

NOVATO SANITARY DISTRICT

An adjourned regular meeting of the Board of Directors of the Novato Sanitary District will be held at **6:30 p.m., Monday, March 1, 2010**, at the District Office, 500 Davidson Street, Novato.

AGENDA

- 1. PUBLIC COMMENT:**
- 2. Continuation of discussion of Item 9.a from the Regular Board of Directors' Meeting of February 22, 2010:**

REFERENDUM ON CONTRACT SERVICE AGREEMENT:

- a. Consider approval of a Resolution requesting the Board of Supervisors of the County of Marin to conduct said election; authorizing the District Manager-Engineer to carry out all the necessary procedures for said election; and submitting to the voters a referendum measure to repeal a contract service agreement.
- 3. ADJOURNMENT:**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the District at (415) 892-1694 at least 24 hours prior to the meeting. Notification prior to the meeting will enable the District to make reasonable accommodation to help ensure accessibility to this meeting.

Next Resolution No. 3022

NOVATO SANITARY DISTRICT BOARD AGENDA ITEM SUMMARY

TITLE: Referendum on Contract Service Agreement: Ballot Language

MEETING DATE: February 22, 2010

AGENDA ITEM NO.: 9a.

RECOMMENDED ACTION: Consider approval of a Resolution requesting the Board of Supervisors of the County of Marin to conduct said election; authorizing the District Manager-Engineer to carry out all the necessary procedures for said election; and submitting to the voters a referendum measure to repeal a contract service agreement.

SUMMARY AND DISCUSSION:

Background:

- July 27, 2009, after receiving public comments, the Board of Directors made CEQA findings and unanimously authorized negotiation of a *Contract Service Agreement for Operation, Maintenance, and Management of Wastewater Treatment Facilities* (Contract).
- September 21, 2009, the Board unanimously approved the negotiated Contract.
- October 15, 2009, a Referendum Petition was filed with the Marin County Registrar of Voters that said
"We the undersigned, registered and qualified voters of the Novato Sanitary District, hereby present this petition protesting the approval of a contract, entitled NOVATO SANITARY DISTRICT CONTRACT SERVICE AGREEMENT For OPERATION, MAINTENANCE, AND MANAGEMENT OF WASTEWATER TREATMENT FACILITIES ("Contract"). The full and complete text of the Contract is attached to this petition as Exhibit A. We request that approval of the Contract be repealed by you or submitted to a vote of the people as prescribed by law to determine whether the Contract should take effect."
- November 2, 2009, the District received certification from the Marin County Registrar of Voters indicating that the Referendum Petition contained a sufficient number of valid signatures to qualify for an election.
- November 9, 2009, the Board approved a motion to decline to repeal the Agreement.
- November 23, 2009, the Board set June 8, 2010 as the date for the referendum and appointed an Adhoc committee to draft ballot language.
- February 8, 2010 the Committee recommended and the Board approved the following ballot language: ***"Shall the Novato Sanitary District's approval of the contract entitled "Novato Sanitary District Contract Service Agreement for Operation, Maintenance, and Management of Wastewater Treatment Facilities" be repealed?"***

The District has taken the position that the approval of the Contract is not a proper subject for referendum. A referendum on the approval of the Contract on September 21 conflicts with general law because the State legislature has granted exclusive authority to approve District contracts to the District Board, not to the electorate. The District's position has consistently been that the District has entered into a valid Contract and that the Referendum can only serve to direct the Board to repeal or void the contract.

The attached Resolution lays out the background for the referendum, sets the ballot language, directs the Manager-Engineer to carry out the procedures for the election, requests the Board of Supervisors of Marin County to conduct the election, sets the date for the election, and names two of the people who will sign the ballot argument on behalf of the Board.

ALTERNATIVES: Continue the agenda item to a future meeting before March 12, 2010.

BUDGET INFORMATION: The District will need to increase the budget for elections by \$76,750 to cover the cost of the election.

DEPT. MGR.:

MANAGER:

Beverly James

**Novato Sanitary District
Resolution No. _____**

**A RESOLUTION REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN
TO CONDUCT SAID ELECTION; AUTHORIZING THE DISTRICT MANAGER-ENGINEER TO
CARRY OUT ALL THE NECESSARY PROCEDURES FOR SAID ELECTION; AND
SUBMITTING TO THE VOTERS A REFERENDUM MEASURE TO REPEAL A CONTRACT
SERVICE AGREEMENT**

WHEREAS, on November 2, 2009 the Novato Sanitary District of Marin County, California ("District") received a certificate from the Marin County Registrar of Voters certifying the results of the Registrar's examination of the numbers of signatures and verification of the signatures affixed to a petition for a referendum measure to repeal the service contract with Veolia Water West Operating Services, Inc. for operation of the District's wastewater treatment plant ("Service Contract"); and

WHEREAS, the Registrar's certification shows that at least 10% of the registered voters in the District signed the referendum petition; and

WHEREAS, the referendum petition contains a request that the Service Contract be repealed or submitted to a vote of the people; and

WHEREAS, Elections Code Section 9145 provides that where the District receives such a referendum petition and certification, it shall either repeal the ordinance in question (here, the Service Contract) or submit it to an election to be held not less than 88 days after the date of the order of election; and

WHEREAS, the District does not believe that the award of the Service Contract is a legislative act subject to referendum; and

WHEREAS, despite the District's belief that referendum procedures are inapplicable to this District decision, the District seeks to proceed with adopting an election order; and

WHEREAS, the District desires that the Marin County Registrar of Voters canvass the returns of the special election; and

WHEREAS, the Marin County Registrar of Voters requires payment by the District of a fee to perform the election services;

WHEREAS, on November 9, 2009 the Board of approved a motion to decline to repeal the Agreement;

WHEREAS, on November 23, 2009, the Board of Directors set the date of the election as June 8, 2010;

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

1. The measure to be submitted to the qualified electors of the Novato Sanitary District shall be as follows:

Shall the Novato Sanitary District's approval of the contract entitled "Novato Sanitary District Contract Service Agreement for Operation, Maintenance, and Management of Wastewater Treatment Facilities" be repealed?

Yes _____

No _____

2. The District Manager-Engineer is hereby directed to issue instructions to the Marin County Elections Department to take any and all steps necessary for the holding of the election.

3. The District Manager-Engineer is hereby directed to transmit a certified copy of this resolution to the Marin County Board of Supervisors and the Marin Registrar of Voters.

4. The District Manager-Engineer is authorized and directed to reimburse Marin County for the actual costs incurred in conducting the election upon presentation of a bill from the County, and to enter into any service agreement(s) for any such County services required.

5. (a) The last day for submission of ballot wording to the Board of Supervisor and Registrar of Voters shall be by March 12, 2010.

(b) The last day for submission of direct arguments for or against the measure shall be by March 22, 2010.

(c) The last day for submission of rebuttal arguments for or against the measure shall be by March 29, 2010.

(d) Direct arguments shall not exceed 300 words and shall be signed by not more than five persons.

(e) Rebuttal arguments shall not exceed 250 words and shall be signed by not more than five persons.

(f) An impartial analysis showing the effect of the measure shall be prepared by March 22, 2010.

(g) The District Board hereby selects _____ and _____ to prepare a written argument against the proposed measure, not to exceed 300 words, on behalf of the Board. The two persons listed above may also authorize up to three additional persons to sign the ballot argument. These may be members of the District Board

or bona fide associations or by individual voters who are eligible to vote. In the event that an argument is filed in favor of the measure, the two persons listed above are also authorized to select two members of the Board to prepare a rebuttal argument on behalf of the Board, which may also be signed by up to three other members of the District Board or bona fide associations or by individual voters who are eligible to vote.

PASSED AND ADOPTED by the Board of Directors of Novato Sanitary District, Marin County, California, at a meeting thereof duly held on the 1st day of March, 2010, by the following vote:

AYES, Members: _____

NOES, Members: _____

ABSENT, Members: _____

Secretary
Novato Sanitary District

APPROVED:

President

APPROVED AS TO FORM:

Kenton L. Alm, District Counsel

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