

City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: FEBRUARY 12, 2019
FROM: PUBLIC UTILITIES DEPARTMENT WARDS: ALL
**SUBJECT: AGREEMENT FOR THE SALE OF EMERGENCY POTABLE WATER BETWEEN
THE CITIES OF NORCO AND RIVERSIDE FOR A FIVE-YEAR TERM**

ISSUES:

Approve the Agreement for the Sale of Emergency Potable Water between the City of Riverside and the City of Norco for a five-year term with an additional and automatic five-year renewal unless either party terminates the Agreement in writing.

RECOMMENDATIONS:

That the City Council:

1. Approve the Agreement for the Sale of Emergency Potable Water between the City of Riverside and the City of Norco for a five-year term with an additional and automatic five-year renewal unless either party terminates the Agreement in writing; and
2. Authorize the City Manager, or his designee, to execute the Agreement.

BOARD RECOMMENDATION:

On December 10, 2018, the Board of Public Utilities, with eight members present, unanimously voted to recommend that the City Council approve the Agreement for the Sale of Emergency Potable Water between the City of Riverside and the City of Norco for a five-year term with an additional and automatic five-year renewal unless either party terminates the Agreement in writing; and authorize the City Manager or his designee to execute the Agreement.

Following discussion, the Board of Public Utilities added a third recommendation which directed staff to return with a request to terminate the Agreement with a 30-day notice, in the event that a potable water sales agreement is executed with the City of Norco.

BACKGROUND:

On November 14, 2016, the City of Riverside Board of Public Utilities approved the construction of the Arlington Avenue 16-inch Water Main Extension Project to construct approximately 6,900 LF of 16-inch water main to extend service to the Riverside city limits immediately east of the city

limits of Norco. The project would allow RPU to serve customers within RPU's service area who are currently being served by the City of Norco, and provide for an interconnection with the City of Norco for emergency potable water as well as potential future water sales. RPU completed construction of the pipeline in September 2017 and has been working with the City of Norco to develop an agreement for the sale of emergency potable water. Both agencies wish to construct an interconnection, or intertie, between the potable water systems operated by RPU and Norco. The interconnection will be located southwest of the intersection of Arlington Avenue and Crestview Drive. The interconnection will have the ability to convey water in either direction to either city.

DISCUSSION:

Under the Terms of the Agreement for the Sale of Emergency Potable Water (Agreement), the amount of emergency water delivered from one agency to the other will not exceed 200 acre-feet per year unless the agencies agree otherwise. This agreement will help improve the reliability to both agencies in the event of a loss of water due to a pipeline shutdown, mechanical or electrical failure of water system equipment, loss of an existing water supply, or to overcome short-term water quality impediments.

Emergency water shall not be provided for longer than 60 calendar days without written approval of the selling party. Under the Agreement, both agencies acknowledge that the selling party shall have the sole discretion to determine what amount of water, if any, to sell to the purchasing party in case of emergency and can exercise that discretion for any reason.

In an effort to minimize direct payments, water received through the interconnection shall be reimbursed by an equal quantity of water returned from the purchasing agency back to the selling agency. These reimbursements shall be completed within 180 days after the emergency has concluded. Any failure to reimburse the other party within the required 180-day period may be assessed at the Metropolitan Water District's current Tier 1 rate for treated potable water for the quantity delivered.

RPU will design and construct the interconnection and the cost will be shared between both agencies. RPU and Norco shall own and maintain their respective portions of the interconnection. The intertie piping and appurtenances are currently being designed and will be brought back for Board authorization for construction at a future date.

This agreement will also provide the opportunity for a future long-term water purchase agreement between the two agencies. Upon execution of such an agreement with the City of Norco, staff will return to the Board of Public Utilities and City Council with a request to terminate the Agreement for the Sale of Emergency Potable Water with a 30-day notice.

FISCAL IMPACT:

There is no fiscal impact associated with this item. The interconnection is currently in design by RPU staff, and will be brought back for Board of Public Utilities authorization once the project is ready for construction.

Prepared by: Todd M. Corbin, Utilities General Manager
Certified as to
availability of funds: Edward Enriquez, Chief Financial Officer/City Treasurer
Approved by: Al Zelinka, FAICP, City Manager
Approved as to form: Gary G. Geuss, City Attorney

Attachments:

1. Agreement for the Sale of Emergency Potable Water – Cities of Norco and Riverside
2. Minutes from December 10, 2018 Board of Public Utilities Meeting
3. Presentation

AGREEMENT FOR THE SALE OF EMERGENCY POTABLE WATER

CITIES OF NORCO AND RIVERSIDE

1. Parties and Dates

This Agreement regarding the Sale of Emergency Potable Water ("Agreement") is entered into as of the 21st day of November, 2018, by and between CITY OF NORCO, a California municipal corporation ("Norco") and CITY OF RIVERSIDE, a California charter city and municipal corporation located within Riverside County, California ("Riverside"). Norco and Riverside may be referred to individually as "Party" or collectively as "Parties."

2. Recitals

- 2.1** Riverside provides potable water service to its customers within its city limits as well as outside of its city limits to certain customers located within the County of Riverside. Norco provides potable water service to its customers within its city limits as well as outside of its city limits to certain customers within its service area located in the County of Riverside.
- 2.2** Both Parties wish to construct an interconnection, or inter-tie, between the potable water system operated by Riverside and the potable water system operated by Norco. The interconnection will be located near the intersection of Arlington Avenue and Crestview Drive and will be designed and constructed to have the ability to convey water supplies between the Parties in the event of an emergency.
- 2.3** The Parties wish to enter into this Agreement in order for Riverside to provide such emergency potable water service to Norco or for Norco to provide such emergency potable water service to Riverside on a temporary basis. In the future, Riverside and Norco may consider other mutual agreements related to the sale of wholesale or surplus potable water supplies.

NOW, THEREFORE, in consideration of the preceding promises and the mutual covenants thereafter contained, and for other good and valuable consideration, the Parties agree as follows:

3. Terms

- 3.1 Term.** The term of this Agreement shall commence on the date first written above and, unless otherwise terminated pursuant to the terms and conditions of this Agreement, shall continue for a period of five (5) years. This Agreement shall automatically renew for a successive five (5) year period unless either Party provides notice of termination to the other in writing, at least thirty (30) calendar days prior to the termination date of the then-current term Agreement. However, this Agreement may be terminated at any time pursuant to Section 3.8 of this Agreement.
- 3.2 Amount of Water; Meter; Delivery Point.** Subject to the other terms of this Agreement, the selling Party agrees to make available to the purchasing Party water supplies necessary to assist the purchasing Party to serve its customers because of an emergency, as further defined herein. The amount of emergency water delivered from one Party to another shall not exceed more than 200 acre-ft/yr, unless the parties agree

otherwise. For the purposes of this Agreement, “emergency” shall not be limited to a water shortage emergency as declared by the State of California. However, the receiving Party understands and acknowledges that the selling Party’s primary responsibility is to serve its own customers. Accordingly, the selling Party shall have the sole discretion to determine what amount of water, if any, to sell to the purchasing Party in case of emergency. The selling Party can exercise that discretion for any reason, including determining whether the sale of such water will adversely affect the quality, reliability or cost of service related to water deliveries by selling Party to its retail or wholesale customers and/or cause selling Party to violate the terms of any other obligations with respect to the production, treatment or delivery of water. The Parties further agree that the precise quantity and pressure of water delivered from the selling Party to the purchasing Party may also vary due to climate conditions, water supply, system availability and other conditions. Water shall ordinarily be delivered through the interconnection near Arlington Avenue and Crestview Drive which will serve as a two-way connection with two separate meters owned and maintained by each Party. Riverside will make available to Norco flow and pressure signals for this intertie from its SCADA system. Norco will be responsible for their communication hardware. The right to use such connection and take water shall be subject to the terms and conditions herein.

3.2.1 Construction of Interconnection. Riverside will design and construct the interconnection and both Parties shall split the design and construction costs of the interconnection. Riverside and Norco shall own and maintain their respective portions of the interconnection within their Service Areas.

3.3 Request Procedure. Both Parties may have a need for emergency water to serve its customers near the intersection of Arlington Avenue and Crestview Drive in the County of Riverside. When emergency water, as defined in Section 3.4, is required, the requesting Party shall do its best to request emergency water in writing or by email including the details describing the need for delivery of emergency water, desired flowrate, duration, and start and stop dates. Upon such request, selling Party shall provide its availability, start and stop dates, estimated duration of emergency water sale, flow rate, and any other details describing the need for delivery of emergency water to the purchasing Party. The selling Party will confirm in writing or by email their availability to provide the requested emergency water. If requesting Party does not have sufficient time to make such request in writing, requesting Party may make a verbal request that shall then be subsequently confirmed in writing or by email. Selling Party has no obligation to respond until such request is received in writing or by email, but shall make a reasonable effort to review the request pending receipt of the written documentation. The current staff list and contact information for both Parties is included as Exhibit ‘A’.

3.4 Definition of Emergency. Emergency water service is defined as a temporary need of water due to loss of an existing water supply, failure of water supply or distribution pipelines, mechanical or electrical failure of water system equipment, or to overcome short term water quality impediments. Emergency water shall not be provided for longer than 60 calendar days without written approval of the selling Party.

3.5 Payments for Water and Maintenance Costs. Both Parties recognize each agency has multiple sources of potable water supply that have variable costs associated with producing said water. Therefore, both Parties agree to minimize direct payments for water provided to either party to the extent possible by instead returning an equal quantity of water for any water received through the connection. The returned quantity of water shall be completed within 180 days after said emergency has concluded. Should any

party fail to reimburse the other party within the required 180-day period, then said party may be assessed Metropolitan Water District's current Tier 1 rate for treated potable water for the quantity delivered. All deliveries of emergency water shall be tracked by Riverside per event and said data provided to both parties by formal letter. Any invoices should be sent to the addresses shown in Section 3.19 below.

- 3.6 **Water Quality.** All water supplied pursuant to this Agreement shall be of good and sufficient quality, and shall comply with any and all applicable standards and laws. Water sold for potable/public drinking water uses shall conform to all applicable local, state and federal drinking water laws and standards.
- 3.7 **Interruption of Water Supply.** The Parties acknowledge and agree that from time to time during the term of the Agreement it may be necessary for the selling Party to interrupt the flow of water to the purchasing Party. The selling Party retains the right, in its sole discretion, to interrupt the flow of water any time for any reason; provided, however, that the selling Party shall exercise best efforts to minimize, to the extent possible, the frequency and duration of any such interruption. The selling Party will also exercise its best efforts to notify the purchasing Party at least 24 hours in advance of any substantial reduction or cessation of water supply deliveries to the purchasing Party.
- 3.7 **Insurance.** The Parties have reviewed the insurance or self-insurance programs of each other and are satisfied that the same or substantially similar coverage or programs shall remain in effect during the term of this Agreement.
- 3.8 **Termination.** Either Party may terminate this Agreement, for any or no reason, upon the expiration of thirty (30) calendar days after written notice of termination is provided to the other Party.
- 3.9 **No Assignment.** Neither Party may assign its rights under this Agreement.
- 3.10 **Indemnification.** Riverside and Norco shall each defend, indemnify and hold the other Party and its officials, officers, employees, consultants, subcontractors, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, to the extent arising out or incident to any negligent acts omissions or willful misconduct of the indemnifying party or its officials, officers, employees, consultants, subcontractors, volunteers and agents arising out of or in connection with the performance of this Agreement, including but not limited to, the negligent or willful failure to provide water which does not meet all federal, state and local laws related to water quality.
- 3.11 **Entire Agreement.** This Agreement contains the entire agreement between the Parties respecting the subject matter thereof and complements all prior understandings and agreements, whether oral or in writing, between the Parties respecting the subject matter of this Agreement.
- 3.13 **Severability.** In any term, covenant, condition or provisions of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any other person or circumstance, shall remain in full force and affect and shall in no way be affected, impaired or invalidated thereby.

- 3.14 Waiver of Covenants, Conditions and Remedies.** The waiver by one (1) Party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it or any other covenant or condition under this Agreement. The waiver by either or both Parties of the time for performing any act under this Agreement shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.
- 3.15 Amendment.** This Agreement may be amended at any time by the written agreement of the Parties. All amendments and changes of this Agreement, in all or in part, and from time to time, shall be binding upon the Parties despite any lack of legal consideration, so long as the same shall be in writing and duly approved and executed by the Parties hereto.
- 3.16 Relationship of Parties.** The Parties agree that their relationship is one of mutual assistance and that nothing contained herein shall render either Party, the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization between the Parties hereto, nor is either Party granted any right or authority to assume or create any obligation or responsibility on behalf of the other Party, nor shall either Party be in any way liable for any debt of the other.
- 3.17 No Third Party Benefit.** This Agreement is intended to benefit only the Parties hereto and no other person or entity has or shall acquire any rights hereunder.
- 3.18 Further Acts.** Each Party hereby agrees that it shall, upon request of the other, execute and deliver such further documents (in form and substance reasonably acceptable to the Party to be charged) and do such other acts and things as are reasonably necessary and appropriate to effectuate the terms and conditions of this Agreement.
- 3.19 Notices.** All notices and demands that either Party is required or desires to give to the other shall be given in writing by United States registered or certified mail, return receipt requested, by personal delivery, by facsimile with confirmation of receipt, or express courier service or by electronic mail to the street address or facsimile number set forth below for the respective Party or any electronic mail address subsequently given, provided that if any Party gives notice of a change of name or address, notices to that Party shall thereafter be given as set forth in that notice. All notices and demands shall be effective upon receipt or upon refusal to accept delivery.

City of Norco
2870 Clark Avenue
Norco, California 92860
Attention: Public Works
Director

City of Riverside
3701 University Ave. 3rd Floor
Riverside, CA 92501
Attention: Public Utilities
General Manager

3.20 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY OF RIVERSIDE

CITY OF NORCO

By: _____
City Manager

By: _____
Ted Hoffman - Mayor

ATTEST:

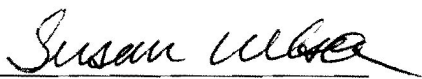
ATTEST:

By: _____
City Clerk

By: _____
Cheryl Link - City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: 
Assistant City Attorney

By: _____
John Harper - City Attorney

EXHIBIT 'A'

**AGREEMENT FOR THE SALE OF
EMERGENCY POTABLE WATER**

**CITIES OF NORCO AND RIVERSIDE
CONTACT LIST**

City of Riverside

David Garcia
Water Operations Manager
(951) 351-5612 (Office)
(951) 315-9391 (Cell)
dagarcia@riversideca.gov

Robin Glenney
Water Quality Administrator
(951) 351-6344 (Office)
(951) 288-2628 (Cell)
rglenney@riversideca.gov

Cliff Bellinghausen
Chief Water Operator
(951) 351-6318 (Office)
(909) 223-2128 (Cell)
cbellinghausen@riversideca.gov

John Nicols
Senior Water Operator
(951) 351-6370 (Office)
(951) 830-7397 (Cell)
jnicols@riversideca.gov

City of Norco

Terry Piorkowski
Public Works Superintendent
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951-545-7877 (Cell)
tpiorkowski@ci.norco.ca.us

Derek Lacombe
Public Works Supervisor
951-270-5605 (Office)
951-258-7029 (Cell)
dlacombe@ci.norco.ca.us

David Ortiz
Water Quality Control Tech
951-206-7053 (Cell)
dortiz@ci.norco.ca.us

DISCUSSION CALENDAR

- 6 Recommend that the City Council approve the Agreement for the sale of emergency potable water between the Cities of Norco and Riverside for a five-year term

Water Engineering Manager Michael Plinski reported on the proposed interconnection between the potable water systems operated by RPU and Norco and terms of the agreement for the sale of emergency potable water between the two cities and answered questions from the Board.

Concerns of the Board were the following:

- The water received through the interconnection should be reimbursed by cash value rather than by an equal quantity of water;
- An update on the Norco water quality that would be reimbursed; and
- Desires a potable water Surplus Sales Agreement executed with the City of Norco.

The Board requested that a recommendation No. 3 be added:

"Direct staff to return with a request to terminate the Agreement, with a 30 day notice, if a potable water sales agreement is executed with the City of Norco".

Following discussion, the Board of Public Utilities:

1. Recommended that the City Council approve the Agreement for the Sale of Emergency Potable Water between the City of Riverside and the City of Norco for a five-year term with an additional and automatic five-year renewal unless either party terminates the agreement in writing; and
2. Recommended that the City Council authorize the City Manager, or his designee, to execute the Agreement; and
3. Directed staff to return with a request to terminate the Agreement, with a 30 day notice, if a potable water sales agreement is executed with the City of Norco.

Motion – Austin. Second – Walcker.

Ayes: Russo-Pereyra, Austin, Crohn, Foust, Hernandez, Ocegüera, O'Farrell, and Walcker.

Absent: Elizabeth Sanchez-Monville (absence due to family sick)