

Livermore Area Recreation and Park District

Staff Report

TO: Chair Boswell and Facilities Committee

FROM: Mathew Fuzie, General Manager

PREPARED BY: Linda VanBuskirk, Executive Assistant

DATE: July 10, 2024

SUBJECT: Contract Between Zone 7 of Alameda County Flood Control and Water Conservation District and the Livermore Area Recreation and Park District for a Treated Water Supply, for a 30-year Term

RECOMMENDATION: That the Facilities Committee review and provide direction to staff regarding authorizing the Board Chair or the General Manager to execute a Contract Between Zone 7 of Alameda County Flood Control and Water Conservation District and the Livermore Area Recreation and Park District for a Treated Water Supply, for a 30-year Term.

BACKGROUND: General Manager Mathew Fuzie will provide a verbal staff report.

Attachments:

- 1) Draft Contract Between Zone 7 and LARPD for a Treated Water Supply
- 2) Zone 7 Resolution No. 22-93 Adoption of the Treated Water Service Rates for Calendar Years 2023-2026

CONTRACT BETWEEN ZONE 7 OF ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND LIVERMORE AREA RECREATION AND PARK DISTRICT FOR A TREATED WATER SUPPLY

THIS CONTRACT, made and entered into this _____ day of _____ 2024, by and between ZONE 7 OF ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as "Zone 7", and LIVERMORE AREA RECREATION AND PARK DISTRICT, a direct retail customer hereinafter referred to as "Customer", together hereinafter referred to as "Parties".

RECITALS

WHEREAS, Zone 7 and Customer are parties to a Contract for Treated Water Supply, the term of which will expire on _____, 2054; and

WHEREAS, Customer and Zone 7 wish to renew their treated water service agreement on substantially the same terms and conditions as that prior agreement; and

WHEREAS, water provided pursuant to this agreement is purchased for use in the area and delivered through the facilities depicted on **Exhibit A** attached hereto and made a part of this agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto do agree as follows:

A. TERM OF CONTRACT

This Agreement shall remain in effect for a period of thirty (30) years from the date of execution. For two years following the expiration of the Agreement, and in the absence of a renewal or replacement agreement, Zone 7 will provide continued water deliveries under the terms and conditions described herein for a subsequent two-year term ("Renewal Period"). If no new agreement is executed during the Renewal Period, any future deliveries will be subject to renegotiation on all material terms of delivery, including cost, quantity, and quality.

B. TERMS OF WATER DELIVERY

Water will be available for purchase by Customer subject to the following conditions:

1. Service Area and Users. Water purchased under this Agreement is available for use in Customer's service area, as more specifically described in Exhibit A. The service area designated in Exhibit A may be modified by mutual agreement of Customer and Zone 7. Customer will not sell, lease, or otherwise transfer water purchased under this agreement to a third party without prior written approval from Zone 7.

2. Peak Deliveries. Water deliveries under this Agreement are subject to a maximum delivery rate of 160 gallons per minute (gpm). Zone 7 will operate its delivery and treatment systems in its sole discretion, with a goal of providing high-quality and reliable water supply to

all of its users, including Customer. Customer acknowledges that additional factors, including system capacity, customer demand, system maintenance requirements, and availability of supply may result in peak delivery rates less than 160 gpm. Customer may, from time to time, increase the number or size of metering for additional deliveries up to a maximum peak flow rate of 160 GPM, subject to payment of any fees due for meter installation, expansion or replacement pursuant to Zone 7's connection fee ordinance.

3. Alternative Water Supply. Customer will not purchase or lease water for use in Exhibit A from any third party without the prior written approval of Zone 7. Notwithstanding the forgoing, Customer may receive emergency deliveries from other sources for firefighting and other emergency purposes.

4. Deliveries Subject to Zone 7 Rules and Regulations. Water service shall be extended to Customer by Zone 7 pursuant to the Rules and Regulations adopted by the Board of Directors of Zone 7 in Resolution No. 159 adopted July 9, 1962, except as such Rules and Regulations are modified by this contract or are modified by subsequent resolutions adopted by said Board of Directors.

C. WATER QUANTITY & QUALITY

1. Water Quality. Treated water delivered to Customer under this Agreement shall be of comparable quality to that provided to other Zone 7 retail customers. In providing this supply, Zone 7 will comply with relevant regulatory standards for treated water supply established by the California Department of Health Services and the United States Environmental Protection Agency. Concerns regarding the quality of water delivered under this agreement should be directed to Zone 7's Water Quality Manager.

2. Water Quantity. Customer acknowledges that the quantity and timing of water delivered under this Agreement is subject to the availability of water under Zone 7's existing water entitlements and regulatory restrictions, including but not limited to the November 20, 1961 contract between Zone 7 and the State of California for State Water Project supply. Zone 7 does not guarantee a fixed quantity of supply under this Agreement. Customer acknowledges that water deliveries under this Agreement may be reduced in response to shortages, facilities outages, or other delivery constraints consistent with Zone 7's Reliability Policy and Water Shortage Contingency Plan and governing water delivery policies. Zone 7 shall give Customer written notice as far in advance as possible of any reduction in deliveries as necessary due to a water supply shortage or facility outage.

D. CHARGES FOR WATER

Water delivered under this agreement is subject to rate schedules adopted by the Zone 7 Board of Directors, which shall include both fixed and volume-based charges.

1. Minimum Charges. Customer's minimum charge each month shall be calculated in accordance with the rate schedule for fixed charges as adopted by the Board. The fixed charge shall be allocated to Customer based on a two-year rolling average of actual use. The monthly

minimum charge shall be 1/12 of the annual fixed charge adopted by the Board.

2. Review and Update of Rate Schedule. The Board shall review the rate schedule at a regular Board meeting and endeavor to adopt the rate schedule at least sixty (60) days prior to January 1 of the calendar year for which the rate schedule is to be effective. If no new rate schedule has been adopted by January 1, the rate schedule in effect for the prior calendar year shall be continued and in full force and effect until otherwise modified by the Board.

3. Timing and Delinquency of Payments. Zone 7 will issue monthly invoices for deliveries under this Agreement. Invoices are due and payable within 30 days. Delinquent amounts shall accrue interest at a rate of 5% monthly. Accounts delinquent for more than 90 days are subject to the suspension of service by an action of the Board, following notice and an opportunity to be heard.

E. FACILITIES

Customer shall take water deliveries through turnout facilities and distribution pipeline ("Facilities") shown on Exhibit A attached hereto.

1. Access. Customer will provide Zone 7 with permanent rights-of-way and right of ingress thereto and egress therefrom on and across Customer owned or controlled property for the purposes of maintaining the Facilities.

2. Future Expansions of Customer Turnouts. Customer is responsible for the costs of any future maintenance, enlargements, improvements and/or other modifications to said Customer's turnout facilities necessary and may be necessary meet the needs of Customer. Any such modifications must be approved by Zone 7 prior to implementation.

3. Future Distribution System Replacement and Repair Costs. Customer's share of total cost of distribution pipeline capital repairs or replacement shall be based on the ratio of maximum peak flow rate capacity to be utilized by Customer and the calculated flow rate capacity of the distribution pipeline, whereby the maximum peak flow rate capacity to be utilized by Customer is 160 GPM and the calculated flow rate capacity of the distribution pipeline is 800 GPM (total capacity for all participating parties).

F. STANDARD TERMS

1. Entire Agreement. This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Agreement.

2. Amendment. This Agreement may be modified or amended only by a subsequent written agreement approved and executed by both parties. Amendment by the Agency requires approval by its Board of Directors

3. Construction. The parties agree that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this

Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

4. Assignment. The rights and duties of the parties under this Agreement shall not be assigned or delegated without the prior written consent of the other party. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void.

5. Binding on Successors. This contract is not for the benefit of any person, corporation or other entity, other than the parties hereto, and no person, corporation, or other entity except the parties hereto, shall have any rights or interest in or under this contract unless otherwise specifically provided herein. Customer shall not assign or transfer any rights or privileges under this contract, either in whole or in part, without the prior written consent of Zone 7, or make any transfer of all or any part of its water system, or allow the use thereof, in any manner whereby any provisions of this contract will not continue to be binding on it, its assignee or transferee, or such user of the system. This contract and the rights and responsibilities provided for herein shall be binding on the successors and assigns of the parties hereto.

6. No Third Party Beneficiaries. This Agreement shall not be construed to create any third-party beneficiaries. This Agreement is for the sole benefit of the parties, and their permitted successors, transferees and assignees, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.

7. Indemnification. Customer will protect, defend, hold harmless and indemnify Zone 7, its assigns, directors, officers, employees, and agents from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, and expenses including but not limited to reasonable attorneys' fees and costs (collectively, "Claims"), arising out of or related to Zone 7's provision of water service under this Agreement, including but not limited to Claims by Customer or any third party related to the control, carriage, handling, use, disposal, or distribution of water hereunder.

8. Notices. Any notice, invoice or other communication that is required or permitted to be given under this Agreement shall be in writing and sent electronically or sent by prepaid, first-class U.S. mail to the addresses below. Notice shall be deemed effective upon receipt if delivered personally or upon deposit with the U.S. Postal Service, if sent by mail. Any party may change its address by notifying the other party of the change in the manner provided above.

<p>Agency:</p> <p>General Manager or Designee Zone 7 of Alameda County Flood Control and Water Conservation District 100 N. Canyons Parkway Livermore, CA 94551 Email Address: administration@zone7water.com</p>	<p>Customer:</p> <p>General Manager Livermore Area Recreation & Park District 4444 East Avenue Livermore, CA 94550 Email Address: info@larpd.org</p>
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9. Severability. In the event that any of the provisions of this Agreement are held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and any invalid or unenforceable provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provisions valid and enforceable.

10. Waiver. The failure of either party hereto to enforce any of the provisions of this agreement, or to enforce any right or option which is herein provided, shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this agreement or any part hereof, or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be legally binding and which shall collectively constitute the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the date and year first above written.

LIVERMORE AREA RECREATION AND PARK DISTRICT

By _____
Chairman, Board of Directors

DRAFT

ZONE 7 OF ALAMEDA COUNTY FLOOD
CONTROL AND WATER CONSERVATION DISTRICT

By _____
General Manager

Exhibit A

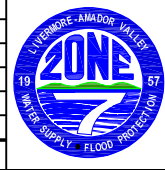
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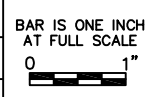
- LEGEND:**
- TURNOUT
 - ISOLATION VALVES
 - ZONE 7 PIPELINES
 - ZONE 7 SYCAMORE PIPELINE

\\ZONE7-FILE\working_files\WSE\Agreements-Long Term\Treated Water Contracts\Direct customer Renewals\Srv Area Maps\LARPD\LARPD Water Service Area

Rev	Date	By	Description
1-16-24	09:34am	gbriones	XREFS: CACLIV20 (7);



Designed
Drawn
ESB
Checked
SS
Date
OCTOBER 2022



ZONE 7 WATER AGENCY
100 NORTH CANYONS PARKWAY
LIVERMORE CALIFORNIA, 94551

L.A.R.P.D. WATER SERVICE AREA
TURNOUT AND DISTRIBUTION
PIPELINE FACILITIES

SHEET NO.
1 OF 1

DRAWING NO.

FILE NO.
WC-302

PROJECT NO. XXX-XX

ZONE 7
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

BOARD OF DIRECTORS

RESOLUTION NO. 22-93

INTRODUCED BY DIRECTOR PALMER
SECONDED BY DIRECTOR FIGUERS

SCENARIO 4B – 5.5%

**Adoption of the Treated Water Service Rates for
Calendar Years 2023, 2024, 2025, and 2026**

WHEREAS the Agency engaged an independent water rate consultant, Raftelis, to prepare a Treated Water Rates Study to identify the cost of providing wholesale treated water service and to recommend treated water rates for Calendar Years (CY) 2023, 2024, 2025, and 2026.

WHEREAS the study recommends increasing fixed charge revenue recovery from 42.5% in CY 2022 to 45% by CY 2023.

WHEREAS, in FY 2022-23, additional funding of \$2,900,000 for the Stoneridge Well PFAS Facility project is required.

NOW, THEREFORE BE IT RESOLVED by the Board of Directors of Zone 7 of the Alameda County Flood Control and Water Conservation District to adopt the following treated water rate schedules for Calendar Years 2023, 2024, 2025, and 2026.

FIRST, a volume-based water delivery charge, per the table below for all metered water delivered to each customer per month per 100 cubic feet (CCF) for CY 2023, CY 2024, CY 2025, and CY 2026.

Calendar Year	2023	2024	2025	2026
Volume-based Rate per CCF	\$2.27	\$2.34	\$2.44	\$2.47

SECOND, increasing fixed charge revenue recovery from 42.5% in CY 2022 to 45% by CY 2023.

Calendar Year	2023	2024	2025	2026
Fixed Revenue Recovery	45%	45%	45%	45%

THIRD, a fixed charge of \$27,131,280 for Retailers and \$264,160 for Direct Customers for CY 2023 per the tables below. Actual Fixed Charge monthly billing will be 1/12 of the annual amount.

Fixed Charge per Retailer	CY 2023
City of Pleasanton	\$9,107,878
Dublin San Ramon Services District	\$8,444,518
California Water Service Company	\$4,771,322
City of Livermore	\$4,807,562
Total Retailer Fixed Charge	\$27,131,280

Fixed Charge per Direct Customer	CY 2023
Lawrence Livermore Lab	\$142,620
L.A.R.P.D.	\$2,147
Veterans Hospital	\$84,349
Wente Brothers	\$23,050
State of California DWR	\$-
East Bay Regional Park District	\$11,994
Total Direct Customer Fixed Charge	\$264,160

FOURTH, fixed charges per the table below for CY 2024, CY 2025, and CY 2026. The Total Fixed Charges for these years shall not be changed without Board approval, however the actual allocation among Retailers and Direct Customers may change based on updated two-year rolling average of proportional use. Actual Fixed Charge monthly billing will be 1/12 of the annual amount.

Calendar Year	2024	2025	2026
Total Retailer Fixed Charges	\$29,438,577	\$31,512,875	\$32,966,450
Total Direct Customer Fixed Charge	\$265,030	\$293,014	\$320,396
Total Fixed Charges	\$29,703,607	\$31,805,889	\$33,286,846

FIFTH, authorize the General Manager to the reallocate the CY 2024, CY 2025 and CY 2026 Fixed Charge per Retailer and Direct Customer based on updated two-year rolling average of proportional use, to be determined at the end of FY 2022-23 for the CY 2024 charges, FY 2023-24 for the CY 2025 charges and FY 2024-25 for the CY 2026 charges.

SIXTH, authorize the following additional capital funding transfer from Fund 100 – Water Enterprise Operations to Fund 120 – Water Enterprise Renewal/Replacement & System-Wide Improvements.

Fiscal Year	2022-23	2023-24	2023-24	2025-26
Amount	\$725,000	\$725,000	\$725,000	\$725,000

BE IT FURTHER RESOLVED by the Board of Directors of Zone 7 of the Alameda County Flood Control and Water Conservation District that the following rate schedule for Recharge, Temporary Treated Water and In-Lieu services be adopted:

FIRST, for Recharge services a recharge fee per the table below for CY 2023, CY 2024, CY 2025, and CY 2026, which is the unit cost of replenishment water to achieve full cost of recovery when it is necessary to replenish the main groundwater basin when water is pumped in excess of a retailers Groundwater Pumping Quota or Independent Quota.

Calendar Year	2023	2024	2025	2026
Recharge Fee per AF	\$1,702	\$1,638	\$1,654	\$1,714

SECOND, the Temporary Treated Water service rate is equivalent to the treated water volume-based charge plus the weighted fixed charge. The rates for CY 2023, CY 2024, CY 2025, and CY 2026 are per the table below:

Calendar Year	2023	2024	2025	2026
Temporary Treated Water per AF	\$1,799	\$1,856	\$1,934	\$1,956

THIRD, for Temporary Treated Water service an initial service establishment charge \$182 per turnout for CY 2023, \$188 for CY 2024, \$193 for CY 2025 and \$199 for CY 2026 for each new direct connection to the Zone system; and a monthly meter service charge of \$21.00 per turnout for CY 2023, CY 2024, CY 2025, and CY 2026; and

FOURTH, for In-Lieu water services, a water rate of \$120 per AF for CY 2023, CY 2024, CY 2025 and CY 2026, and authorize the General Manager to offer to any treated water contractor who takes delivery of treated water from Zone 7 in lieu of pumping groundwater per their Groundwater Pumping Quota should appropriate circumstances be identified; and Zone 7 may offer this rate to its treated water contractors who have a Groundwater Pumping Quota (GPQ) (including well pumping capacity) if sufficient surface water is available and if it is deemed financially and operationally prudent; and, In-Lieu quantities will be limited to each contractor's GPQ plus any accumulated carry-over.

BE IT FURTHER RESOLVED that said water rate schedules for all treated water service as adopted herein shall be effective on February 1, 2023, and shall end on the next effective date for such water rates as adopted by the Board. Rates for CY 2024 – 2026 will take effect on January 1 of that year.

BE IT FURTHER RESOLVED that the Board shall revisit the rate schedule for calendar years 2025 and 2026, through a public process, with any changed rates adopted by November 2024.

BE IT FURTHER RESOLVED that the General Manager of Zone 7 of the Alameda County Flood Control and Water Conservation District is hereby authorized to continue to enter into, renew, modify, and otherwise administer all Temporary Treated Water service agreements in

accordance with said rate schedules adopted herein and as may be modified from time to time.

ADOPTED BY THE FOLLOWING VOTE:

AYES: DIRECTORS BENSON, FIGUERS, GAMBS, PALMER, RAMIREZ HOLMES


NOES: DIRECTORS GREEN, SANWONG

ABSENT: NONE

ABSTAIN: NONE

I certify that the foregoing is a correct copy of a Resolution adopted by the Board of Directors of Zone 7 of the Alameda County Flood Control and Water Conservation District on November 16, 2022.

DocuSigned by:

By: 
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President, Board of Directors