

**OTAY WATER DISTRICT
BOARD OF DIRECTORS POLICY**

Subject	Policy Number	Date Adopted	Date Revised
DISTRICT ADMINISTRATION OF REIMBURSEMENT AGREEMENTS	26	2/10/93	7/05/06

PURPOSE

This policy establishes guidelines for how the District will administer reimbursement agreements for facilities, both Master Plan and Non-Master Plan. It also describes when and how the District will participate in the cost of such facilities.

BACKGROUND

Policy 26 requires that development which creates the need for new facilities must bear all costs to construct and finance the on-site, in-tract and off-site water, wastewater, and recycled water systems.

"On-site" facilities are defined as those pipelines, pump stations and reservoirs required within a developer's project boundaries. "Off-site" facilities are those facilities located outside a project's boundary that are required to serve the project. "In-tract" facilities are defined as those non-regional facilities that serve only the project being constructed. These facilities are typically 6 inch through 12 inch pipelines. In-tract facilities are the sole responsibility of the developer/property owner until the facilities and all required property easements are dedicated to, and accepted by, the District pursuant to authority granted by the Board to the General Manager.

The District's Master Plan includes all regional on-site and off-site facilities anticipated to be necessary to provide service throughout the District. The District's capacity fees have been calculated to pay for the cost of all the regional facilities identified in the Master Plan including the developer/property owner portion of such facilities. The District does not subsidize development but it does undertake responsibility to insure that those regional facilities necessary to serve a particular development are constructed and that the costs associated with the construction of said facilities is fairly distributed among all users.

POLICY

A. Master Plan Facilities-Reimbursement by the District: For facilities identified in the Master Plan, both on-site and off-site, the District may reimburse the developer for construction and design costs if the project meets the following guidelines:

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1. The project must be in the District's approved five-year Capital Improvement Program (CIP) at the time of the request, and shall not exceed the CIP budget amount without prior Board approval.
2. The District has approved a Sub-Area Master Plan (SAMP) and any required maps, upon which the facilities are clearly described.
3. The developer makes an irrevocable offer to dedicate the facilities and any easements required for the operation and maintenance of the facilities to the District, which offer is accepted by the General Manager and all applicable language and documentation of the dedication(s) is prepared and recorded, all in the manner authorized by the Board.
4. The developer enters into an Agreement for Construction of a Water System with the District.
5. The developer/property owner obtains bids from qualified contractors and provides copies of the bids to the District. The developer/property owner is responsible for selecting the lowest responsive responsible bidder. The developer/property owner will be reimbursed for the CIP portions of the project based on the unit prices submitted with the lowest responsive responsible bid.
6. The cost of addressing environmental issues, such as burying a reservoir, shall not be reimbursable unless they are currently addressed in the District's Master Environmental Impact Report and CIP.
7. All soft costs, such as engineering, inspection, bonds, etc., will be included in the reimbursement cost at five percent of the construction costs.
8. Except as provided below, the District will pay 100 percent of the reimbursement cost after the General Manager accepts the project.
9. The District may elect to finance the facilities by borrowing if, after analysis by the Finance Department, it is determined that the borrowing fits into the District's financial plan as outlined in Policy 25.
10. If for any reason reimbursement funds are not available at the time the project is operationally complete, the District may elect to defer or a portion of the reimbursement the District determines is due the developer until the General Manager accepts

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the dedication of the project and until all liens, claims and/or bonds, as applicable, have been released in the manner provided under the Agreement for Construction of a Water System.

11. Funds for reimbursement shall be carried as a CIP until the reimbursement is made.
12. Each reimbursement agreement requires approval by the Board. A Staff Report will be prepared and reviewed with the Finance Department prior to presentation to the Board for approval.
13. This type of reimbursement agreement ends five (5) years after Board's original approval. The reimbursement agreement may be terminated prior to said (5) year term by the General Manager upon a determination that the developer has failed to comply with its obligations under the Reimbursement Agreement or the Agreement for Construction of a Water System.
14. If the reimbursement agreement expires prior to the facilities by the District or prior to payment of reimbursement, the Developer shall no longer be entitled to reimbursement. The Developer may submit new documentation and request that the District enter into a new reimbursement agreement. If the District agrees to enter into a new reimbursement agreement for the facilities, however, the District may revise the terms and amounts of reimbursement at its discretion based on information available at the time of the request.
15. All reimbursement requests shall be submitted to the Board for consideration and shall not be processed without prior Board approval.

B. Non-Master Plan Facilities-Reimbursement to Developer by Future Users: Occasionally, a developer/property owner requests the District to administer a reimbursement agreement to collect money from future customers who connect to the facility built by the developer/property owner. If the District agrees, the District collects the reimbursement amount from each customer connecting to the facility, together with any other District connection fees. The reimbursement portion of the customer's payment is forwarded by the District to the developer/property owner as reimbursement.

The District may administer this type of reimbursement agreement if the developer/property owner's project meets the following criteria and guidelines:

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1. The developer/property owner demonstrates the facilities to be constructed have adequate capacity to serve future customers.
2. The developer/property owner requests and executes a reimbursement agreement, which is presented to the Board for approval in conjunction with the presentation of an agreement to construct.
3. The property owner deposits with the District the estimated cost for District staff to prepare a nexus study and obtain Board approval for the reimbursement agreement. District staff will provide a written estimate of the required deposit to the property owner within 15 days of the property owner's request.
4. The property owner provides three (3) bids from qualified contractors for the purpose of establishing the cost of the facilities and the portion of the reimbursement amount which is to be allocated to future connections.
5. A nexus study shall be performed by District staff to identify those who may benefit from the construction of the proposed facility and the amount they shall reimburse the developer/property owner who constructed the facility.
6. Prior to the public notice being sent to those property owners affected by the reimbursement agreement, an informational staff report will be presented to the Board.
7. The District shall notice all those property owners that will be subject to the reimbursement charge. These property owners will then be responsible to pay their fair share of the cost of the facilities at such time as they connect to the system. The fair share will be based on their Assigned Service Unit/Equivalent Dwelling Unit (ASU/EDU) contribution to the total projected ASU/EDU to use the system. The reimbursement charge will be in addition to any other fees a property owner would pay to the District to obtain service.
8. Each reimbursement agreement requires approval by the Board. Prior to presenting a reimbursement agreement to the Board, staff must obtain two originals signed by an authorized representative of the developer/property owner. A Staff Report must then be prepared and reviewed with the Finance Department prior to presentation to the Board for approval.

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9. This type of reimbursement agreement shall be valid for 10 years from the date of Board approval. After the 10 year period has lapsed the collection of the reimbursement amount by the District shall cease.
10. Concurrently with submission of a signed reimbursement agreement, the developer/property owner must pay an administrative fee to the District to defray costs related to the review of the request and the negotiation and execution of the reimbursement agreement. The amount of the administrative fee will be calculated at the staff rate existing at the time of said submission.
11. In addition, concurrently with payment of the fee described above, developer must pay a fee to defray costs estimated to be incurred per each connection to be established during the term of the reimbursement agreement. The amount of this fee will be calculated based on an estimated 6 man hours per connection. The staff rate in existence at the time the reimbursement agreement is executed will be used as a base and it will be projected to change each year to account for changes in the COLA, as determined by the District's finance department.
12. The District will not distribute any reimbursement funds to the developer/property owner until the project has been accepted by the Board. The distribution of reimbursement funds will occur as the District collects the funds from new customers who connect to the facility, but not more frequently than once per year.
13. District staff shall collect the reimbursement amount due at the same time the standard District capacity fees for the new service are collected.
14. If the reimbursement agreement expires prior to the facilities by the District or prior to payment of reimbursement, the Developer shall no longer be entitled to reimbursement. The Developer may submit new documentation and request that the District enter into a new reimbursement agreement. If the District agrees to enter into a new reimbursement agreement for the facilities, however, the District may revise the terms and amounts of reimbursement at its discretion based on information available at the time of the request.
15. All reimbursement requests shall be submitted to the Board for consideration and shall not be processed without prior Board approval.

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C. Non-Master Plan Facilities-Reimbursement to Developer by the District: Normally the District would not participate in the cost of facilities which are not identified in the Master Plan. These facilities are of benefit only to the adjoining property and should ordinarily be financed solely by the developer/property owner proposing the new facility. Nonetheless, there may be circumstances where the General Manager determines that it is appropriate for the District to participate in the cost of a non-Master Plan facility. Typical reasons would be in order to accommodate future growth or betterment of the system. In these instances, the District may establish special fees to recover the reimbursement costs from benefiting property owners as they connect to the system.

The District may reimburse the developer/property owner for construction costs if the project meets the following criteria and guidelines:

1. The General Manager has determined that it is appropriate for the District's customers to participate in the construction of the project.
2. The developer/property owner shall obtain three (3) bids from qualified contractors and provide copies of the initial bids to the District. The developer/property owner is responsible for selecting the lowest responsive bidder. The developer/property owner will be reimbursed for the CIP portions of the project based on the unit prices submitted with the lowest responsive bid.
3. A nexus study will be performed by the District to identify those property owners who may benefit from the construction of the proposed facility.
4. Prior to the public notice being sent to those property owners affected by the reimbursement agreement, an informational Staff Report shall be presented to the Board.
5. The District shall notice all those property owners which will be subject to the reimbursement charge. These properties will then be responsible to pay their fair share of the cost of the facilities, plus interest, at such time as they connect to the system.
6. The developer/property owner shall request and execute the reimbursement agreement with the District prior to awarding any contracts for construction.

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7. Each reimbursement agreement requires approval by the Board. A Staff Report shall be prepared and reviewed with the Finance Department prior to presentation to the Board for approval.
8. Except as provided below, the District will pay 100 percent of the reimbursement cost after the General Manager accepts the project.
9. The District may elect to finance the facilities by borrowing, if it is determined that borrowing is in the best interest of the District's customers.
10. If for any reason reimbursement funds are not available at the time the project is operationally complete, the District may elect to defer the reimbursement until the General Manager determines that it is appropriate to make payments.
11. Funds for reimbursement shall be carried as a CIP until the reimbursement has been made.
12. This type of reimbursement agreement contains no end date for the collection by the District of its contributed share of the cost, and shall be the responsibility of all current and subsequent property owners.
13. District staff shall collect the reimbursement amount due at the same time the standard District capacity fees for the new service are collected.
14. If the reimbursement agreement expires prior to the facilities by the District or prior to payment of reimbursement, the Developer shall no longer be entitled to reimbursement. The Developer may submit new documentation and request that the District enter into a new reimbursement agreement. If the District agrees to enter into a new reimbursement agreement for the facilities, however, the District may revise the terms and amounts of reimbursement at its discretion based on information available at the time of the request.
15. All reimbursement requests shall be submitted to the Board for consideration and shall not be processed without prior Board approval.