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January 29, 2014

To: Board of Directors, Marina Coast Water District
From: Jeanine DeBacker, Special Legal Counsel
Subject: Investigation Regarding Closed Session of July 15, 2013

This memorandum is to provide a brief update of the status of the investigation regarding the closed session on July 15, 2013 (the "Brown Act investigation") and to answer questions posed by Director Le via email.

Engagement of Outside Investigator

At the January 6, 2014 meeting, the Board discussed a complaint by Director Gustafson as to an alleged attempt in closed session to appoint Director Peter Le as Interim General Manager and the Board's options regarding such complaint. The Board directed Special Legal Counsel to ask attorney Doug White of Churchwell White for recommendations of an investigator to investigate the matter.

Mr. White provided his highest recommendation on behalf of Ms. Hilda Cantu Montoy of Fresno. Ms. Montoy represents public agencies as general counsel and special counsel in a broad spectrum of public agency law matters. Ms. Montoy was the City Attorney for the City of Fresno for over a decade. She has extensive public sector experience in governance and the critical transparency requirements under the Brown Act, the Public Records Act, and the rules governing conflicts of interest in public entities.

Ms. Montoy was retained on January 14, 2014 to serve as a neutral fact-finder to conduct an independent fact investigation. Given the depth and breadth of Ms. Montoy's experience with public governance, she was asked to make conclusions of law as well as findings of fact, and, if appropriate, recommend a course of action for the Board to pursue.

Ms. Montoy asked that the District arrange for the interviews of appropriate persons as identified by her. As the Board is aware, there is another, unrelated, investigation taking place at this time. Given that District staff and Directors are involved in that second investigation, and since Special Legal Counsel

was not at the July 15, 2013 meeting involved in the Brown Act investigation, Special Legal Counsel made arrangements for meetings via email with the persons identified by Ms. Montoy.

Status of Investigation

As of the date of this memorandum, the Brown Act investigation is ongoing and will not conclude prior to your February 3, 2014 meeting.

Questions Posed by Director Le Regarding the Investigation

In emails dated January 21, 2014 and January 22, 2014, Director Peter Le posed several questions about the investigation. Attached to this memorandum are the two emails for your reference.

Below are the questions posed by Director Le regarding the Brown Act investigation, grouped according to the general theme of his question. Special Legal Counsel's responses follow.

In a second memorandum to the Board, Special Legal Counsel responded to questions regarding the separate investigation.

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- “2. I like the Brown Act interview at the Marina City Council Chamber or at the Marina Conference Room.”

When the City of Marina meeting spaces are available, the District may use them for meetings and interviews.

For the Brown Act interviews, the Beach location was chosen as the default location primarily for convenience to the investigator and the interviewees and the opportunity for a more private setting. In the future, if an alternative location is desired, please make this known.

^ ^ ^

- “3. I have not received the contact information on both investigators so that I can ask questions on the interviews.”
- “3. Please also forward my questions to the investigators so that they can address my questions.”
- “6. I previously provided Ms. DeBacker with my available interview schedule assuming that I would receive all the requested documents and contact information of the investigators so that I could discuss my questions before the actual interview on the complaints.”

- “7. I like to have the investigators contact me directly. I do not wish to have Ms. DeBacker contact me on these investigations since she may have undue influence on the investigations.”

Each Director has been provided the contact information for Ms. Montoy. For those individuals, including Directors, who have been interviewed by Ms. Montoy, each received her contact information at the meeting. In response to this email, Special Legal Counsel emailed Ms. Montoy, informed her of the request by Director Le and provided the investigator with Director Le’s email address in the event she elected to contact him.

Ms. Montoy asked that the District set up the interviews. Due to the other pending investigation, Special Legal Counsel sought to reduce the need for contact between the Board and District staff. Special Legal Counsel contacted the requested interviewees at the direction of Ms. Montoy.

Please note, no one can be compelled to meet with Ms. Montoy for this investigation.

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- “5. It appears that Ms. DeBacker has unnecessarily involved in these investigations and will affect the neutrality of the investigations. I did not see that the Board authorized Ms. DeBacker to set up any interview on behalf of the investigators. I did not believe that the Board authorized Ms. DeBacker to approve the investigators on behalf of the Board either. Ms. DeBacker should not involved in the investigations once the investigators have been identified and later approved by the Board. The Board needs to approve the investigators first and let the investigators contact all the Directors to set up the interviews and answer my questions. The District Counsel needs to provide the Board his opinion on the actions the Board took at the Board meetings on January 6 and 11, 2014. The Board also needs to ask Ms. DeBacker to remove herself immediately from the investigation processes to maintain the integrity of the investigations.”

[January 22, 2014 email from Director Le to the Board, District Legal Counsel and Special Legal Counsel:]

Dear Ms. DeBacker:

At the Board meeting of January 6, 2014, the Board authorized you to search for an independent investigator to investigate the alleged Brown Act violation. I did not hear that the Board authorized you to approve the agreement or services of the independent investigator. I did not hear that the Board authorize you to schedule the interviews or a go between the investigator and the directors either. There may be some conflicts of interests if you took these actions.

I believe that once you selected or recommended an investigator, the Board will need to approve an agreement with the investigator. I copy this email to the entire Board and the District Counsel so that they can recall the actions they took on this matter. Obviously, the directors cannot discuss this email between themselves or in a chained discussion due to the prohibition of the Brown Act.

Due to the above concerns, I asked that you remove yourself from the Brown Act investigation process and let the investigator do her work assuming that the Board approves her services.

Peter Le

At the January 6, 2014 meeting, the Board directed Special Legal Counsel to ask attorney Doug White of Churchwell White for recommendations for an independent investigator.

Ms. Montoy was retained on January 14, 2014 to serve as a neutral fact-finder to conduct an independent fact investigation.

The purpose of Ms. Montoy's review of the matter is to provide an independent analysis of the events and actions. The best course of action, then, was to not include the Board in the selection process so as to maintain the investigator's neutrality. Further, Special Legal Counsel was directed to engage the investigator in part due to her absence from the closed session at issue.

Ms. Montoy is charged with using her experience, skills and knowledge to determine the best steps to conduct the investigation, including but not limited to the order of obtaining information. Ms. Montoy is to determine the information to be provided in advance to each interviewee. Among other things, such determinations are designed to help the investigator obtain responses from each interview based on personal knowledge to the extent possible.

Ms. Montoy asked that the District arrange for the interviews of appropriate persons as identified by her. As the Board is aware, there is another, unrelated, investigation taking place at this time. Given that District staff and Directors are involved in that investigation as well, and since Special Legal Counsel was not at the July 15, 2013 meeting involved in the Brown Act investigation, Special Legal Counsel made arrangements for meetings via email with the persons identified by Ms. Montoy.

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I hope this update is helpful. I will be available to discuss this memorandum at your February 3, 2014 meeting.

Jeanine DeBacker

From: PETER LE [mailto:peter381@sbcglobal.net]
Sent: Tuesday, January 21, 2014 1:30 PM
To: Tom Moore; janet shriner; bill lee; Howard Gustafson
Cc: Roger Masuda
Subject: Questions on Investigations & Interviews

January 21, 2014

Dear Board of Directors:

I have the following questions, comments and requests on the proposed interviews from Ms. DeBacker:

1. When will I receive the documents on the complaints that I have previously asked for from the Board? I like to review them before the interview. Additionally, the Board has not made a decision on my request for legal representation. I cannot have any complaint interview until the Board makes a decision on my request and I have reviewed details of the complaints and the District approved procedures handling this type of complaint.
2. I like the Brown Act interview at the Marina City Council Chamber or at the Marina Conference Room.
3. I have not received the contact information on both investigators so that I can ask questions on the interviews.
4. Please also forward my questions to the investigators so that they can address my questions.
5. It appears that Ms. DeBacker has unnecessarily involved in these investigations and will affect the neutrality of the investigations. I did not see that the Board authorized Ms. DeBacker to set up any interview on behalf of the investigators. I did not believe that the Board authorized Ms. DeBacker to approve the investigators on behalf of the Board either. Ms. DeBacker should not involved in the investigations once the investigators have been identified and later approved by the Board. The Board needs to approve the investigators first and let the investigators contact all the Directors to set up the interviews and answer my questions. The District Counsel needs to provide the Board his opinion on the actions the Board took at the Board meetings on January 6 and 11, 2014. The Board also needs to ask Ms. DeBacker to remove herself immediately from the investigation processes to maintain the integrity of the investigations.
6. I previously provided Ms. DeBacker with my available interview schedule assuming that I would receive all the requested documents and contact information of the investigators so that I could discuss my questions before the actual interview on the complaints.
7. I like to have the investigators contact me directly. I do not wish to have Ms. DeBacker contact me on these investigations since she may have undue influence on the investigations.
8. I do not believe Ms. DeBacker conducted the complaint made against me properly and appropriately. I do not believe Ms. DeBacker has any authority whatsoever to request me to meet her to resolve the complaint unless the Board can provide me with District written and approved procedures, policies, signed MOU's, ordinances, resolutions or any other document that indicate she has such authority. The District Counsel needs to provide the Board his opinion on these matters.

9. Once the complaints were expressed, the District needed to write down the verbal complaints and other pertinent information of the complaints. Since the complaints were made against me, I am entitled to received full and specific details of the complaints such as statements of the complaints, the complaining parties, etc. so that I can respond to the complaints. Without providing me full details of the complaints, it will be very difficult for me to prepare and provide responses to the investigator at or after the interviews. I have not received any specific and full details of the complaints and the proper procedure to handle these complaints as of today.

10. As usual, you cannot discuss my questions, requests or comments between yourselves or in a chained discussion due to the prohibition of the Brown Act. I hope you will place my previous request and this email on the February 3, 2014 Board agenda for consideration by the Board.

Please provide me with responses on the above questions and ask the investigators to contact me directly, preferably by emails. Once I receive the complaint documents and the Board decision on my legal representation request, I will contact the investigator to set up an interview.

Peter Le
Director

----- Original message -----

From: Jeanine DeBacker
Date: 01/21/2014 10:20 AM (GMT-08:00)
To: peter381@sbcglobal.net
Subject: Investigation interviews

Dir. Le:
Please let me know if the following will work:

1. Brown Act interview on Friday, 1/24 at 2:30 at Reservation Road office.
2. Complaint interview on Thursday, 1/23 at 9:30 AM at Reservation Road office.

If you have an alternative location that works better for a face-to-face meeting, please let me know and I'll see if that will work.

Best,
Jeanine

Jeanine D. DeBacker | McPharlin Sprinkles & Thomas LLP
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Phone: 408.293.1900 | Facsimile: 408.293.1999
Email: jdebacker@mstpartners.com | mstpartners.com

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Jeanine DeBacker

From: PETER LE <peter381@sbcglobal.net>
Sent: Wednesday, January 22, 2014 9:56 AM
To: Jeanine DeBacker
Cc: Tom Moore; janet shriner; bill lee; Howard Gustafson; Roger Masuda; Hilda Cantu Montoy
Subject: MCWD Investigation interviews

Dear Ms. DeBacker:

At the Board meeting of January 6, 2014, the Board authorized you to search for an independent investigator to investigate the alleged Brown Act violation. I did not hear that the Board authorized you to approve the agreement or services of the independent investigator. I did not hear that the Board authorize you to schedule the interviews or a go between the investigator and the directors either. There may be some conflicts of interests if you took these actions.

I believe that once you selected or recommended an investigator, the Board will need to approve an agreement with the investigator. I copy this email to the entire Board and the District Counsel so that they can recall the actions they took on this matter. Obviously, the directors cannot discuss this email between themselves or in a chained discussion due to the prohibition of the Brown Act.

Due to the above concerns, I asked that you remove yourself from the Brown Act investigation process and let the investigator does her work assuming that the Board approves her services.

Peter Le

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From: Jeanine DeBacker <jdebacker@mstpartners.com>
To: "peter381@sbcglobal.net" <peter381@sbcglobal.net>
Sent: Tuesday, January 21, 2014 1:38 PM
Subject: FW: Investigation interviews

Dir. Le:
For FRIDAY, the investigator has asked to move your meeting to 3:00 PM.
Thanks,
Jeanine DeBacker

From: Jeanine DeBacker
Sent: Tuesday, January 21, 2014 10:20 AM

To: peter381@sbcglobal.net
Subject: Investigation interviews

Dir. Le:

Please let me know if the following will work:

1. Brown Act interview on Friday, 1/24 at 2:30 at Reservation Road office.
2. Complaint interview on Thursday, 1/23 at 9:30 AM at Reservation Road office.

If you have an alternative location that works better for a face-to-face meeting, please let me know and I'll see if that will work.

Best,
Jeanine

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