CITY OF MARTINEZ **CITY COUNCIL AGENDA**
December 5, 2012

TO: Mayor and City Council

FROM: Tim Tucker, City Engineer

SUBJECT: Out of Agency Water Service

DATE: November 29, 2012

RECOMMENDATION:

Adopt resolutions:

A. Reaffirming the City Council intent to pursue annexations within the City's Sphere of Influence (SOI) in the unincorporated Alhambra Valley area.

B. Authorizing the City Engineer to execute Agreements to Extend Water Service to Property Located outside the City Limits.

BACKGROUND:

State law regulates under what conditions that city owned water systems may "extend" water service to new customers outside their jurisdictional boundaries. State statute allows LAFCO to approve out of agency service under two situations:

1) existing or impending threat to the health and safety of the public, or
2) in anticipation of a future annexation (if the subject property is within the City's SOI).

City water systems must meet one of these conditions even though the properties are within the City's Water Service Area. State statutes do not define the meaning of "Extension of Service." Contra Costa's LAFCO staff has taken a conservative approach when making interpretations of this statue. They contend the mere act of installing a water meter on an existing water main constitutes an extension of service.

Should LAFCO not be able to make one of the findings above, current developments with County approvals and future development and single parcel development cannot proceed. In some cases developers have already received County approval and constructed or paid for significant improvements for sewer and water system improvements. These investments could be lost should LAFCO not be able make the required findings.

City and LAFCO staff recommends the Council reaffirm their intention to pursue annexations within the Alhambra Valley as opportunities arise. Council has take previous action such as adopting design guidelines, pre-zoning and General Plan amendments to set the stage for future annexations in the valley. The attached resolution reaffirms the Councils intent and sets a

schedule to trigger staff to review opportunities on a regular basis. The resolution also directs staff to proactively communicate with residents of Alhambra Valley, both within and outside the City limits, regarding projects and programs that benefit the area.

Lastly, the City as water provider, not the developer, is the applicant to LAFCO for "Out of Agency Water Service Extension" agreement applications. The City Attorney has developed an agreement with prospective developers requesting water service to defend and hold the City harmless for submitting a LAFCO application. The attached resolution authorizes the City Engineer to execute the agreements as they arise.

FISCAL IMPACT:

None. All costs are reimbursed by the developer requesting water service.

ACTION:

Motion adopting resolutions:

A. Reaffirming the City Council intent to pursue annexations within the City's Sphere of Influence in the unincorporated Alhambra Valley area.

B. Authorizing the City Engineer to execute Agreements to Extend Water Service to Property Located outside the City Limits.

Attachment:
Resolutions
Agreement to extend water service to property located outside the city limits

APPROVED BY:
City Manager

RESOLUTION NO. -12

REAFFIRMING THE CITY COUNCIL INTENT TO PURSUE ANNEXATIONS WITHIN THE CITY'S SPHERE OF INFLUENCE IN THE UNINCORPORATED ALHAMBRA VALLEY AREA

WHEREAS, in the past the City Council of the City of Martinez (Council) has pursued annexations within the southwest portion of the City of Martinez's Sphere of Influence (SOI) commonly known as Alhambra Valley; and

WHEREAS, the Council adopted Resolution 116-10 establishing Design Guidelines for portions of Alhambra Valley; and

WHEREAS, the Council adopted Resolution 115-10 establishing General Plan policies and Land Use designations for portions of Alhambra Valley; and

WHEREAS, the Council adopted Resolution 114-10 adopting a Negative Declaration for annexing portions of Alhambra Valley; and

WHEREAS, the Council direct staff to inform residents of Alhambra Valley SOI on a regular basis accomplishments within the City Limits that benefit non residents such as park, road and water system improvements; and

WHEREAS, the Council direct staff to poll residents of Alhambra Valley SOI on a regular basis regarding ideas and desires for improvements and programs the City could implement or maintain that also benefit non residents; and

WHEREAS, the Council requests staff report to the Council every even year at a minimum to evaluate the status, quantity and location of Deferred Annexation Agreements; and

WHEREAS, the Council direct staff to report to the Council every even year at a minimum the status, quantity and location of Deferred Annexation Agreements and likelihood of successful additional annexations.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Martinez reaffirms the Council intent to pursue annexations within the City's Sphere of Influence in the unincorporated Alhambra Valley area.

* * * * * *

I HEREBY CERTIFY that 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 5th day of December, 2012, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

RESOLUTION NO. -12

AUTHORIZING THE CITY ENGINEER TO EXECUTE AGREEMENTS TO EXTEND WATER SERVICE TO PROPERTY LOCATED OUTSIDE THE CITY LIMITS

WHEREAS, State Statues require LAFCO approve Out of Agency Water Service Extension Agreement application (Application) prior to City Water Agencies provide water to parcels within the Water Agency area but outside the City Limits; and

WHEREAS, the City is the applicant, not the party requesting water service; and

WHEREAS, the LAFCO application among other things require the City defend and hold harmless LAFCO for accepting, approving or denying said Application; and

WHEREAS, it is the desire of the City of Martinez to transfer the responsibility to defend and hold LAFCO harmless to the party requesting water service; and

WHEREAS, the City Attorney has developed a standard agreement titled "Agreement to Extend Water Service to Property Located Outside the City Limits" (attached) that accomplishes this; and

WHEREAS, said standard agreement may be amended by the City Attorney from time to time.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Martinez that the City Engineer is authorized to execute Agreements to Extend Water Service to Property Located outside the City Limits as amended from time to time by the City Attorney.

* * * * * *

I HEREBY CERTIFY that 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 5th day of December, 2012, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

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

APN #

AGREEMENT TO EXTEND WATER SERVICE TO PROPERTY LOCATED OUTSIDE THE CITY LIMITS

This Agreement is made this____ day of _____by and between, the City of Martinez ("City"), and _____ ("Owner").

W I T N E S S E T H

WHEREAS, by Agreement dated _____, the City and Owner entered into that Deferred Annexation Agreement ("DAA") whereby in exchange for the City's agreement to provide water service to property commonly known as Assessor's Parcel Number ("APN") _____ and more particularly described on Exhibit A attached hereto and made a part hereof (the "Subject Property"), Owner agreed to not protest annexation of the Subject Property to the City of Martinez and to indemnify the City; and

WHEREAS, the Subject Property is located outside the City's boundaries and within the City's water service area; and

WHEREAS, the Owner desires to have the City provide water service to the Subject Property prior to the Subject Property being annexed to the City and, under such circumstances, the law requires the City, on behalf of the Owner, to apply to the Contra Costa Local Agency Formation Commission ("LAFCO") for approval of the provision of such water service to the Subject Property; and

WHEREAS, the City made such application to LAFCO and on _____20___, LAFCO approved the provision of City water to the Subject Property to service Owner's subdivision (the "LAFCO Approval"); and

WHEREAS, as a condition of LAFCO approval, LAFCO has required the City to enter the agreement attached hereto as Exhibit B and incorporated by reference ("LAFCO-City Agreement") by which the City is to indemnify LAFCO related to certain actions; and

WHEREAS, the parties hereto wish to set forth additional terms and conditions under which the City agrees to provide water service to the Subject Property, including requiring the Owner to assume the City's obligations under the LAFCO-City Agreement and to indemnify the City for the liabilities and obligations imposed upon the City under the LAFCO-City Agreement.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. The City agrees to provide water to the Subject Property subject to the terms and conditions of this Agreement and the DAA. Where conflicts exist between this Agreement and the DAA, this Agreement shall control.
2. As a condition precedent to the City providing and delivering water service to the Subject Property, Owner shall:

   a. pay all fees assessed by LAFCO on the City or on Owner arising out of or connected with the LAFCO Approval.

   b. enter into and fully perform Owner's obligations under a Water Service Improvement Agreement(or water service application, as applicable) in the form attached hereto as Exhibit C and incorporated by this reference, subject to any modifications determined necessary by the City and subject to the approval of the City Attorney.

   c. timely pay all fees and charges assessed by the City for allowing the Subject Property to be connected to the City's water system.

   d. enter into and fully perform under all other agreements normally and regularly required by the City of a property owner seeking to connect his/her property to the City's water system.

e. comply with all regulations, ordinances, policies and rules governing the receipt of water service from the City and the provision of water service to a property by the City.

f. fully perform its obligations under the DAA.

g. not be in breach of any agreement into which Owner and the City have entered.

h. have fully paid to the City all City's costs or any other amounts as required under any agreement into which Owner and the City have entered or as otherwise required under any applicable regulation, policy, rule and/or ordinance.

i. have fully executed, notarized and delivered to the City ready for recordation all easements and other interests in real property which are required to be conveyed to the City pursuant to any agreement between the parties or required under any applicable regulation, policy, rule and/or ordinance.

j. have timely performed all of its obligations under any agreement into which it and the City have entered.

k. have removed all liens or encumbrances on the improvements ("Improvements") described in the Water Service Improvement Agreement or otherwise required to be installed, constructed and/or erected by Owner in order to connect the Subject Property to the City's water system.

3. As further conditions precedent to the City's provision and delivery of water to the Subject Property:

a. Owner shall cause the Owner's contractor and all Owner's workers to provide unconditional lien and material releases.

b. Owner shall provide City with a declaration by Owner's contractor that the Owner's contractor and all persons and entities who furnished material in the construction of the Improvements have been paid in full.

c. All permits, plans, construction surveys and operating manuals related thereto, shall be delivered to and become the property of the City, subject to Owner's warranty work and other obligations required hereunder.

4. a. The Owner and its successors in interest hereby agree to indemnify, defend with counsel reasonably acceptable to the City, release and hold the City of Martinez and its elective and appointive boards, commissions, officers, agents, and employees

("Indemnitees") harmless from and against any and all past and future allegations, claims, demands, causes of action, damages, losses, liabilities of any kind and/or expenses (collectively referred to as "Liabilities"), including attorneys' fees, experts' fees, and witness costs, that may be asserted or incurred, as the case may be, by any person or entity, including Owner, and Owner's heirs, successors or predecessors in interest or assignees, including, but not limited to, liability or claims for damages for personal injury, or death, inverse condemnation, interference with prospective economic advantage, and/or real or personal property damage, arising out of or in connection with: (i) the failure of City to previously supply water service to the Subject Property; (ii) the activities of Owner in performing any work or improvement on the subject property or to connect the subject property to water service; (iii) Owner's performance or non-performance under this Agreement; (iv) Owner's breaches of this Agreement; (v) the City's approval of this Agreement or any of the City's actions relating thereto, (vi) the City's compliance or non-compliance with the California Environmental Quality Act ("CEQA") or any other law applicable to the approval, processing and implementation of this Agreement, the provision of water to the Subject Property, the LAFCO approval, or the Improvements necessary to connect the Subject Property to water service, (vii) the City's provision of water to the Subject Property, (viii) interruptions of the provision of water to the Subject Property once water service is connected to the Subject Property, (ix) the City's charging of water rates to Owner and/or its successors in interest that are higher than the rates charged to property owners whose properties are located within the City's water service area, and/or (x) Owner's violation of any law, ordinance or regulation; whether or not there is concurrent, passive negligence on the part of the Indemnitees. Owner also agrees to reimburse Indemnitees for their reasonable expenses incurred as a result of any legal action or proceeding initiated against Indemnitees in which the Liabilities are asserted against or sought to be imposed upon the City. Such expenses may include, but are not limited to, fees and costs awarded to the opposing party, the Indemnitees' attorney's fees and charges in representing the Indemnitees, the cost of preparing the record for any such action, including City staff costs and all other costs and expenses the Indemnitees may incur as a result of any such action or proceeding. The parties hereto expressly agree that no public interest or public policy is implicated or involved in the matters for which this indemnification is entered into and

that this agreement is not void or voidable pursuant tot California Civil Code Section 1668, and the parties waive all rights or protections provided pursuant to said Civil Code Section 1668.

b. The Owner and its successors in interest hereby agree to indemnify, defend with counsel reasonably acceptable to the City, release and hold the Indemnitees harmless from and against any and all Liabilities, including attorneys' fees, experts' fees, and witness costs, that may be asserted or incurred, as the case may be, by any person or entity, including LAFCO, Owner, and Owner's heirs, successors or predecessors in interest or assignees, arising out of or in any way connected with the LAFCO-City Agreement. Further, Owner expressly agrees to assume and fully discharge any and all obligations of the City, as the "Agency" so-named in the LAFCO-City Agreement, as though Owner were the Agency under the LAFCO-City Agreement. The parties hereto expressly agree that no public interest or public policy is implicated or involved in the matters for which this indemnification is entered into and that this agreement is not void or voidable pursuant tot California Civil Code Section 1668, and the parties waive all rights or protections provided pursuant to said Civil Code Section 1668.

c. The Owner and its successors in interest hereby agree to indemnify the City for any costs, fees and expenses the City incurs in enforcing the above indemnification provisions.

5. General Provisions.

a. The recitals are hereby incorporated into this Agreement as if though fully set forth herein.

b Prior to the acceptance of the Improvements, Owner shall furnish to City any and all documents reasonably requested by City.

c. All notices provided for hereunder shall be in writing and mailed (registered or certified, postage prepaid, return receipt requested), or by express carrier (return receipt requested) or hand delivered to the parties at the addresses set forth below or at such other addresses as shall be designated by such party and a written notice to the other party in accordance with the provisions of this section. All such notices shall, if hand delivered, or delivered by express carrier, be deemed received upon delivery and, if mailed, be deemed received three (3) business days after such mailing.

Notice to City:	City Engineer City of Martinez 525 Henrietta Street Martinez, CA 94553 Phone: 925-372-3562 FAX: 925 372-0257 Email:_____
Notice to OWNER:	_____ Attn: _____ Address: _____ _____ Phone:_____ FAX:_____ Email:_____

d. Time is of the essence of this Agreement and each and every term and provision thereof.

e. This Agreement shall be construed as if prepared by all of the parties hereto. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived.

f. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise of any other right, power or privilege hereunder.

g. This instrument, together with the exhibits attached hereto and other writings referenced herein, contain the entire agreement between the parties

relating to the subject matter hereof and supersede any and all prior agreements between the parties, oral or written, and any and all amendments thereto. Any oral representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by the parties to be charged.

h. In the event of any litigation or other action between the parties arising out of or relating to this Agreement or the breach thereof, the prevailing party shall be entitled, in addition to such other relief as may be granted, to its reasonable costs and attorneys' fees.

i. The invalidity or illegality of any provision of this Agreement shall not affect the remainder of this Agreement.

j. Each individual executing this Agreement hereby represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the Party which s/he represents.

k. Owner shall maintain and make available for inspection by City during regular office hours, accurate records pertaining to the design, construction and installation of the Improvements to be constructed by Owner.

l. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

m. If any payment due City hereunder is not paid when due, said payment shall bear simple interest at the rate of ten percent (10%) per annum (provided such amount shall not exceed the maximum rate allowed under California law) from the date due until paid in full.

n. The terms and provisions set forth in this Agreement shall be deemed provisions, terms and/or covenants running with the Subject Property in accordance with applicable law, including, without limitation, Section 1468 of the California Civil Code and shall pass to and be binding upon the successor owners of the Subject Property. As such, all successor owners of the Subject Property will have any of the rights, responsibilities and liabilities of Owner, as if such person or entity originally executed this Agreement in place and stead of Owner. Each and every contract, deed or other instrument hereafter executed covering or

conveying the Subject Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to such terms and conditions regardless of whether such terms and conditions are set forth in such contract, deed or other instrument. No transfer of the Subject Property shall rel ieve Owner of any responsibility or liability under this Agreement.

o. Following fulfillment of the terms and conditions herein and acceptance by City of the Improvements, City will provide water service to the Subject Property in accordance with the City's applicable rules, policies, ordinances and regulations.

6. The following exhibits are attached hereto and incorporated by this reference:

Exhibit A: Subject Property Description

Exhibit B: LAFCO-City Agreement

Exhibit C: Water Service Improvement Agreement (or Water Service Application)

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto as of the date first written above

OWNER	**CITY OF MARTINEZ**
Security Owners Corporation	
By:_____	By: _____
James Busby, Its President	Tim Tucker, City Engineer
By:_____	ATTEST:
_____, Its Chief Financial Officer	_____ City Clerk