

Marina Coast Water District
Agenda Transmittal

Agenda Item: 8-B

Meeting Date: February 8, 2011

Submitted By: Lloyd Lowrey, District Counsel
Reviewed By: Carl Niizawa

Presented By: Carl Niizawa

Agenda Title: Consider Adoption of Resolution No. 2011-15 to Approve a Fee Agreement Between the Marina Coast Water District and the Redevelopment Agency of the City of Marina for the Preparation of a Water Supply Assessment for the Downtown Vitalization Specific Plan

Detailed Description: The Board of Directors is requested to authorize the Fee Agreement Between the Marina Coast Water District and the Redevelopment Agency of the City of Marina for the Preparation of a Water Supply Assessment (WSA) for the Downtown Vitalization Specific Plan for the payment of fees and costs associated with the preparation of the WSA requested by the Redevelopment Agency of the City of Marina.

Rincon Consultants is currently preparing the Downtown Vitalization Specific Plan (Specific Plan) for the Redevelopment Agency of the City of Marina (the "Project"). In conjunction with the Specific Plan, Rincon is preparing an environmental impact report (EIR), which is required by the California Environmental Quality Act (CEQA) Guidelines to evaluate projects, such as the Specific Plan, that have the potential to have significant environmental impacts.

Pursuant to SB 610 in 2001, Chapter 643, Statutes of 2001 Sections 10910 – 10912 of the California Water Code, any city or county that determines that a project, as defined in Section 10912, is subject to the California Environmental Quality Act (CEQA) under Section 21080 of the Public Resources Code, must identify any public water system that may supply water for the project and the public water system must prepare and adopt a WSA containing the information required by Section 10910. The Redevelopment Agency of the City of Marina has submitted a request to MCWD for a WSA.

Section 6.16.030 of the Marina Coast Water District Code requires the MCWD be reimbursed for the expense of preparing a WSA. Under the applicable law, MCWD may collect and the Redevelopment Agency may pay the cost of preparing the WSA."

Staff of the two agencies have worked together to draft a proposed Fee Agreement, which is attached. The Fee Agreement provides for the Redevelopment Agency to pay the costs of preparing and delivering the WSA.

Environmental Review Compliance: None required.

Prior Committee or Board Action: None.

Board Goals/Objectives: *Strategic Plan, Mission Statement - Providing high quality water, wastewater and recycled water services to the District's expanding communities through management, conservation and development of future resources at reasonable costs.*

Financial Impact: Yes No

Funding Source/Recap: The District will use the reimbursement line item to capture the expenses. The fees collected from the Redevelopment Agency of the City of Marina will be used to offset the expenditures.

Material Included for Information/Consideration: Resolution No. 2011-15; and, Fee Agreement.

Staff Recommendation: The Board of Directors considers adoption of Resolution No. 2011-15 to approve Fee Agreement between the Marina Coast Water District and the Redevelopment Agency of the City of Marina for the Preparation of a Water Supply Assessment for the Downtown Vitalization Specific Plan.

Action Required: Resolution Motion Review
(Roll call vote is required.)

Board Action

_____ Resolution No _____ Motion By _____ Seconded By _____

Ayes _____ Abstained _____

Noes _____ Absent _____

Reagendized _____ Date _____ No Action Taken _____

February 8, 2011

Resolution No. 2011 - 15
Resolution of the Board of Directors
Marina Coast Water District
Approving Fee Agreement Between the Marina Coast Water District and the Redevelopment
Agency of the City of Marina for the Preparation of a Water Supply Assessment for the
Downtown Vitalization Specific Plan

RESOLVED by the Board of Directors (“Directors”) of the Marina Coast Water District (“District”), at a special meeting duly called and held on February 8, 2011, at the business office of the District, 11 Reservation Road, Marina, California as follows:

WHEREAS, the Redevelopment Agency of the City of Marina requested that the District direct the preparation of a Water Supply Assessment (WSA) for the Downtown Vitalization Specific Plan; and,

WHEREAS, the District estimates that it will incur expenses in an amount estimated at \$14,900 to prepare and deliver the Specific Plan WSA; and,

WHEREAS, Section 6.16.030 of the Marina Coast Water District Code requires the MCWD be reimbursed for the expense of preparing a WSA; and,

WHEREAS, the expenses of the preparation of a WSA is a discretionary fee and thereby chargeable to the Redevelopment Agency.

NOW, THEREFORE, BE IT RESOLVED, that the Directors of the Marina Coast Water District do hereby approve the Fee Agreement between the Marina Coast Water District and the Redevelopment Agency of the City of Marina for the preparation of a Water Supply Assessment for the Downtown Vitalization Specific Plan; and

BE IT FURTHER RESOLVED, that the Directors authorize the General Manager and/or Deputy General Manager/District Engineer to take all actions and execute an Agreement with Schaaf & Wheeler who provided a Scope-of-Work/Fee Schedule for a not-to-exceed amount of \$14,900 for the Specific Plan WSA and execute all documents as may be necessary or appropriate to give effect to this resolution.

PASSED AND ADOPTED on February 8, 2011 by the Board of Directors of the Marina Coast Water District by the following roll call vote:

Ayes: Directors _____

Noes: Directors _____

Absent: Directors _____

Abstained: Directors _____

William Y. Lee, President

ATTEST:

Jim Heitzman, Secretary

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Marina Coast Water District hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 2011-15 adopted February 8, 2011.

Jim Heitzman, Secretary

FEE AGREEMENT BETWEEN THE MARINA COAST WATER
DISTRICT AND THE REDEVELOPMENT AGENCY OF THE
CITY OF MARINA FOR THE PREPARATION OF
A WATER SUPPLY ASSESSMENT FOR THE
DOWNTOWN VITALIZATION SPECIFIC PLAN

THIS AGREEMENT, is made and entered into on _____, 2011, by and between the Redevelopment Agency of the City of Marina, hereinafter referred to as "Agency", and the Marina Coast Water District, hereinafter referred to as "MCWD," as follows:

Recitals

A. Rincon Consultants is currently preparing the Downtown Vitalization Specific Plan (Specific Plan) for the Agency (the "Project").

B. In conjunction with the Specific Plan, Rincon is preparing an environmental impact report (EIR), which is required by the California Environmental Quality Act (CEQA) Guidelines to evaluate projects, such as the Specific Plan, that have the potential to have significant environmental impacts.

C. Pursuant to SB 610 in 2001, Chapter 643, Statutes of 2001 Sections 10910 – 10912 of the California Water Code, any city or county that determines that a project, as defined in Section 10912, is subject to the California Environmental Quality Act (CEQA) under Section 21080 of the Public Resources Code, must identify any public water system that may supply water for the project and the public water system must prepare and adopt a water supply assessment (WSA) containing the information required by Section 10910.

D. Section 10 of SB 610 states that no reimbursement is required by SB 610 pursuant to Section 6 of Article XIII B of the California Constitution, because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code. MCWD Code section 6.16.030 provides for MCWD to collect a discretionary fee to pay MCWD's costs of preparing and providing a WSA.

D. The City of Marina has determined that a WSA is required for the Project and has identified MCWD as the public water system to prepare and adopt the WSA. MCWD has selected Schaaf & Wheeler, a Marina-based engineering firm, to prepare the WSA, based on the scope of work/fee schedule a copy of which attached as Exhibit "A" hereto. Schaaf and Wheeler has prepared a draft of the WSA and the Agency needs to enter into a fee agreement in order to reimburse MCWD for its actual expenses incurred in preparing the WSA.

E. The Agency has received a copy of the draft WSA.

Terms and Conditions

In consideration of the mutual promises contained herein, MCWD and the Agency agree to the following terms and conditions:

1. Scope of Services. Agency accepts the WSA prepared by Schaaf & Wheeler. Because the services are being rendered for the benefit of Agency, Agency shall be entitled to obtain and retain any copies of the draft and final WSA and all working papers used to prepare the WSA, other than that identified as protected by attorney client-privilege, before and subsequent to the term of this agreement.

2. MCWD Retains Discretion. Nothing set forth in this Agreement shall be construed as a limitation on the MCWD's discretion to deny or condition any approval required for the Project, provided such denial or condition is made in good faith.

3. Agency to Reimburse MCWD. Agency hereby agrees to reimburse MCWD for its actual expenses incurred by Schaaf & Wheeler in preparation of the WSA pursuant to this Agreement in an amount not to exceed \$14,900, except as provided in Paragraph 5.a), below.

4. Term. This Agreement shall commence upon execution of the Agreement and receipt by MCWD of the amount described in paragraphs 3 and 5 and shall be for an indefinite term subject to termination by either party upon fifteen days prior written notice to the other party or as described elsewhere in this Agreement.

5. Payment.

a) Agency shall deposit with MCWD the amount of \$14,900 not later than the five business days of execution of this Agreement by MCWD. Subsequent to execution of this Agreement, but prior to the MCWD or Schaaf & Wheeler incurring any expenses in excess of said amount, MCWD shall provide the Agency with written notification if it is reasonably expected that the cost of the WSA will exceed \$14,900 and request that Agency make a deposit of an amount necessary to complete the WSA. MCWD shall provide the Agency with not less than seven days notice of the date the additional deposit is due and the reasons therefor.

b) Within thirty (30) days of completion of the final WSA, MCWD shall ascertain any balance due to Agency from the amounts previously deposited and refund the balance of the account to Agency.

6. Modification. This Agreement is not subject to amendment or modification except by a writing signed by the parties hereto.

7. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters covered by this Agreement, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is not contained in this Agreement shall be binding or valid.

8. Attorney's Fees. In the event of any controversy, claim or dispute relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

IN WITNESS WHEREOF, Marina Coast Water District and the Redevelopment Agency of the City of Marina, by their duly authorized representatives, have executed this Agreement on the date first hereinabove set forth at Marina, California.

REDEVELOPMENT AGENCY
OF THE CITY OF MARINA

MARINA COAST WATER DISTRICT

Anthony Altfeld, Executive Director

Jim Heitzman, General Manager

Date: _____, 2011

Date: _____, 2011

Attest (per Resolution No. 2010-18 (MRA)):

By: _____
Joy P. Junsay, City Clerk

Approved as to form:

Approved as to form:

By: _____
City Attorney

By: _____
District Counsel