Parties.
- C. Each Party further agrees to execute and deliver to the other Party such additional documents as may be reasonably requested by the other Party in furtherance of the transactions contemplated by this Agreement.

IN WITNESS THEREOF, the Parties hereto have made and execute this Agreement as of the date and year first written above.

**CITY OF MARTINEZ**

**CONTRA COSTA WATER DISTRICT**

By: \_\_\_\_\_  
Jim Jakel, City Manager

By: \_\_\_\_\_  
Jerry Brown, General Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Veronica A. F. Nebb, City Attorney

\_\_\_\_\_  
District Legal Counsel

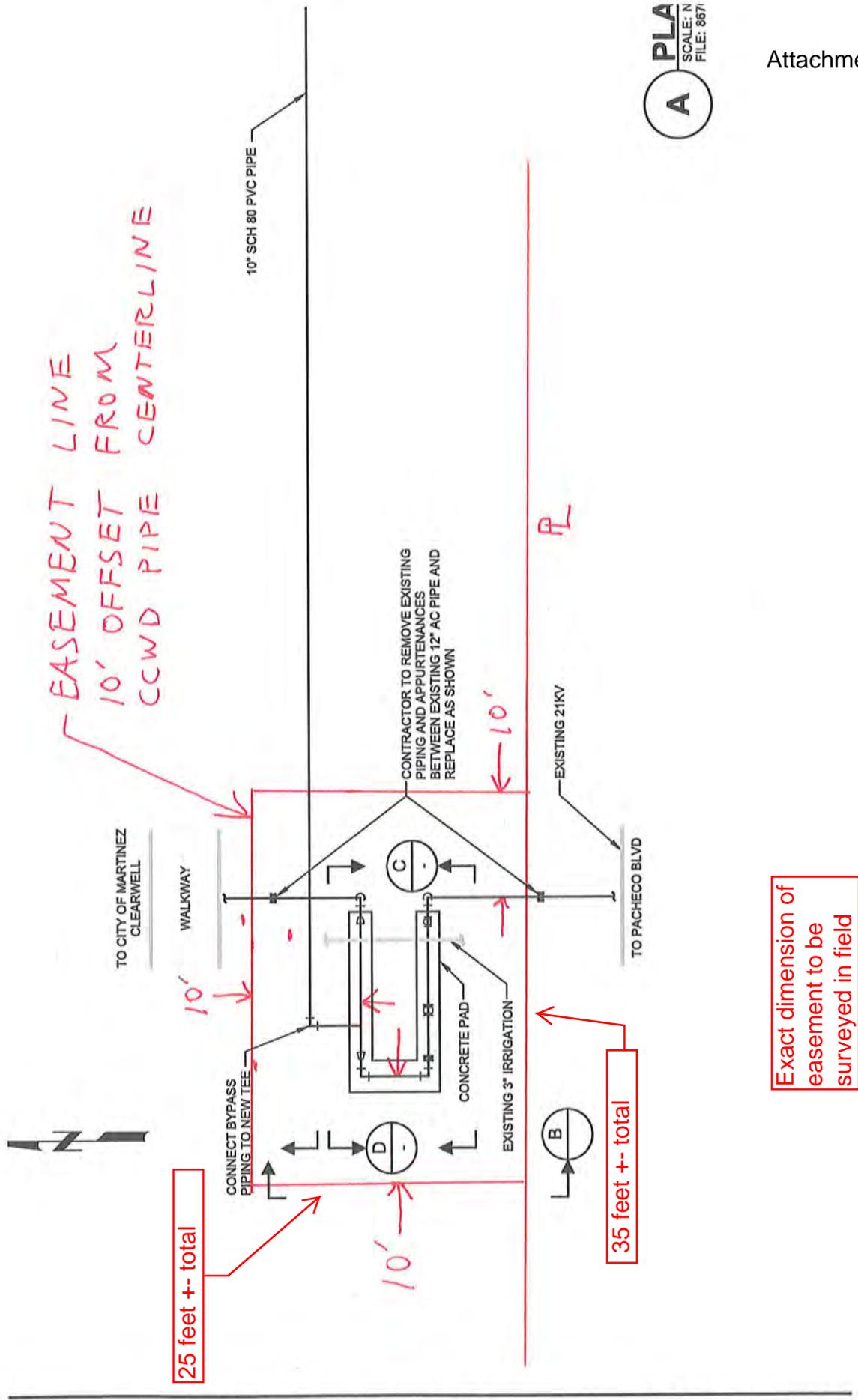
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**EXHIBIT 1 – Sample Calculation of Costs for Temporary Treated Water Supply**

The principle is for the receiving Party to reimburse the supplying Party for the actual costs for treatment and distribution of water to the other, plus a Rental Fee, as described below, for temporary treated water service. The following methodology would be used to determine the costs paid by both CCWD and the City for water delivered under this Agreement.

<b>Component</b>	<b>Basis for Actual Charges</b>
<u>Untreated Water</u>  <i>Quantity Charge</i> FY16 Estimate: \$632/AF	The wholesale municipal untreated water rate as set forth in the District's Code of Regulations Section 5.20.010, as amended from time to time by the District's Board of Directors.
<u>Treatment</u>  <i>Fixed Treatment Costs</i> FY16 Estimate: \$117/AF (> 60 days)	Fixed costs per unit of treated water shall be estimated based upon each fiscal year's budget for fixed costs at CCWD's Randall-Bold Water Treatment Plant (RBWTP) and the estimated amount total water to be treated at the RBWTP.  FY16 estimate based on FY15 actual costs $\$2,786,802 / 23,791 \text{ AF} = \$117/\text{AF}$
<u>Treatment</u>  <i>Variable Treatment Costs</i> FY16 Estimate: \$63/AF	These costs per unit of treated water shall be estimated based upon each fiscal year's budget for the RBWTP for treatment chemicals and power.  FY16 estimate based on FY15 actual costs $\$1,506,713 / 23,791 \text{ AF} = \$63/\text{AF}$
<u>Treatment</u>  <i>Treatment Rental Fee</i>  FY16 Estimate: \$0/AF (<= 60 days)  FY16 Estimate: \$78/AF (> 60 days)	City will not be assessed a rental charge for temporary deliveries, provided the City's use does not exceed 60 days in any Fiscal Year (July through June).  If City's use exceeds 60 days in any Fiscal Year (July 1 through June 30), then City will be required to pay a Rental Fee for all water taken by City in that Fiscal Year. Rental fee for use of the RBWTP capacity for treatment will be calculated as the average 30-year annual interest on the RBWTP debt divided by total water sales volume.  Basis is average interest portion of RBWTP debt (\$1,860,766) divided by RBWTP total deliveries  FY16 estimate based on FY15 actual deliveries $\$1,860,766 / 23,791 \text{ AF} = \$78/\text{AF}$
<u>Treatment</u>  <i>Treatment Wear and Tear</i>  FY16 Estimate: \$0/AF (<= 60 days)  FY16 Estimate: \$20/AF (> 60 days)	City will not be assessed a Wear and Tear charge for temporary deliveries, provided the City's use does not exceed 60 days in any Fiscal Year (July through June).  If City's use exceeds 60 days in any Fiscal Year (July 1 through June 30), then City will be required to pay a Wear and Tear component for all water taken by City in that Fiscal Year, calculated as the book value of RBWTP depreciated over 30 years divided by the permitted capacity of RBWTP (currently 50 MGD).  FY16 estimate based on FY15 Book value $\$33,389,671 / 30 \text{ years} / 56,007 \text{ AF} = \$20/\text{AF}$
<u>Treated Water Distribution</u>  <i>Power</i> FY16 Estimate: \$52/AF	Treated Water Distribution costs will be based on the power costs to deliver treated water to CCWD's distribution system from the Multi-Purpose Pipeline (MPP) Pump Station during the Year. The City's share of variable costs will be calculated per acre-foot based on the estimated or actual quantity of MPP deliveries during the Year.  FY16 estimate based on FY15 actual costs $\$810,329 / 15,583 \text{ AF} = \$52/\text{AF}$
<u>Total Water Costs</u>  FY16 Estimate: \$864/AF (<= 60 days)  FY16 Estimate: \$962/AF (> 60 days)	



Exact dimension of easement to be surveyed in field