

OTAY WATER DISTRICT
ENGINEERING, OPERATIONS & WATER RESOURCES COMMITTEE MEETING
and
SPECIAL MEETING OF THE BOARD OF DIRECTORS

2554 SWEETWATER SPRINGS BOULEVARD
SPRING VALLEY, CALIFORNIA
Board Room

WEDNESDAY
March 21, 2012
11:30 A.M.

This is a District Committee meeting. This meeting is being posted as a special meeting in order to comply with the Brown Act (Government Code Section §54954.2) in the event that a quorum of the Board is present. Items will be deliberated, however, no formal board actions will be taken at this meeting. The committee makes recommendations to the full board for its consideration and formal action.

AGENDA

1. ROLL CALL
2. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

DISCUSSION ITEMS

3. ADOPT ORDINANCE NO. 532 REVISING SECTION 72, PENALTIES AND DAMAGES, OF THE DISTRICT'S CODE OF ORDINANCES RELATED TO REQUESTS FROM CUSTOMERS FOR AN ADMINISTRATIVE REVIEW (GRANGER) [10 minutes]
4. APPROVE THE FUNDING FOR THE PURCHASE AND INSTALLATION OF A CONFINED SPACE TRAINING PROP AT THE HEARTLAND REGIONAL FIRE AND PUBLIC SAFETY TRAINING FACILITY LOCATED ON THE DISTRICT'S REGULATORY SITE IN THE AMOUNT OF \$80,000 (COBURN-BOYD) [5 minutes]
5. APPROVE A REIMBURSEMENT AGREEMENT WITH INTERNATIONAL INDUSTRIAL PARK, INC., A CALIFORNIA CORPORATION, FOR THE CONSTRUCTION OF A 24-INCH RECYCLED WATER PIPELINE ON ALTA ROAD, NORTH OF LONE STAR ROAD, FOR A PORTION OF THE CAPITAL IMPROVEMENT PROGRAM PROJECT, RecPL-24-INCH 860 ZONE, ALTA ROAD/AIRWAY ROAD (R2077), IN THE AMOUNT OF \$930,962.16 (KENNEDY) [5 minutes]
6. SAN DIEGO COUNTY WATER AUTHORITY UPDATE (WATTON) [10 minutes]
7. ADJOURNMENT

BOARD MEMBERS ATTENDING:

Gary Croucher, Chair

Jose Lopez

All items appearing on this agenda, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

The Agenda, and any attachments containing written information, are available at the District's website at www.otaywater.gov. Written changes to any items to be considered at the open meeting, or to any attachments, will be posted on the District's website. Copies of the Agenda and all attachments are also available through the District Secretary by contacting her at (619) 670-2280.

If you have any disability that would require accommodation in order to enable you to participate in this meeting, please call the District Secretary at 670-2280 at least 24 hours prior to the meeting.

Certification of Posting

I certify that on March 16, 2012 I posted a copy of the foregoing agenda near the regular meeting place of the Board of Directors of Otay Water District, said time being at least 24 hours in advance of the meeting of the Board of Directors (Government Code Section §54954.2).

Executed at Spring Valley, California on March 16, 2012.

/s/ Susan Cruz, District Secretary



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	April 4, 2012
		PROJECT:	Various DIV. NO. ALL
SUBMITTED BY:	William Granger Water Conservation Manager		
APPROVED BY:	<input checked="" type="checkbox"/> Rom Sarno, Chief of Administrative Services <input checked="" type="checkbox"/> German Alvarez, Assistant General Manager <input checked="" type="checkbox"/> Mark Watton, General Manager		
SUBJECT:	ADOPTION OF ORDINANCE NO. 532, REVISING SECTION 72 OF THE OTAY WATER DISTRICT'S CODE OF ORDINANCES RELATED TO A CUSTOMER'S REQUEST FOR ADMINISTRATIVE REVIEW		

GENERAL MANAGER'S RECOMMENDATION:

That the Board adopt Ordinance No. 532 approving the revisions to Section 72 of the District's Code of Ordinances, related to a customer's request for an administrative review.

COMMITTEE ACTION:

Please see "Attachment A."

PURPOSE:

To adopt Ordinance No. 532 which revises Section 72 of the District's Code of Ordinances, related to a customer's request for administrative review upon receipt of a "Notice of Administrative Fine."

ANALYSIS:

District staff periodically reviews District policies, procedures and the Code of Ordinances to ensure these documents are consistent with

current practices and updated as to current changes in the applicable laws and regulations.

Currently the District's Code of Ordinances provides for a customer who has received an administrative fine to request review and consideration by the Board of Directors.

The proposed changes, made primarily in Section 72.05 G of the Code, are intended to streamline the procedure in handling requests from customers for review and consideration of administrative fines resulting from violations of the District Code of Ordinances. This change would allow the General Manager or designee to make the final determination of imposing an administrative fine.

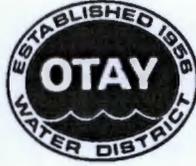
In addition to such procedural changes, further revisions were made for clarity and to ensure compliance with Government Code Section 53069.4.

FISCAL IMPACT: Joe Beachem, Chief Financial Officer
n/a

STRATEGIC GOAL:
Improve business functionality by constantly improving the efficiency and effectiveness of important business processes.

LEGAL IMPACT:
n/a

Attachments: Attachment A - Committee Action
 Attachment B - Presentation
 Exhibit 1 to Attachment B - Revised Section 72



ATTACHMENT A

SUBJECT/PROJECT:	ADOPTION OF ORDINANCE NO. 532, REVISING SECTION 72 OF THE OTAY WATER DISTRICT'S CODE OF ORDINANCES RELATED TO A CUSTOMER'S REQUEST FOR ADMINISTRATIVE REVIEW
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COMMITTEE ACTION:

The Finance, Administration and Communications and the Engineering, Operations and Water Resources Committees met on March 19 and March 21, 2012, respectively to review this item. The Committee supports presentation to the full Board for their consideration.

NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a committee approved item, or modified to reflect any discussion or changes as directed from the committee prior to presentation to the full Board.

ORDINANCE NO. 532

AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE OTAY WATER DISTRICT
AMENDING SECTION 72, PENALTIES AND DAMAGES,
OF THE DISTRICT'S CODE OF ORDINANCES

BE IT ORDAINED by the Board of Directors of Otay Water District that the District's Code of Ordinances, Section 72, Penalties and Damages, be amended as per Exhibit 1 to this Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the new proposed Section 72 of the Code of Ordinances shall become effective upon adoption by the District's Board of Directors.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Otay Water District at a regular meeting duly held this 4th day of April, 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

President

ATTEST:

District Secretary

SECTION 72 PENALTIES AND DAMAGES

72.01 GENERAL

A. User and Owner Responsibility. Each person receiving service or that owns a property that receives service, agrees to pay the District any applicable fees and charges. Such persons are also responsible for all costs and damages in connection with any violation of this Code relating to their service.

B. District Not Liable. The District shall bear no liability for any cost, damage, claim or expense (incurred by District or any responsible party or third party) arising from or related to any violation, including but not limited to costs, damages, claims or expenses arising from any corrective action of the District, including but not limited to the removal, confiscation, disposition or use of any device, equipment, improvement or material encroaching on any District property or used in connection with any other violation.

C. District Obligation to Collect Damages. Pursuant to Government Code Section 53069.6, the District shall take all practical and reasonable steps, including appropriate legal action, if necessary, to recover civil damages for the negligent, willful, or unlawful damaging or taking of property of the District.

D. Assessment of Damages. Actual damages resulting from any violation, including late payment or failure or refusal to pay for service and any interest thereon, may be assessed and collected as part of a customer's monthly bill to the extent allowed by law. The District will separately invoice any actual damages not assessed on a monthly bill, including any damages assessed against any responsible person who is not a customer.

E. Unpaid or Partially Paid Bills. Bills issued by the District are due, in full, as provided in such bills. Failure to timely pay bills in full may lead to a reduction, suspension or termination of service, as provided in the paragraph below, in Section 34 of this Code or pursuant to other provisions of this Code or applicable law. In addition, if bills remain unpaid, in full or in part, the District may lien the delinquent real property and may assess damages and penalties established by District or otherwise authorized by law.

F. Notice of Violation. Notice and a reasonable period of time to correct a violation will be given prior to the termination, reduction or suspension of service or the imposition of any administrative fine. However, the District may, without notice, correct any condition or violation that endangers the health or safety or impairs any District service, facility or property or is otherwise determined by the District to require immediate action.

1. Investigative Procedures. If a possible violation is identified, observed or reported, the District will contact the allegedly responsible party to investigate. If the violation is in fact occurring, the District staff will issue a notice of violation or otherwise inform the responsible party that corrective actions must be taken within a period of time deemed reasonable by the District, taking into consideration the nature of the violation and the potential damage that can arise if the violation continues.

2. Content of Notice of Violation. The notice will describe the violation, indicate the actions that must be taken, and indicate the date by which those actions must be taken. Unless immediate action is required, the notice will provide a reasonable time for the violation to be corrected. The notice will also specify the amount of any delinquency, actual damages or other amounts due the District, if any, and the telephone number of a representative of the District who can provide additional information.

3. No Notice Required; District Action. If the District determines that immediate or prompt correction of the violation is necessary to prevent waste or to maintain the integrity of the water supply, systems or facilities of District or for the immediate protection of the health, safety or welfare of persons or property, or for any other compelling reason, the District will take any action deemed necessary (including suspension, reduction or termination of service; locking or removal of meters; or repairs of any improvements) and a notice will be left at the affected parcel specifying any further corrective actions required. Any costs incurred by District will be the responsibility of the responsible party.

4. Notice; Failure to Comply. The responsible party will be given an opportunity to correct the violation and to provide verbal, written and pictorial exculpatory evidence. If such evidence does not exonerate the responsible parties and if the violation(s) are not corrected to the satisfaction of the District within the time provided, the District may assess cost and penalties, administrative fines and may take any other action or pursue any other remedy available. Furthermore, if the violation concerns any service requirement or facility, or to prevent waste or protect the integrity of the system or the health and safety of the public, the District may suspend, reduce or terminate service to the extent permitted by law.

G. Service Termination, Suspension or Reduction; Removing or Locking Meters. Service may be reduced, suspended or terminated for failure to pay for service or in connection with a violation of this Code or applicable law. Termination, suspension or reduction of service will be as follows:

1. Notice Prior to Termination, Suspension or Reduction of Service. Except as provided in Paragraph F, above, or in other provisions of this Code or applicable law, not less than ten (10) days notice will be given prior to the date service is reduced, suspended or terminated; provided that, where service is terminated due to failure to comply with the terms of an amortization agreement, under Section 34 of this Code, only forty-eight (48) hours prior notice is required. The notice will be delivered to the affected parcel and, if the owner of record does not reside in the affected parcel, a

copy of the notice will be forwarded to the owner's address on record with the assessor's office via any available means, such as personal delivery, certified mail return receipt requested, email, fax or fed-ex.

2. Termination for failure to pay for service. The district may discontinue any or all service due to failure to pay the whole or any part of a bill issued by the District. In connection with termination of water service, the provisions of Section 60373 of the Government Code, or any other appropriate provision of law, or as set forth in Section 34 of this Code of Ordinance, will be followed. In connection with sewer, Section 71672 of the California Water Code or other applicable requirements will be followed.

H. Reconnection or Reinstatement of Service, Unlocking or Reinstalling Meters. If service is reduced, suspended or terminated for any reason, each of the following conditions applicable to the situation must be satisfied or arrangements satisfactory to the General Manager or a designee must be made *before* service is reinstated:

1. Outstanding amounts for service bills, including any service charges for benefits derived from the violation, must be paid;

2. All required deposits (including any security deposits), actual damages, fines, costs, charges and penalties must be paid;

3. Any amounts due for the removal, locking, servicing, repair or replacement of meters or other facilities required for service, must be paid at the rates in effect at the time of reinstatement, as set forth on **Appendix A** to this Code or other schedule of fees then in effect;

4. All violations and related damages or conditions must have been corrected and or repaired and evidence satisfactory to the District to that effect and demonstrating that it is safe to reinstate service, must have been provided to and approved by the District; and

5. If the service was originally in the name of a tenant, the District may require the owner of the parcel to request the service account under his or her name and responsibility.

I. Owner Responsibility for Account. Owners may be required to deliver to the District a form of acknowledgement or authorization for service to a tenant. In addition, if a tenant engages in any violation or if the District has reduced, suspended or terminated any service to a tenant three (3) times within any twenty-four (24) month period or the tenant ~~has~~ fails or refuses to comply with the terms of payment arrangements with the District four (4) times, the District reserves the right to demand that the property owner take responsibility for services to the tenant-occupied parcel. The General Manager or a designee shall develop procedures to implement these requirements.

J. Right of Access to Customer's Premises; Interference. If any person refuses to consent to an investigation of a possible violation, or prevents or refuses to allow access to District staff or authorized representatives to any premises or facility during an investigation or in connection with any termination, reduction or suspension of service, the District may seek an injunction or a warrant, as provided in Section 71601 of the Water Code.

K. Other Remedies. In addition to the actions contemplated in this Section, the District may seek other remedies authorized or required by any applicable law, including imposing an administrative fine, pursuant to Section 72.05, or pursuing other available civil or criminal remedies.

72.02 CERTAIN SPECIFIC OPERATIONAL VIOLATIONS

A. Unauthorized Connections. The District shall bear no cost or liability for any unauthorized connection. In addition to other remedies, the District may demand that the unauthorized connection be immediately disconnected. In the alternative, or if the customer refuses to take immediate action, the District may immediately disconnect, remove, destroy or dispose of any parts installed or used for the unauthorized connection, all at the expense of the customer and any other responsible party. To the extent allowed by law, the District may also, immediately or as otherwise deemed advisable by District, terminate service to any parcel and any person that allows, uses or benefits from such unauthorized connection.

B. Water waste. No customer shall knowingly permit leaks or other wastes of water, including but not limited to allowing runoff on any portion of his or her property, engaging in non-permitted uses of water, or failing to take corrective action after notice of any leaks or water waste is given. If the District determines that water waste is occurring, the District may:

1. Without prior notice, repair or replace any District controlled facilities, at the cost of the person identified as the responsible party, if any.

2. If the water waste is due to a condition within the customer's property or facilities, the District may (i) require the customer to repair or replace the affected facilities, immediately or within a reasonable time, depending on the situation; or (ii) if necessary to prevent further waste, adjust, lock or remove the meter. If any repair or replacement required is not timely completed, the District may perform the repair or replacement at the cost of the customer or may terminate service without further notice.

C. Meter Tampering. In addition to other remedies, tampering may be prosecuted as a crime under Section 498 of the California Penal Code, as set forth in Section 73.01 of this Code.

D. Fire Service Violation. Such service is subject to compliance with all provisions of this Code and the law concerning water service and failure to comply with such provisions may result in the reduction, suspension, termination or disconnection of water service for fire protection, without any liability to District. Furthermore, illegal

connections or other violations relating to fire service may result in steep fines and may be prosecuted as crimes.

E. Backflow prevention, screens and other safety devices. If service requirements include the installation, testing and maintenance of backflow prevention devices (Section 23.04 of this Code), screens or other safety operational items, in addition to, or in lieu of, other remedies provided herein, the District may apply any of the remedies under Section VI and VII of the District's Ordinance No. 386, as amended or renumbered. Furthermore, violations relating to backflow testing may be prosecuted as set forth in Section 73.01 of this Code.

F. Violation Concerning Recycled Water Service. In addition to any fine, revocation, suspension or penalty imposed under Section 26 in connection with any violation of said Section, including permit suspension or revocation under Section 26.07.C, the District may (i) suspend or terminate water and or sewer service to the property, the owner and/or the operator; (ii) require payment by the owner for any damage to the District facilities, reimbursement to District of costs and expenses, or fines imposed on the District in connection with such violation; or (iii) prosecute the responsible party under any applicable provision of this Code, the Water Code or the Penal Code.

G. Violation Concerning Sewer Service. In addition to any other remedy, fine or penalty, failure to comply with any requirements of sewer service, including requirements for the preservation of public health, safety and welfare and including but not limited to the requirements established under Article II, Chapter 2, Sections 50 to 56.04 of this Code, as hereafter amended or as supplemented by other District Rules and Regulations for Sewer Service, the California Health and Safety Code, the California Code of Regulations, Titles 17 and 22, and Water Agency Standards. Furthermore, may be prosecuted as set forth in Section 73.01 of this Code.

72.03 VIOLATIONS OF CONSERVATION OR OTHER WATER USE RESTRICTION PROVISIONS

The District has established and published conservation measures set forth in Section 39 of the Code. Commencing with declared Level 2 conditions, the District may assess water shortage rates and charges previously adopted. In addition, after notice of the declared water shortage level is given as required by law, any person who uses, causes to be used, or permits the use of water in violation of such requirements (other than a person who qualifies for an applicable exemption, if any) may be assessed damages, penalties and fines.

A. Additional provisions concerning use restriction violations. In addition to payment of actual damages, the following may apply to a violation of any water conservation or water use restriction measure:

1. A change on the account holder shall not cause the account to revert to pre-violation status unless the new account holder provides evidence that it is not related to the violator and had no responsibility for the prior account.

2. The District may reduce, suspend or terminate service to any parcel immediately and without further notice if the violation involves or results in water waste.

3. Willful violations of mandatory conservation measures described in Section 39 of this Code may be enforced by terminating service to the property at which the violation occurs, as provided by Section 356 of the California Water Code.

B. Prosecution for violations of conservation measures. Pursuant to Section 377 and 71644 of the California Water Code, each violation of the District's Conservation Ordinance, set forth in Section 39 of this Code, may be prosecuted as a misdemeanor, punishable by imprisonment in the County jail for no more than thirty (30) days or by a fine, as set forth in Section 72.05, below.

72.04 VIOLATIONS INVOLVING DISTRICT REAL PROPERTY

A. Removal, Disposition and Costs. The District has absolute discretion to determine the corrective action required in connection with any violation involving District property, including requiring the owner of any unauthorized encroachment or improvement to remove it or taking action to remove it immediately and without notice. Any improvements or uses placed within or on any District property or right of way are subject to the following:

1. Costs and Damages. All costs and damages shall be the responsibility of the customer and any other responsible party. Furthermore, the District shall not be liable for costs to repair or replace any unauthorized encroachment or improvement, or any property, improvement or thing used in connection with, supported by or attached thereto.

2. Burden of proof. The burden shall be on the user to prove to the District's satisfaction, the authority, scope and extent of any right to access, improve or use the District's property. Only written evidence in the form of an agreement, deed, statute, recorded or official map or plat, governmental regulation or other right may be used to establish such claim of right.

B. Notice. In connection with any improvement or use that does not constitute a health hazard and does not interfere with the District's use of its property, the District will give written notice of up to sixty (60) days, at the discretion of the General Manager, to cease, terminate, eliminate or remove the offending improvement, structure or use. Any written notice will be given to the responsible party or posted at the property where the trespass or encroachment occurs. If the responsible party is not the owner of any real property affected by the violation, the District will also give notice to the owner

of record at the address on record with the assessor's office via personal delivery, certified mail return receipt requested or via fed-ex.

C. No notice. In connection with any improvement that constitutes a health hazard or interferes with the District's use of any District property, the District will take any immediate action deemed necessary by the General Manager.

D. Fines. In addition to all other remedies provided under this Article or under applicable law, the District may impose a fine as provided in Section 72.05.

E. Separate violation. A separate violation will accrue for each day after the deadline to cease, terminate, eliminate or remove the trespass or encroachment, as set forth on the notice.

72.05 ADMINISTRATIVE FINES

Any administrative fines established herein shall be in the nature of civil penalties and shall be additional and cumulative to any other ~~administrative~~ fines, damages or any other charges established by the District and are also separate from and cumulative to any other civil or criminal penalty, fine or remedy. In connection with each violation, the District may assess a fine up to the amount specified in the schedule of fines for the type of fine being imposed.

Each day during which a violation is in effect constitutes a separate violation and violations are cumulative while the account is in the name of the original violator or any person that participated in or benefited from the violation. Except where the violation creates an immediate danger to health or safety, the person responsible for the continuing violation will be provided a reasonable period of time to correct or otherwise remedy the violation(s) prior to the imposition of administrative fines.

A. Assessment of Fines for Violations of Conservation or Water Use Restriction Provisions. Any responsible party who fails to comply with any conservation or use restriction measure is subject to the assessment of an administrative Type I fine, **added to account.**

B. Assessment of Fines for Technical Violations of Other Code Provisions. Any person who engages in a violation of any provision of this Code is subject to the assessment of a separate administrative Type I fine.

C. Assessment of Fines for Other Violations. If a higher limit is not otherwise specified in this Code or allowed by law, any act or omission with respect to any District service, system, facility or property, is subject to the following administrative fines:

1. A Type I or Type II fine, at the option of the District, for a violation involving theft, fraud or misappropriation of District water, services or property;

2. A Type II or Type III fine, at the option of the District, for a violation concerning sewer service;

3. Up to Type II or Type IV fine, at the option of the District, for a violation concerning recycled water service; and

4. Up to the amount specified on any sign or a Type I or Type II fine, at the option of the District, in connection with any trespass on District property in violation of a sign prohibiting trespassing.

Nothing in this code or the limits specified per violation shall prevent the imposition of separate fines for each separate violation committed during a single act. For example, in connection with a violation concerning sewer service that involves a trespass on any portion of the District's real property, separate fines may be assessed for the trespass, the damage to District personal property, the damage to District real property; the damage to the sewer system and the activity resulting on all the damages.

D. Types of Fines. The amount for each type of fine specified below may increase automatically to reflect any higher amount authorized by law or regulation. The District has determined to establish four types of fines based on the nature of the violation, as follows:

1. Type I Fine. Any violation that does not have the potential to endanger the health or safety of the public. The fine will not exceed the amount specified in the California Government Code, Section 36900(B) or Appendix A for a first, second, third or each additional violation of that same ordinance or requirement within a twelve-month period.

2. Type II Fine. Any violation that has the potential to endanger the health or safety, including illegal connections or water theft. The fine will not exceed the amount specified on Appendix A per each day the violation is identified or continues.

3. Type III Fine. Pursuant to Section 5411 of the Health and Safety Code, any person who without a discharge permit, or in violation thereof, causes or permits a discharge of sewage or other waste in a manner resulting in contamination, pollution or nuisance, and fails to immediately notify the local health officer of the discharge, is subject to a fine up to the amount specified on Appendix A per each day the violation is identified or continues.

4. Type IV Fine. Pursuant to Section 116820 of the Health and Safety Code, a person who violates a backflow requirement, or knowingly files a false statement or report required by a local health officer, is subject to a fine up to the amount specified on Appendix A per each day the violation is identified or continues.

E. Collection of Fines. Any fines assessed by the District are payable directly to the District, are due upon issuance, or as otherwise indicated on the notice or bill, and are delinquent 30 calendar days from the due date.

F. Notice of Administrative Fine; Content. Notice of an administrative fine pursuant to this section will contain the following information: (i) a brief description of the violation(s); (ii) the date and location of the violation(s); (iii) a brief description of corrective action(s) required, as appropriate; (iv) a statement explaining that each day the violation continues constitutes a new violation; (v) in the case of violations creating an immediate danger to health or safety, the amount of civil penalty assessed or, in all other cases, the amount of civil penalty to be assessed if the violation(s) are not corrected within the time provided by the notice; (vi) a statement of the procedure for payment and the consequences of failure to pay; (vii) contact information for the District employee that should be contacted to discuss the notice and provide evidence of compliance; and (viii) a brief statement describing the responsible party's right to request an ~~evaluation~~consideration Administrative Review, pursuant to subsection (G), below.

G. Option for Administrative Review to Request Board Consideration. Persons receiving a Notice of Administrative Fine may request ~~Board consideration~~administrative review by the General Manager of the District or his/her designee. The request for ~~Board consideration~~administrative review must be in writing, must be received by the District Secretary within ten (10) calendar days from the date of the notice and must include contact information, an explanation of the basis for the request, whether or not a meeting is requested, and any supporting documentation said person(s) wish to provide to the ~~Board~~General Manager or his/her designee for review and consideration. Where a meeting is requested, the District will provide notice of the date, time and place for ~~Board-consideration~~by the General Manager or his/her designee by electronic means, facsimile or first class mail sent to the return addressee indicated on the written request. The General Manager or his/her designee may request a meeting if he /she deems a meeting is required.

Any fines assessed pursuant to the Notice of Administrative Fines must be timely paid notwithstanding the filing of a request for ~~Board~~ administrative review.

At the time of ~~Board-consideration~~by the General Manager or his/her designee, the petitioner may present witnesses, documents or other evidence to show good cause why the fine should not be imposed. In accordance with the provisions of Government Code Section 53069.4, the ~~Board's~~General Manager's, or his/her designee's, determination shall be final and conclusive, and shall be deemed confirmed, if not appealed within 20 calendar days to the Superior Court of the County of San Diego.

AGENDA ITEM 4



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	April 4, 2012
	Lisa Coburn-Boyd Environmental Compliance	PROJECT:	P2382- DIV. NO. 5 001000
SUBMITTED BY:	Specialist Ron Ripperger Engineering Manager		
APPROVED BY:	<input checked="" type="checkbox"/> Rod Posada, Chief of Engineering <input checked="" type="checkbox"/> German Alvarez, Asst. General Manager <input checked="" type="checkbox"/> Mark Watton, General Manager		
SUBJECT:	Purchase of a Confined Space Training Prop for the Heartland Regional Fire and Public Safety Training Facility for Joint Use by Otay Water District and Fire District Personnel		

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) authorize the funds for the purchase and installation of a Confined Space Training Prop at the Heartland Regional Fire and Public Safety Training Facility (Heartland Training Facility) located on the District's Regulatory Site in the amount of \$80,000 (See Exhibit A for location of the Training Facility).

COMMITTEE ACTION:

See Attachment A.

PURPOSE:

To obtain Board authorization for the funds, in the amount of \$80,000, to purchase and install a confined space training prop at the Heartland Training Facility. This prop will be available for training of District employees and Fire District and Emergency Services personnel.

ANALYSIS:

On December 21, 2007, San Miguel Fire District (San Miguel) entered into a Ground Lease and Joint Use Agreement with the District. According to this Agreement, San Miguel was to construct a state-of-the-art regional training facility at the District's Regulatory site. Construction of the facility began in May 2011. Also, in May 2011, San Miguel entered into an agreement with the Heartland Fire Training Facility Authority for the operation of the training facility now known as the Heartland Regional Fire and Public Safety Training Facility.

The construction of the training facility is being done in two phases because of funding constraints. Phase One construction is underway and includes site grading, walls, installation of all utilities, and the construction and/or installation of several training props. The props to be installed in Phase One include the bridge prop, the trench training prop, an electrical vault training prop (provided and to be installed by SDG&E) and a confined space training prop. The confined space prop will provide valuable training opportunities for District personnel at an easily accessible site. At the present time, District staff must arrange for confined space training at Helix Water District. Exhibit B shows the location of the various props and buildings within the training facility site and the phase in which they will be constructed. Exhibit C is a photograph of a similar confined space prop at the Escondido Fire Training Facility.

FISCAL IMPACT: Joe Beachem, Chief Financial Officer

The funding for the Confined Space training prop will be taken from P2382 - Safety and Security Improvements. The total budget for P2382, as approved in the FY2012 budget is \$3,397,000. Total expenditures, plus outstanding commitments to date, including the funding of this training prop, are approximately \$1,795,657. See Attachment B for budget detail.

Based on a review of the financial budget, the Project Manager anticipates that the budget for CIP P2382 will be sufficient to support this Project.

Finance has determined that 40% of the funding is available from the Expansion fund and 60% of the funding is available from the Betterment Fund.

STRATEGIC GOAL:

This project supports the District's Mission statement, "To provide customers with the best quality water, wastewater and recycled water service in a professional, effective, and efficient manner."

LEGAL IMPACT:

None.

LCB/RR:jf

P:\WORKING\CIP P2382 - Safety and Security Improvements\Staff Reports\BD 04-04-12, Staff Reports, Confined Space Prop, (LCB-RR).docx

Attachments: Attachment A - Committee Action
Attachment B - Budget Detail
Exhibit A - Location Map
Exhibit B - Training Facility Site Plan
Exhibit C - Confined Space Prop Photograph



ATTACHMENT A

SUBJECT/PROJECT: P2382-001000	Purchase of a Confined Space Training Prop for the Heartland Regional Fire and Public Safety Training Facility for Joint Use by Otay Water District and Fire District Personnel
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COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on March 21, 2012. The Committee supported Staff's recommendation.

NOTE:

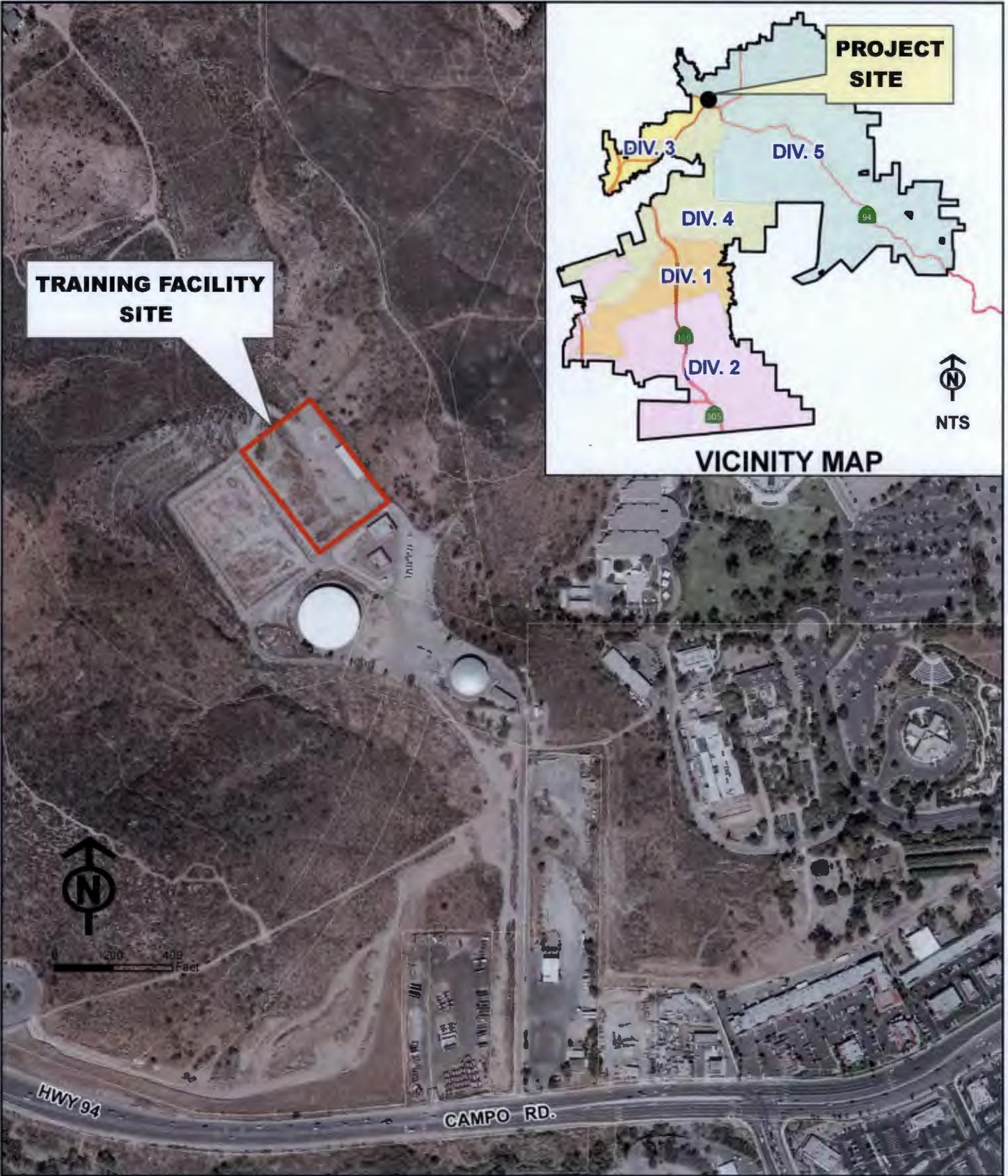
The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full Board.



ATTACHMENT B

SUBJECT/PROJECT:	Purchase of a Confined Space Training Prop for the Heartland Regional Fire and Public Safety Training Facility for Joint Use by Otay Water District and Fire District Personnel
P2382-001000	

<i>Budget</i>	<i>Committed</i>	<i>Expenditures</i>	<i>Outstanding Commitment & Forecast</i>	<i>Projected Final Cost</i>	<i>Vendor/Comments</i>
3,397,000					
Safety/Security Upgrades					
Addl subprojects					
Labor	162,727	162,727		162,727	
Books, Periodicals And Subscriptions	348	348	-	348	UNION TRIBUNE PUBLISHING CO
	96	96	-	96	SAN DIEGO DAILY TRANSCRIPT
Annual Support Maintenance For Softwa	38,322	3,333	34,989	38,322	HENRY BROS ELECTRONICS INC
Consultant Contracts	500	500	-	500	SIMON WONG ENGINEERING
	2,500	2,500	-	2,500	DARRYL THIBAUT
	625	625	-	625	PEXIS CORPORATION
Computer Training	17	17	-	17	PETTY CASH CUSTODIAN
Safety Training	1,000	1,000	-	1,000	JB SAFETY & RESCUE SERVICES
	562	562	-	562	UNITED RENTALS NORTHWEST INC
Gas Detectors	23,867	23,867	-	23,867	CALOLYMPIC SAFETY
Infrastructure Equipment & Supplies	124	124	-	124	PETTY CASH CUSTODIAN
	7,156	7,156	-	7,156	UNITED RENTALS NORTHWEST INC
	1,012	1,012	-	1,012	CALOLYMPIC SAFETY
Infrastructure Equipment & Materials	27,394	27,394	-	27,394	EMCOM ELECTRONICS SYSTEMS INC
	2,091	2,091	-	2,091	WESCO DISTRIBUTION INC
	34,989	-	34,989	34,989	HENRY BROS ELECTRONICS INC
Security Services	574	574	-	574	CALOLYMPIC SAFETY
	970	970	-	970	ALCEM FENCE COMPANY INC
	598,920	598,920	-	598,920	STANDARD ELECTRONICS
	354	354	-	354	MARWEST ACCESS CONTROLS
	6,346	6,346	-	6,346	ADVANCED ELECTRONIC SOLUTIONS2
	344,676	309,667	34,989	344,676	HENRY BROS ELECTRONICS INC
	11,835	11,835	-	11,835	ENHANCED COMMUNICATIONS
	3,875	3,875	-	3,875	PEXIS CORPORATION
	4,875	4,875	-	4,875	ADVANCED COMMUNICATIONS
	1,215	1,215	-	1,215	GRAYBAR ELECTRIC CO INC
	20,490	20,490	-	20,490	PRIME ELECTRICAL SERVICES INC
	5,973	5,973	-	5,973	SPECIALTY DOORS AND AUTOMATION
	14,109	-	14,109	14,109	BRAULT INC
	4,476	-	4,476	4,476	NEAL ELECTRIC CORP
Service Contracts	3,995	3,995	-	3,995	MSA SYSTEMS INC
	97,354	62,365	34,989	97,354	HENRY BROS ELECTRONICS INC
	2,300	2,300	-	2,300	ADVANCED COMMUNICATIONS
	1,980	1,980	-	1,980	SAN DIEGO CONSTRUCTION WELDING
	459	459	-	459	SPECIALTY DOORS AND AUTOMATION
Safety Equipment Misc Materials	135	135	-	135	MARWEST ACCESS CONTROLS
	2,365	2,365	-	2,365	STONEHOUSE SIGNS INC
	824	824	-	824	IDENTICARD SYSTEMS
	2,516	2,516	-	2,516	CALOLYMPIC SAFETY
	8,400	8,400	-	8,400	C & I EQUIPMENT CO
Building And Grounds Materials	90	90	-	90	MCMMASTER-CARR SUPPLY CO
	721	721	-	721	C W MCGRATH INC
	1,698	1,698	-	1,698	T M PEMBERTON
	120	120	-	120	CONSTRUCTION RESIDUE RECYCLING
	6,200	6,200	-	6,200	FRANK & SON PAVING INC
	578	578	-	578	US BANK CORPORATE PAYMENT
	14,599	14,599	-	14,599	ENTERPRISE SECURITY INC
	16,913	16,913	-	16,913	ACCESS SECURITY CONTROLS
For Ops Only - Contracted Services	4,484	4,484	-	4,484	ACCESS SECURITY CONTROLS
	450	450	-	450	WALTCOMM
	8,775	8,775	-	8,775	ADVANCED COMMUNICATIONS
Security Vulnerability Study	92,008	92,008	-	92,008	EMA, INC.
Onsite Training	18	18	-	18	GREYSTONE ENVIRONMENTAL
Reimbursement from EPA	(115,000)	(115,000)	-	(115,000)	
x30074	208,843	208,843	-	208,843	
Construction Contract	30,000	-	30,000	30,000	ADVANCED INDUSTRIAL SERVICES
Confined Space Prop	80,000	-	80,000	80,000	EC CONSTRUCTORS
Total Safety/Security Upgrades	1,792,840	1,524,299	268,541	1,792,840	
Fire Protection					
Labor	191	191	-	191	
For Ops Only - Contracted Services	2,626	2,626	-	2,626	AZTEC FIRE & SAFETY
Total Fire Protection	2,817	2,816	-	2,816	
Grand Total	1,795,657	1,527,116	268,541	1,795,657	



OTAY WATER DISTRICT
HEARTLAND REGIONAL FIRE AND PUBLIC SAFETY TRAINING FACILITY
LOCATION MAP

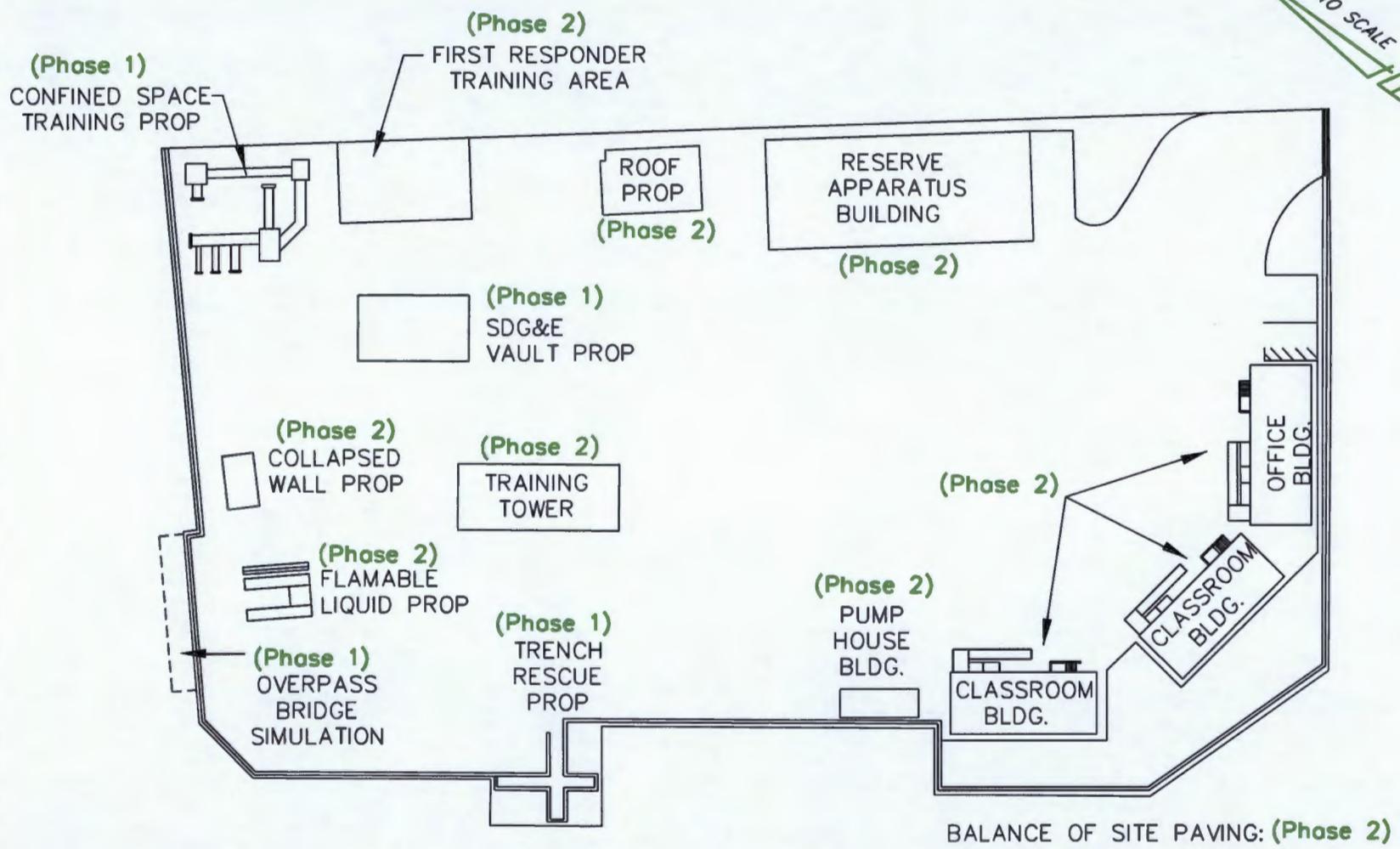
CIP P2382

EXHIBIT A

P:\WORKING\ P2382\Staff Reports\Exhibit A 2-9-12

P:\WORKING\GP P2466 REGIONAL TRAINING FACILITY\STAFF REPORTS 2-23-12-EXHIBIT B.DWG

NOT TO SCALE



OTAY WATER DISTRICT

HEARTLAND REGIONAL FIRE AND PUBLIC SAFETY TRAINING FACILITY

SITE PLAN

CIP #P2382

EXHIBIT B



P:\WORKING\ P2466\Staff Reports\Exhibit C 2-8-12



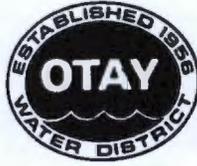
OTAY WATER DISTRICT

HEARTLAND REGIONAL FIRE AND PUBLIC SAFETY TRAINING FACILITY

CIP P2382

EXHIBIT C

AGENDA ITEM 5



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	April 4, 2012
SUBMITTED BY:	Bob Kennedy Sr. Civil Engineer	PROJECT NO./ SUBPROJECT:	R2077-001103
		DIV. NO.	2
APPROVED BY:	<input checked="" type="checkbox"/> Rod Posada, Chief, Engineering <input checked="" type="checkbox"/> German Alvarez, Asst. General Manager <input checked="" type="checkbox"/> Mark Watton, General Manager		
SUBJECT:	Reimbursement Agreement with International Industrial Park, Inc., a California Corporation, Project location Alta Road & Lone Star Road, for a Portion of the Capital Improvement Program Project, RecPL-24-Inch 860 Zone, Alta Road/Airway Road (R2077)		

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) approves the request for the General Manager to execute a Reimbursement Agreement with International Industrial Park, Inc., a California Corporation, Project location Alta Road & Lone Star Road, for the construction of a 24-inch recycled water pipeline on Alta Road, north of Lone Star Road, for a portion of the Capital Improvement Program Project, RecPL-24-Inch 860 Zone, Alta Road/Airway Road (R2077), in an amount of \$930,962.16 (see Exhibit A-1 within the Reimbursement Agreement for Project location).

COMMITTEE ACTION:

Please see Attachment A.

PURPOSE:

To obtain Board authorization for the General Manager to enter into a Reimbursement Agreement (see Attachment C) with International Industrial Park, Inc., a California Corporation, for reimbursement of construction costs for a 24-inch recycled water pipeline on Alta Road North, north of Lone Star Road, for a portion of the Capital Improvement Program Project, RecPL-24-Inch 860 Zone, Alta Road/Airway Road (R2077), in an amount of \$930,962.16.

ANALYSIS:

International Industrial Park, Inc., as part of its CG 4754 Project, is widening portions of Alta Road, north of Lone Star Road. As part of these improvements, the Developer has agreed to install approximately 1,510 lineal-feet of 24-inch steel recycled pipe and be reimbursed by the District.

Since the Developer is currently required to improve Alta Road, north of Lone Star Road, the Developer has agreed to install a portion of the 24-inch steel recycled water pipeline adjacent to its MUP 98-001-W1 Phase 2B project and enter into a Reimbursement Agreement (Agreement) per Policy No. 26 (see Exhibit B within the Agreement) with the District. Staff negotiated with the Developer to provide the Developer with cathodic design and welding inspection. Additionally, the District has agreed to use actual costs rather than the 5% and to reimburse the Developer via progress payments on a monthly basis. See Exhibit A-2 within the Agreement which depicts the total of \$930,962.16 corresponding to the maximum construction and estimated soft costs for this Project. The soft costs to be reimbursed to the Developer are \$29,470 or 3% of the total Project cost.

The District will have Valley Construction Management (VCM) monitor the contractors work and facilitate the coordination and cooperation between District, Contractor, and Developer.

In compliance with Policy No. 26, the Developer has received three responsive bids for the pipeline construction and submitted copies to the District. Staff evaluated and certified that the bids are in compliance with Policy No. 26 requirement. They are as follows:

CONTRACTOR	BID AMOUNT
Basile Construction	\$886,492.16
TC Construction	\$921,183.50
CCL Contracting	\$1,012,119.00
Bert W. Salas	\$1,044,852.00
Cass Construction	\$1,351,806.00

FISCAL IMPACT: Joe Beachem, Chief Financial Officer

The approved total budget for CIP R2077, as approved in the Fiscal Year 2012 budget, is \$4,500,000. Expenditures to date are \$1,976,409. Total commitments to date, including this Agreement are approximately \$2,911,590. (See Attachment B for budget detail.)

The Project Manager anticipates that, based on the attached financial analysis, the budget will be sufficient to support this Project.

Finance has determined that 100% of the funding is available from the Expansion Fund.

STRATEGIC GOAL:

This Project supports the District's Mission Statement, "To provide the best quality of water and wastewater service to the customers of the Otay Water District in a professional, effective, and efficient manner," and the District's strategic goal, "To satisfy current and future water needs for potable, recycled, and wastewater services."

LEGAL IMPACT:

None.

BK/RP:jf

P:\Public-s\Staff Reports\2011\BD 4-4-12, Staff Report, International Industrial Park, Inc Reimbursement

Attachments: Attachment A - Committee Action
Attachment B - Budget Detail
Attachment C - Reimbursement Agreement w/Exhibits
Exhibit A-1 - Location Map
Exhibit A-2 - Construction and Soft
Costs Reimbursable Estimate
Exhibit B - District Code of Ordinances
Policy No. 26
Exhibits C-1 & C-2 - Description of CIP
R2077



ATTACHMENT A

SUBJECT/PROJECT: R2077-001103	Reimbursement Agreement with International Industrial Park, Inc, a California Corporation, Project location Alta Rd & Lone Star Road, for a Portion of the Capital Improvement Program Project, RecPL-24-Inch 860 Zone, Alta Road/Airway Road (R2077)
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COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on March 21, 2012. The Committee supported Staff's recommendation.

NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full Board.



ATTACHMENT B

Otay Water District
RecPL - 24-Inch, 860 Zone, Alta Road - Alta Gate/Airway

Date Updated: March 07, 2012

<i>Budget</i>	<i>Committed</i>	<i>Expenditures</i>	<i>Outstanding Commitment & Forecast</i>	<i>Projected Final Cost</i>	<i>Vendor/Comments</i>
4,500,000					
Planning					
Labor	85,034	85,034		85,034	
Professional Legal Fees	1,737	1,737	-	1,737	GARCIA CALDERON & RUIZ LLP
Other Agency Fees	46	46	-	46	DEPARTMENT OF PUBLIC HEALTH
Consultant Contracts	38,003	38,003	-	38,003	LEE & RO INC
	67,553	67,553	-	67,553	JONES & STOKES ASSOCIATES INC
Service Contracts	1,182	1,182	-	1,182	UNION TRIBUNE PUBLISHING CO
Contracted Services	360	360	-	360	KIRK PAVING INC
Total Planning	193,916	193,916	-	193,916	
Design					
Labor	429,327	429,327		429,327	
Mileage Reimbursement	21	21	-	21	PETTY CASH CUSTODIAN
Office Supplies	64	64	-	64	PETTY CASH CUSTODIAN
Professional Legal Fees	104	104	-	104	GARCIA CALDERON & RUIZ LLP
	481	481	-	481	STUTZ ARTIANO SHINOFF
Regulatory Agency Fees	6,667	6,667	-	6,667	CITY TREASURER
	156	156	-	156	STATE WATER RESOURCES
	6,783	6,783	-	6,783	COUNTY OF SAN DIEGO
Other Agency Fees	6	6	-	6	PETTY CASH CUSTODIAN
Consultant Contracts	50,584	50,584	-	50,584	SOUTHERN CALIFORNIA SOIL
	49,380	49,380	-	49,380	DARNELL & ASSOCIATES INC
	27,738	27,738	-	27,738	HDR ENGINEERING INC
	23,139	23,139	-	23,139	AEGIS ENGINEERING MGMT INC
	8,000	8,000	-	8,000	SAN-LO AERIAL SURVEYS
	4,140	4,140	-	4,140	CPM PARTNERS INC
	2,275	2,275	-	2,275	MWH CONSTRUCTORS INC
	640	640	-	640	SWINERTON MANAGEMENT
Service Contracts	6,680	2,462	4,218	6,680	REPROHAUS CORP
	1,800	1,800	-	1,800	SAN-LO AERIAL SURVEYS
	138	138	-	138	UNION TRIBUNE PUBLISHING CO
Total Design	618,122	613,904	4,218	618,122	
Construction					
Labor	92,634	92,634		92,634	
Meals and Incidentals	16	16	-	16	PETTY CASH CUSTODIAN
Professional Legal Fees	83	83	-	83	STUTZ ARTIANO SHINOFF
Materials	822	822	-	822	WESTBURNE SUPPLY INC
	47	47	-	47	CW MCGRATH INC
Inventory	1,938	1,938	-	1,938	INVENTORY
Outside Services	3,180	3,180	-	3,180	ALCEM FENCE COMPANY INC
	50	50	-	50	CW MCGRATH INC
Consultant Contracts	21,808	21,808	-	21,808	JC HEDEN AND ASSOCIATES INC
	4,930	4,930	-	4,930	VALLEY CONSTRUCTION MANAGEMENT
	4,653	4,653	-	4,653	RBF CONSULTING
	926	926	-	926	CPM PARTNERS INC
	700	700	-	700	HDR ENGINEERING INC
Construction Contracts	870	870	-	870	VALLEY CONSTRUCTION MANAGEMENT
	1,029,489	1,029,489	-	1,029,489	RANCHO VISTA DEL MAR
	930,962	-	930,962	930,962	INTERNATIONAL INDUSTRIAL PARK INC
	548	548	-	548	CLARKSON LAB & SUPPLY INC
Service Contracts	21	21	-	21	SAN DIEGO DAILY TRANSCRIPT
Infrastructure Equipment & Materials	127	127	-	127	HANSON AGGREGATES INC
	178	178	-	178	UNITED RENTALS NORTHWEST INC
	490	490	-	490	FERGUSON WATERWORKS # 1083
	1,938	1,938	-	1,938	COUNTY OF SAN DIEGO - DPW
Contracted Services	400	400	-	400	PENHALL COMPANY
	2,742	2,742	-	2,742	KIRK PAVING INC
Total Construction	2,099,552	1,168,589	930,962	2,099,552	
Grand Total	2,911,590	1,976,409	935,180	2,911,590	



ATTACHMENT C

REIMBURSEMENT AGREEMENT

**REIMBURSEMENT AGREEMENT
FOR
CAPITAL IMPROVEMENT PROGRAM WATER FACILITIES
ASSOCIATED WITH R2077 RECPL-24-INCH, 860 ALTA RD – ALTA GATE/AIRWAY RD
FOR 1510 LF OF 24-INCH STEEL RECYCLED PIPELINE,
DEVELOPER PROJECT ON ALTA RD & LONE STAR ROAD (PASEO DE LA FUENTE)
FOR MUP 98-001-W1**

This Reimbursement Agreement (“**Agreement**”) is entered into as of this _____ day of _____, 2012, by and between the Otay Water District, a Municipal Water District formed under the Municipal Water District Act of 1911 (“**District**”) and International Industrial Park, Inc., a California Corporation, with an address at 5440 Morehouse Dr., Suite 4000 San Diego, California, 92121 (“**Developer**”), in view of the following facts and for the following purposes:

RECITALS

A. District’s Board of Directors has adopted a Master Plan and approved a Capital Improvement Program (“**CIP**”) for all regional water facilities (“**Planned CIP Facilities**”) throughout District. There are a number of Planned CIP Facilities within and adjacent to the Alta Road and Lone Star Road (Paseo De La Fuente) Improvements for MUP 98-001-W1(the “**Development**”), which Developer will construct within District’s service area in Otay Mesa, California.

~~B. In connection with the Development and the Facilities, Developer was required to complete a Subarea Master Plan (the “SAMP”) upon which the Planned CIP Facilities are identified. If required, the SAMP has been completed, is entitled “_____”, dated _____ and is incorporated herein by reference. Developer will complete the Planned CIP Facilities as identified in the SAMP, if any, or/and as depicted or described in Exhibit _____ attached hereto.~~

C. Developer intends to develop its property, which will include substantial public improvements, including the construction of certain of the Planned CIP Facilities within the Development (“**Required CIP Facilities**”) as more fully depicted or described in Exhibits A-1 for project location and A-2 for reimbursable estimate.

D. Developer recognizes that District will need to construct regional facilities to support this development, typically in advance of the Developer paying all capacity fees.

E. Developer shall conform to, and comply with, all of the conditions set forth in District’s current Policy 26, attached hereto as Exhibit B, with the exception of item numbers 6, 7, 8, and 10.

F. Developer shall comply with all terms and conditions in the current District’s Code of Ordinances and in the District’s Standard Specifications.

G. Developer agrees to encourage participation by Emerging Business Enterprises on construction contracts related to this agreement.

H. In coordination with this Agreement, Developer and District have entered into that certain Agreement for Construction of a Water System dated _____ (“**Construction**”

Agreement") wherein Developer's obligations regarding the construction and completion of the Required CIP Facilities are more fully set forth. The Parties acknowledge that where the terms and conditions of this agreement conflict with the Construction Agreement on matters pertaining to construction and completion of the Required CIP Facilities, the Construction Agreement will control. Similarly, where the terms and conditions of the Construction Agreement conflict with this Agreement on matters pertaining to the reimbursement of Developer by District, this Agreement will control.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the above Recitals and of the promises and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, District and the Developer do hereby promise and agree as follows:

1. Project Cost

Developer shall design and construct, install and complete a portion of the Required CIP facilities described in Exhibits C-1 (CIP) and C-2 (CIP) in the manner more fully set forth in the Construction Agreement, and shall provide all funds needed for the design, construction, installation and completion of the Required CIP Facilities with the exception of construction management and District's direct costs including, but not limited to, District inspections and construction water. In order to remain eligible for reimbursement as provided under this Agreement, the Required CIP Facilities must be constructed and completed within the time provided in the Construction Agreement. Furthermore, to remain eligible for reimbursement, Developer must construct the Required CIP Facilities in compliance with all applicable laws, rules and regulations.

2. Reimbursement

Developer shall be entitled to reimbursement for the cost and expense of constructing and completing the Required CIP Facilities consistent with District's Policy No. 26, with the exception of items 6, 7, 8 and 10, and consistent with any Construction Agreement in form and function satisfactory to District. Except as provided in Policy 26, the District will pay 100% of the reimbursement cost via progress payments after the Board approves the request for reimbursement.

Developer shall submit a request for reimbursement in writing to District and shall attach all documents necessary to demonstrate, to the satisfaction of District, that the work has been completed and accepted and the costs and expenses have been actually and reasonably incurred. The necessary documents shall include (i) copies of bid documents, (ii) invoices, (iii) unconditional lien releases, and (iv) any other documentation as requested by the District.

3. Termination

If not otherwise earlier terminated, this agreement shall terminate on the earlier of (i) the date on which the reimbursements contemplated herein have been paid, or (ii) five (5) calendar years from the date first set forth above, which shall be the date of Board approval; provided that all Developer's warranties and indemnifications shall remain in effect until terminated in accordance with their respective terms. District may terminate this Agreement and its obligations if the General

Manager determines that Developer has failed to comply with its obligations hereunder or under the Construction Agreement.

4. **Plan Removal**

Developer shall be required to adhere to District's process for submittal of improvement plans, which includes its contractor bonding for all facilities to be constructed, construction agreements and project acceptance.

5. **Record Keeping**

Developer shall keep an accurate record of the actual cost to construct the Required CIP Facilities for which reimbursement is requested, in accordance with generally accepted accounting procedures. Developer shall allow an authorized District representative, during Developer's regular business hours and upon reasonable notice, to examine and duplicate any records relevant to verifying the actual cost to construct the Required CIP Facilities, including, without limitation, all contract bids and invoices. Any changes occurring during construction shall be properly documented. Back-up documentation shall be kept by Developer for three (3) years after the completion of the facilities and be provided to District for its review upon its request.

6. **Change Orders**

No change orders will be permitted unless the change order results from an unforeseen sub-surface condition or from a change in the work, design or specifications initiated by the District, or other governmental agency, during the construction of the Required CIP Facilities.

7. **General Provisions**

a. **Incorporation of Recitals and Exhibits.** The recitals set forth above and all exhibits referenced in this Agreement are hereby incorporated by reference into this Agreement to be given the same force and effect as if fully set forth herein.

b. **Amendments.** No amendment, modification, supplement, termination or waiver of any provision of this Agreement shall be effective unless executed in writing by both parties and then only in the specified instance and for the specific purpose given.

c. **Notices.** Any demand upon or notice required or permitted to be given by one party to the other party shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one party to the other party in connection with this Agreement shall be effective (i) on the date a personal delivery is accepted, (ii) on the date a facsimile of the notice is sent, or on the next business day if the fax is sent after 5:00 p.m. or on a Saturday, Sunday or holiday; provided that receipt and confirmation of the facsimile transmission is attached to a copy of the faxed notice, (iii) on the second business day after mailing by certified or registered United States mail, return receipt requested, or (iv) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express), postage or fee prepaid as appropriate, addressed to the party at the address shown below:

If to District: Otay Water District
2554 Sweetwater Springs Boulevard
Spring Valley, California 91978-2004
Attn: General Manager

If to Developer: Mr. David Wick
International Industrial Park, Inc
A California Corporation
5440 Morehouse Dr., Suite 4000
San Diego, California 92121
Telephone: (858) 623-9000 x700
Facsimile: (858) 623-9009

Notice of change of address shall be given by written notice in the manner set forth in this paragraph.

d. Indemnity. Developer agrees to defend, indemnify, protect, and hold harmless District and its governing boards, agents, officers and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to employees, agents or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent acts or omissions or willful misconduct of Developer or its agents, officers or employees, in performing the Work, or any part thereof, and all expenses of investigation and defending against same; provided, however, that Developer's duty to defend, indemnify and hold harmless shall not include any claims or liability arising from the negligent acts or omissions or willful misconduct of District or its governing board, agents, officers or employees. District and Developer agree that in the event of any joint or concurrent negligence, they will apportion any established or agreed upon liability proportionate to their respective degree of fault.

e. Applicable Law and Venue. This Agreement and each provision herein shall be interpreted in accordance with the laws of the State of California. The Parties agree that the proper venue for the resolution of any disputes under this Agreement shall be with the Superior Court of the County of San Diego.

f. Successors in Interest. The Agreement and all rights and obligations contained herein shall be in effect whether or not any or all parties to the Agreement have been succeeded by another entity, and all rights and obligations of the parties signatory to this Agreement shall be vested and binding on their successors in interest.

g. Counterparts. This Agreement may be executed in multiple counterparts, each or which counterpart, if fully executed, shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Agreement is in the physical possession of the party seeking enforcement thereof.

h. Effective Date. This Agreement shall not bind the parties and become effective until such time as the authorized representative of Developer has executed the Agreement, and District has approved and the authorized representative of District has executed this Agreement.

i. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto represent and warrant that: (i) such party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party; (iii) by so executing this Agreement, such party is formally bound to the provisions of any other Agreement to which said is bound.

IN WITNESS WHEREOF, this Agreement is executed by District and by Developer as of the date first above written.

OTAY WATER DISTRICT
A California Municipal Water District

By: _____
General Manager

Date: _____, 2012

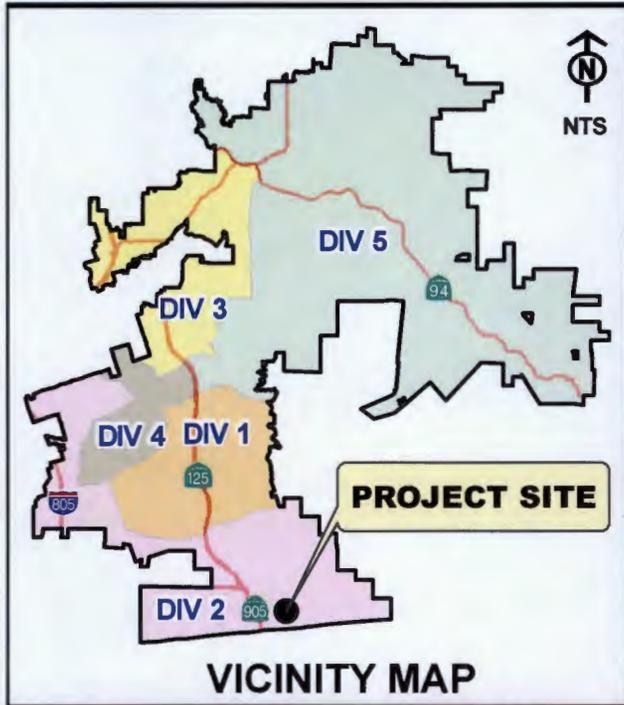
Approved as to Form:

_____ Attorney

INTERNATIONAL INDUSTRIAL PARK, INC.
A California Corporation

By: _____
David Wick
Vice-President

Date: _____, 2012



OTAY WATER DISTRICT
ALTA ROAD - LONE STAR ROAD TO CALZADA DE LA FUENTE
LOCATION MAP

CIP R2077

Exhibit A-2

Project Name: Alta Road North of Lone Star Road		
Location: Alta Road, County of San Diego		
Project Engineer: Bartolome J. Pastor		
OWD CIP Project No. R2077		
Date: March 2, 2012		
Project No. CG-4754 24-Inch Steel CML&C Recycled Water Pipeline		
Item No.	Description	Cost
1	Alta Consultants: Engineering design, construction, administration, and job closeout	\$ 21,745.00
2	JT Kruer & Company	\$ 3,000.00
3	Engineering Contingency	\$ 4,725.00
4	Basile Construction	\$ 886,492.16
5	Unknown Utility Allowance	\$ 15,000.00
Total		\$ 930,962.16

Reimbursement Estimate Amount: \$ 930,962.16

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 25 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.

**OTAY WATER DISTRICT
CAPITAL IMPROVEMENT PROGRAM**

EXHIBIT C-1

CIP Number: R2077

PROJECT TITLE:	RecPL - 24-Inch, 860 Zone, Alta Road - Alta Gate/Airway		
WORK ORDER NO:	n/a	DIRECTOR DIVISION:	2
PROJECT MANAGER:	Kennedy	I.D. LOCATION:	7
ORIGINAL APPROVED DATE:	5/23/2006	PRIORITY	1
RELATED CIP PROJECTS:	R2048, R2058, R2087, R2088	BUDGET AMOUNT:	\$4,500,000

DESCRIPTION OF PROJECT

Construction of approximately 9,300 feet 24-inch pipeline within the 860 Pressure Zone in Alta Road from the Alta Gate location to Airway Road. This project will be constructed as part of the Otay Mesa recycled water system.

JUSTIFICATION OF PROJECT:

This project will provide transmission capacity for development of Otay Mesa and link the planned 860-1 Reservoir with the recycled water transmission system in Otay Mesa.

COMMENTS:

Funding opportunity is the United States Bureau of Reclamation Water Reclamation and Reuse Program, Title XVI of P.L. 102-575.

FUND DETAIL:

FUNDING SOURCE:	Expansion	Betterment	Replacement	Total
Recycled	100%			100%
TOTAL	100%			100%

EXPENDITURE SCHEDULE (X \$1000):

PRIOR YEARS:	FY	FY	FY	FY	FY	FY	
TOTAL	2011	2012	2013	2014	2015	2016	TOTAL
\$624	\$1,750	\$2,121	\$5				\$4,500

**OTAY WATER DISTRICT
CAPITAL IMPROVEMENT PROGRAM**

EXHIBIT C-2

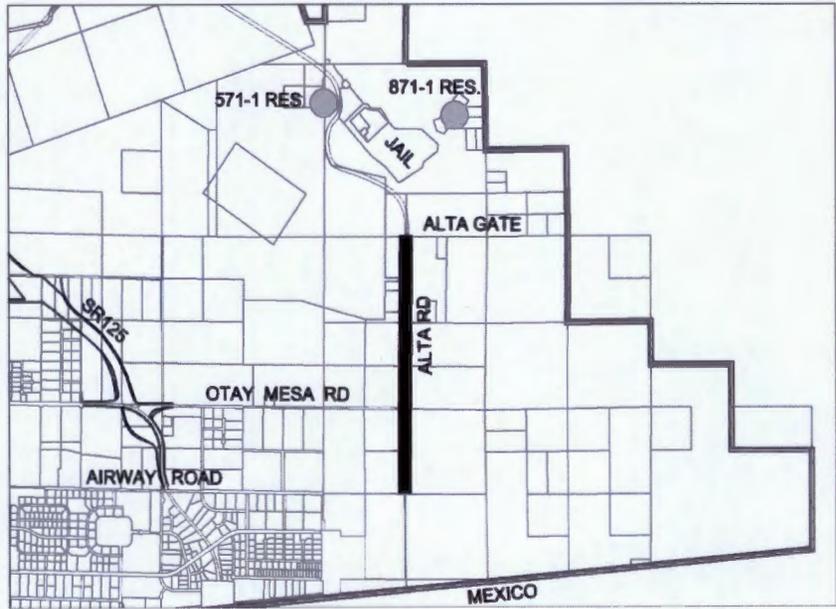
CIP Number: R2077

PROJECT SCHEDULE:	ESTIMATED START DATE:	ESTIMATED FINISH DATE:
PROJECT PHASE:		
PLANNING:	07/01	12/09
DESIGN:	01/10	06/11
CONSTRUCTION:	07/11	06/13

PROJECTED INCREMENTAL OPERATION EXPENDITURES SCHEDULE (\$):

FY	FY	FY	FY	FY	FY
2011	2012	2013	2014	2015	2016
			\$3,200	\$3,300	\$3,400

PROJECT LOCATION: Thomas Bros. Map: 1332 OWD Map Book: 39



Submitted By: Bob Kennedy **Date:** 2/19/2010