

Marina Coast Water District
Agenda Transmittal

Agenda Item: 5-A

Meeting Date: April 4, 2011

Submitted By: Kelly Cadiente

Presented By: Kelly Cadiente

Reviewed By: Carl Niizawa

Agenda Title: Consider Adoption of Resolution No. 2011-24 to Approve a Financial Advisory Services Agreement with Piper Jaffray

Detailed Description: The Board of Directors is requested to consider adoption of Resolution No. 2011-24 to approve a financial advisory services agreement with Piper Jaffray to serve as Financial Advisor for the Regional Desalination Project (Project).

On January 11, 2011, the Board adopted Resolution No. 2011-10 authorizing staff to submit an application to the California Pollution Control Finance Authority (CPCFA) for a \$340,000,000 debt allocation for Private Activity Bonds to finance the Project. Included in the application process is a need to obtain a Financial Advisor to provide a letter of opinion as to the viability and fairness of the proposed financing plan and terms.

The letter of opinion would be the result of the Financial Advisor's review of the facts, current state of the capital markets, and financing plan. Although the Project has already been under consideration the last two years, the Financial Advisor would provide additional input and structure to the financing team effort.

The scope of services is more limited in nature than a typical financial advisory engagement; however it will involve at least some aspects from each of the following financial advisory services:

- Financing Schedule Preparation & Management
- Debt Structuring Analyses
- Method of Sale Selection
- Financing Team Selection
- Financing Alternatives
- Financing Terms & Conditions
- Review and Comment on Documents
- Marketing Plan Preparation
- Rating Presentation
- Bond Pricing & Closing
- Other Ancillary Services (bond proceeds management, investment products, arbitrage rebate compliance)

The estimated person hours for the project are 315 hours and the estimated budget is \$86,625.

Piper Jaffray is well-qualified to serve as Financial Advisor on the transaction. They have a solid base of water and wastewater utility finance expertise and have completed more than \$2 billion

in project financings over the past three years including a variety of energy and utility transactions. Staff recommends that the Board approve obtaining Piper Jaffray as Financial Advisor for the Regional Desalination Project.

Environmental Review Compliance: None required.

Prior Committee or Board Actions: Resolution No. 2011-10 authorizing submission of an application to the CPCFA for a qualified private activity bond allocation of \$340,000,000 to finance the Regional Desalination Project.

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: California American Water line of credit will be used to fund the cost of the agreement.

Materials Included for Information/Consideration: Resolution No. 2011-24; and, Piper Jaffray Financial Advisory Services Agreement.

Staff Recommendation: Adopt Resolution No. 2011-24 approving a financial advisory services agreement with Piper Jaffray.

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 _____

April 4, 2011

Resolution No. 2011 - 24
Resolution of the Board of Directors
The Marina Coast Water District
Approving a Financial Advisory Services Agreement with Piper Jaffray

RESOLVED by the Board of Directors of the Marina Coast Water District (Board), at a special meeting duly called and held on April 4, 2011 at the business office of the District, 11 Reservation Road, Marina, California as follows:

WHEREAS, the Board adopted Resolution No. 2011-10 which authorized submission of an application to the California Pollution Control Finance Authority (CPCFA) for a Qualified Private Activity Bond Allocation of \$340,000,000 to finance the Regional Desalination Project; and,

WHEREAS, part of the application process is to obtain a Financial Advisor to provide a letter of opinion as to the viability and fairness of the proposed financing plan and terms; and,

WHEREAS, the letter of opinion must be completed and submitted to CPCFA prior to the application being placed on a CPCFA meeting for approval.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Marina Coast Water District does hereby approve the Financial Advisory Service Agreement and authorizes the General Manager to execute the Agreement as the District's Secretary, and to take the actions and execute the documents necessary or appropriate to give effect to the Agreement and this Resolution.

PASSED AND ADOPTED on April 4, 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 full, true and correct copy of Resolution No. 2011-24 adopted April 4, 2011

FINANCIAL SERVICES AGREEMENT

This Agreement is entered into the ____ day of _____, 2011 ("Effective Date"), by and among Marina Coast Water District, a County Water District organized and operating under the County Water District Law, Section 30000 and following of the California Water Code, having its principal address at 11 Reservation Road, Marina, CA 93933 ("MCWD"), Monterey County Water Resources Agency, a duly constituted Water Resources Agency created pursuant to the Monterey County Water Resources Agency Act, found at California Water Code, Appendix Chapter 52, having its principal address at 893 Blanco Circle, Salinas, CA 93901 ("MCWRA," together with MCWD, the "Issuers" or "Borrowers" and, each individually, an "Issuer" or "Borrower", and Piper Jaffray & Co. (the "Financial Services Provider"). Each of MCWD, MCWRA and Financial Services Provider are referred to herein individually as a "Party" and shall be collectively referred to as the "Parties."

RECITALS:

WHEREAS, the Issuers require financial advisory services (the "Services") as described more specifically in Section 1 hereto and the "Proposal to Provide Financial Advisory Services" attached as **Exhibit A** hereto and incorporated herein, in connection with the issuance of approximately \$415,000,000 of bonds to finance various portions of a regional desalination project for the Monterey peninsula.

WHEREAS, the Issuers desire to engage the Financial Services Provider to render these Services.

NOW THEREFORE, in consideration of the mutual covenants and stipulations hereinafter set forth, the parties agree as follows:

Section 1. Scope of Services. The Services shall include, but not be limited to, advice and assistance in the following areas:

- a) Develop and implement a transaction structure.
- b) Evaluate financing alternatives.
- c) Review and Evaluate legal documentation.
- d) Analyze and comment on Financing Plan.
- e) Analyze and comment on Bond Marketing Plan.
- f) Prepare a letter of findings ("Letter") concerning achievability and cost-effectiveness of the Financing Plan, and assist with public meetings, as necessary.
- g) Other items if mutually agreed to in writing by both Issuers and Financial Services Provider.

The Parties agree that the Financial Services Provider will not provide assistance in connection with the preparation or review of any offering materials used in connection

with the distribution of any bonds issued to finance various portions of a regional desalination project for the Monterey peninsula.

It is understood that the Financial Services Provider will not limit its assistance to the Services specifically enumerated above, but will extend its Services and assistance as reasonably required to provide for the successful implementation of the plan of financing; provided that any such change to the scope of Services will be evidenced in a writing amending this Agreement. Within ten (10) days of the Effective Date, Financial Services Provider shall meet and confer with representatives of both Issuers to discuss the scope of Services and to establish parameters and a framework pursuant to which Financial Services Provider will deliver the Services hereunder. During the term of this Agreement and in connection with its delivery of the Services, Financial Services Provider shall provide each of the Issuers with periodic progress reports in connection with the Financial Services Provider's review and analysis in order to assist the Issuers in formulating and finalizing both the Financing Plan and the Bond Marketing Plan, including provision of a closing progress report prior to issuing the Letter.

Extent of Duties Arising under this Agreement

The Issuers and the Financial Services Provider intend and agree that, to the extent the performance of services by the Financial Services Provider with respect to the Services contemplated herein or in an amendment to this Agreement constitutes municipal advisory activities within the meaning of proposed rule 15Ba1 of the Securities Exchange Act of 1934 or otherwise creates a duty of the Financial Services Provider under Section 15B(c)(1) of the Securities Exchange Act of 1934 or Rule G-23 of the Municipal Securities Rulemaking Board, such duty does not extend beyond the services to be provided with respect to the Services contemplated herein or in an amendment to this Agreement and such duty does not extend to or to any other contract, agreement, relationship, or understanding of any nature between the Issuers and the Financial Services Provider either currently existing or arising in the future.

Section 2. Compensation. Compensation for the Services provided under this Agreement shall be based on the following schedule:

Title	Hourly Rate
Senior Vice President	\$ 275
Associate/Analyst	\$125

With respect to the foregoing schedule of compensation for Services, Financial Services Provider shall provide each of the Issuers with bi-monthly updates of the amounts incurred by Financial Services Provider in providing the Services, including a breakdown of each component of the Services, the Work Hours of Financial Services Provider's personnel, and related information. If, at any time, Financial Services Provider believes the initial estimate of \$86,625 is likely to be exceeded by more than

five percent (5%), Financial Services Provider shall immediately notify each of the Issuers of such belief and will provide a summary detailing the reason for the expected increase in the cost of compensation for Services.

Section 3. Expenses. The Issuers will be jointly responsible for all of the Financial Services Provider's out-of-pocket expenses, including travel at reasonable business rates, directly incurred in fulfilling its duties outlined herein. Travel expenses will only be reimbursed if pre-approved by the Issuers, except for mileage at the approved IRS rate and expenses that arise due to exigent circumstances.

Section 4. Underwriting. The Financial Services Provider, during the terms of this engagement, and subject to applicable laws, may not bid or participate in any syndicate which may bid on any bonds issued by the Issuer.

Section 5. Term of Agreement. The term of this Agreement shall begin on the date of execution set forth above and shall expire upon the later of: (a) when the Letter referenced in Section 1(f) of this Agreement is delivered in its final form to issuers; (b) appearance by Financial Services Provider at the final Board meeting or meetings of both Issuers where Financial Services Provider's analysis and/or findings are addressed by the pertinent Board; or (c) by mutual written agreement of the Parties.

Section 6. Independent Contractor. The Financial Services Provider is an independent contractor and nothing herein contained shall constitute or designate the Financial Services Provider or any of its employees or agents as employees or agents of the Issuers.

Section 7. Confidentiality. During the performance of this Agreement and for all time subsequent to completion of the work under this Agreement, the Financial Services Provider agrees not to use or disclose to anyone, except as required in the performance of this Agreement or by law, or as otherwise authorized by the Issuer, all information which is not currently available to the public, given to the Financial Services Provider by the Issuers or developed by the Financial Services Provider as a result of the performance of this Agreement.

Section 8. Assignment. Neither the Financial Services Provider nor the Issuers shall have the right or power to assign this Agreement or parts thereof, or its respective duties, without the express written consent of the Party or Parties not requesting consent to assignment, which consent shall not be unreasonably withheld.

Section 9. Entire Agreement/Amendments. This Agreement constitutes the entire Agreement between the Parties hereto and sets forth the rights, duties, and obligations of each Party to the other Parties as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Financial Services Provider and both of the Issuers.

Section 10. Legal Advice. The Financial Services Provider is not legal counsel or an accountant and is not providing legal or accounting guidance. None of the Services contemplated in this Agreement shall be construed as legal services or a substitute therefore.

Section 11. Indemnification. Except where caused by the gross negligence or intentional misconduct of either MCWD or MCWRA, to the fullest extent permitted by law, Financial Services Provider shall indemnify and hold harmless both MCWD and MCWRA, along with their directors, officers, agents, employees, representatives and volunteers from and against any and all claims, demands, debts, costs or expenses, liabilities or causes of action of every kind or character (whether in law or in equity) by reason of any death, injury or damage to any person or persons, or with respect to damage to or destruction of property or from any cause whatsoever, resulting or arising out of Financial Services Provider's (or any of its directors, officers, agents, employees, or representatives) grossly negligent, reckless, or intentional acts or omissions in the performance of its obligations under this Agreement. Any such costs or expenses shall include reasonable attorneys' fees incurred by counsel chosen by each of MCWD and MCWRA.

Except where caused by the gross negligence or intentional misconduct of Financial Services Provider, to the fullest extent permitted by law, both MCWD and MCWRA shall indemnify and hold harmless Financial Services Provider, along with its directors, officers, agents, employees, representatives and volunteers from and against any and all claims, demands, debts, costs or expenses, liabilities or causes of action of every kind or character (whether in law or in equity) by reason of any death, injury or damage to any person or persons, or with respect to damage to or destruction of property or from any cause whatsoever, resulting or arising out of either MCWD's or MCWRA's (or any of their directors, officers, agents, employees, or representatives) grossly negligent, reckless, or intentional acts or omissions in the performance of their obligations under this Agreement. Any such costs or expenses shall include reasonable attorneys' fees incurred by counsel chosen by Financial Services Provider.

The Issuers acknowledge and understand that state and federal laws relating to disclosure in connection with municipal securities, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the Issuers and that the failure of the Financial Services Provider to advise the Issuers respecting these laws shall not constitute a breach by the Financial Services Provider or any of its duties and responsibilities under this Agreement.

Section 12. Reliance on Letter Opinion. Each of the Parties agrees that the Letter being delivered by Financial Services Provider in connection with the Services under this Agreement is solely for the benefits of MCWD and MCWRA. This Letter may not be relied upon in any manner by any other person and may not be disclosed, quoted,

filed with a governmental agency or otherwise referred to without the prior written consent of both MCWD and MCWRA. Should such disclosure occur, Financial Services Provider shall inform the person or persons to whom disclosure is made that such disclosure is for the purpose of providing information only and that such person or persons have no right to and may not rely upon the Letter nor assert that such reliance was approved by MCWD, MCWRA or Financial Services Provider.

Section 13. Notices. Any written notice or communications required or permitted by this Agreement or by law to be served on, given to, or delivered to any Party hereto, by any other Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the Party to whom it is addressed or in lieu of such personal services, when deposited in the United States' mail, first-class postage prepaid, addressed to the Issuer at:

To MCWD at:

11 Reservation Road
Marina, CA 93933
Attn: General Manager and District Counsel

To MCWRA at:

893 Blanco Circle
Salinas, CA 93901
Attn: General Manager and County Counsel

or to the Financial Services Provider at:

Piper Jaffray & Co.
Attention Public Financing Department
345 California Street, Suite 2400
San Francisco, CA 94104

Section 15. Controlling Law. This Agreement will be governed by the laws of the State of California.

Section 16. Parties in Interest. This Agreement, including rights to indemnity and contribution hereunder, shall be binding upon and inure solely to the benefit of each party hereto, any indemnified party and their respective successors, heirs and assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 17. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HEREBY AGREES TO WAIVE ANY RIGHT TO A TRIAL BY

JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written. By the signature of each of their representatives below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

MARINA COAST WATER DISTRICT

By: _____
James Heitzman
General Manager

MONTEREY COUNTY WATER RESOURCES
AGENCY

By: _____
Curtis V. Weeks
General Manager

PIPER JAFFRAY & CO.

By: _____
Its: _____

EXHIBIT A

Proposal to Provide Financial Advisory Services

[PLEASE SEE ATTACHED]



Charlotte
Chicago
Dallas
Denver
Des Moines
Helena
Houston
Jacksonville
Kansas City
Lincoln
Los Angeles
Milwaukee
Minneapolis
New York
Orange County
Palo Alto
Phoenix
Portland
San Francisco
Sacramento
Seattle
St. Louis

International Offices:

Hong Kong
London
Shanghai

Proposal to Provide Financial Advisory Services for
the:

**Marina Coast Water District &
Monterey County Water Resources
Agency**

Regional Desalination Project

PiperJaffray®

December 13, 2010

Don Evans
President
Evans Group International, LLC
8550 West Charleston Suite 102-394
Las Vegas, NV 89117

RE: Financial Advisory Services

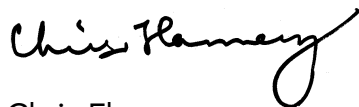
Dear Mr. Evans:

On behalf of Piper Jaffray & Co., thank you for the opportunity to present a proposal to provide Financial Advisory Services in connection with the Regional Desalination Project for the Marina Coast Water District and the Monterey County Water Resources Agency. We believe Piper Jaffray is well-qualified to serve as Financial Advisor on the transaction as a result of the following:

- **Piper Jaffray is the Most Active Underwriter in the Western Region** – having senior managed the greatest number of negotiated long-term financings in 2009.
- **Piper Jaffray Project Finance Expertise** – Piper Jaffray has completed more than \$2 billion in project financings over the past three years including a variety of energy and utility transactions.
- **Piper Jaffray has a Solid Base of Water and Wastewater Utility Finance Expertise.**

This attached proposal includes a summary Scope of Services, estimated time and cost budget and draft Financial Advisory Services Agreement. If you have any questions, desire clarification, or require additional information, please contact us. Thank you for your consideration.

Sincerely,



Chris Flannery
Senior Vice President
(612) 303-2193
christopher.j.flannery@pjc.com



Matthew Challis
Senior Vice President
(415) 616-1608
matthew.d.challis@pjc.com

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Piper Jaffray Scope of Services

Project Overview - The work product expected from Piper Jaffray in the Marina Coast Water District ("MCWD") and Monterey County Water Resources Agency ("MCWRA") Regional Desalination Plant project is to provide a letter opining as to the viability and fairness of the proposed financing plan and terms. This letter would be the result of our review of the facts, current state of the capital markets, and financing plan. Although the transaction has already been moving forward over the last few years, we would provide additional input and structure to the financing team effort.

The project is more limited in nature than a typical financial advisory engagement, however it will involve at least some aspects from each of the following financial advisory services:

- Financing Schedule Preparation & Management
- Debt Structuring Analyses
- Method of Sale Selection
- Financing Team Selection
- Financing Alternatives
- Financing Terms & Conditions
- Review and Comment on Documents
- Marketing Plan Preparation
- Rating Presentation
- Bond Pricing & Closing
- Other Ancillary Services (bond proceeds management, investment products, arbitrage rebate compliance)

Preliminary Work Plan - As mentioned before, this transaction is already well along the path to completion. It is understood that the transaction is a project financing with funding coming via the sale of tax exempt private activity bonds, meaning that the entire credit resides in the project and the related security provisions. In order for Piper to become fully conversant in the transaction with respect to each of its components, relatively significant due diligence will be undertaken. As such this requires a review of many of the pertinent underlying documents, including:

Component	Analyses	Time
Transaction Structure	<ul style="list-style-type: none"> • Understand the current state of key project parameters (cost, site control, equipment) • Understand the current state of project documents (development, supply and offtake contracts, construction, EPC or GMP, engineering/construction specifications, contractor qualifications, permitting, zoning, insurance, environmental reports) 	2 weeks

	<ul style="list-style-type: none"> Analyze Financial Model including project economics and structure (cashflows and related schedules) Borrower and Sponsor information Current thought with respect to potential O&M Plans 	
Financing Alternatives	<ul style="list-style-type: none"> Review and discussion of any proposed alternatives 	
Legal Documentation	<ul style="list-style-type: none"> Review available instruments and documents required for bond financing transactions, including the bond indenture, loan agreement, official statement, and related items 	1-2 weeks
Financing Plan	<ul style="list-style-type: none"> Analyze bond sizing assumptions Review the maturities, call features, premiums, interest rates, reserve provision, flow of funds and other features of proposed bond issues and advise MCWD and MCWRA as to the financial integrity of such issues; Analyze cash flow assumptions with regard to interest rates, fees, application of bond proceeds, investment of funds and other program requirements to assess the reasonableness of the cash flow projections based on such assumptions; Prepare detailed cash flow projections and analyses of specified bond issues and related projects or programs, such cash projections and analyses to be accompanied by a listing of all significant underlying assumptions; Evaluate financial proposals including those provided by the investment bankers Comment on Credit and/or Rating strategy 	1-2 weeks; overlap with Bond Marketing Plan
Bond Marketing Plan	<ul style="list-style-type: none"> Assist the financing team in preparing for, and participating in, transaction-related presentations to and negotiations with financial institutions, developers, governmental entities and others; Monitor market conditions and assess optimal time for pricing Comparable Transactions analyses Assist in the preparation of disclosure, sale and other relevant marketing documents 	1-2 weeks; overlap with Financing Plan
Public Review	<ul style="list-style-type: none"> Compilation, review, and revision of documentation required for any presentation and meeting Prepare letter of findings 	1 weeks for preparation; 1 week for comments and final edit

Total Estimated Time Frame (non-binding)

8 Weeks

Please note that many of the items can overlap and are estimates of the time anticipated to review and determine if additional follow-up is required. Each phase builds upon the prior phase, with the culmination of Piper Jaffray's review presented in a letter of findings on the reasonableness of the proposed financing and bond marketing plan.

Budget and Fee Proposal

The table below presents hourly fees which can be adjusted or capped as a result of further discussion or refinement of the Scope of Services outlined in the prior section.

Title	Hourly Rate
Senior Vice President	\$ 275
Associate/Analyst	\$125

Component	Time	Work Hours	Budget
Transaction Structure	2 weeks	150	41,250
Financing Alternatives		10	2,750
Legal Documentation	1-2 weeks	40	11,000
Financing Plan	1-2 weeks	75	20,625
Bond Marketing Plan	1-2 weeks	25	6,875
Public Review	1 week preparation & comment	15	4,125
Total		315	86,625

The table below presents a time and budget estimate for each phase of the anticipated Scope of Services.

We would note that the time to complete each function is based on our experience with similar project financing engagements, however given the advanced state of the Marina/Monterey project less time may be required. It is assumed that most of the review work would be done by both Senior Vice President level consultants, while

analytical and modeling work would be done by Associate/Analyst level personnel with oversight by senior members of the team.

Financial Advisory Agreement

The next section contains a draft form of Financial Advisory Services Agreement. Once the Piper Jaffray consulting team and the Issuer/Borrower have agreed on the Scope of Services and any other financial or other details of the engagement, those details would be included in this template and the Financial Advisory Services Agreement executed by the parties.