

NOVATO SANITARY DISTRICT

October 14, 2009

The Board of Directors of Novato Sanitary District will hold a Closed Session at 5:00 p.m., Wednesday, October 14, 2009, at the District offices, 500 Davidson Street, Novato. (Open session begins at 6:30 p.m. Adjourned meeting from October 12, 2009. See agenda below).

PLEDGE OF ALLEGIANCE:

CLOSED SESSION AGENDA

CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – TWO POTENTIAL CASES:

Significant exposure to litigation pursuant to Subsection (b) of Government Code Section 54956.9

CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION – ONE POTENTIAL CASE:

Initiation of litigation pursuant to Subsection (c) of Government Code Section 54956.9

REGULAR AGENDA

Materials related to items on this agenda are available for public inspection in the District Office, 500 Davidson Street, Novato, during normal business hours.

1. AGENDA APPROVAL:

2. PUBLIC COMMENT (PLEASE OBSERVE A THREE-MINUTE TIME LIMIT):

This item is to allow anyone present to comment on any subject not on the agenda, or to request consideration to place an item on a future agenda. Individuals will be limited to a three-minute presentation. No action will be taken by the Board at this time as a result of any public comments made.

3. REVIEW OF MINUTES:

- a. Consider approval of minutes of July 27, 2009 meeting.

4. WASTEWATER TREATMENT FACILITY OPERATION:

- a. Consider making CEQA findings and approving an Emergency Consulting Services Agreement.

5. MANAGER'S ANNOUNCEMENTS:

6. ADJOURNMENT:

Next resolution no. 3013

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.

Materials that are public records and that relate to an open session agenda item will be made available for public inspection at the District office, 500 Davidson Street, Novato, during normal business hours.

July 27, 2009

A regular meeting of the Board of Directors of the Novato Sanitary District was held at 6:30 p.m., Monday, July 27, 2009, preceded by a closed session beginning at 5:30 p.m. at the Hill Community Room, Margaret Todd Senior Center, 1560 Hill Road, Novato.

CLOSED SESSION:

President Di Giorgio opened the Closed Session Board Meeting at 5:30 p.m.

BOARD MEMBERS PRESENT: President Michael Di Giorgio, Members James D. Fritz, Arthur T. Knutson, William C. Long and George C. Quesada.

STAFF PRESENT: Manager-Engineer Beverly James.

AGENDA APPROVAL:

On motion of Member Long, seconded by Member Quesada, and carried unanimously, the Agenda was approved as mailed.

Confer with District's labor negotiators regarding meet and confer with District's "General" bargaining unit, represented by Teamsters Local 315.

Closed Session ended at 5:50 p.m.

RECONVENE IN OPEN SESSION AT 6:30 p.m.

The Manager reported the following actions were taken in Closed Session:

- For each of the nine employees affected by the contract operations transition, the District will offer \$2,000 for each full or partial year of service if they choose not to transfer to the Vendor and sever their employment with NSD.
- For employees of retirement age who do not currently qualify for retiree medical benefits and who wish to retire by September 30, 2009, the District will provide the retiree medical at the single party rate.
- For any employee transferring to the Vendor, Novato Sanitary District (NSD) will transfer all NSD accrued sick leave time to the Vendor.

ADDITIONAL STAFF PRESENT FOR OPEN SESSION: Deputy Manager- Engineer Sandeep Karkal, District Counsel Kent Alm, Administrative Services Manager June Penn Brown, and Administrative Secretary Julie Borda.

ALSO PRESENT: Colleen Rose, Novato resident
Justina Daniel, Novato resident
Dennis Welsh, Novato resident and former NSD employee
Pam Welsh, Novato resident
Art Ribbel, Novato resident

Pat Ribbel, Novato resident
Bob Abeling, Novato resident
Carol Abeling, Novato resident
Eric Roley, Novato resident
Bill Scott, Novato resident, Marin Building Trades Council
Tom Pierce, Novato resident
Barry Buckley, Novato resident
Dennis Fishwick, Novato resident
Dean L. Heffelfinger, Novato resident
Phil Tucker, CA Healthy Communities Networks
Lynn Axelrod, Marin County resident
Dean B. Heffelfinger, NSD employee and Novato resident
Dr. Robert Ovetz
Heidi Heffelfinger, Novato resident
Margaret Ballow
Dale Robbins, Secretary-Treasurer for Teamsters Union Local 315
Barb Keller
Joseph Feller, CA Healthy Community Networks
Gary Wetstein
Gene Noble, Novato resident
Eric Ruby
Suzanne Brown Crow, Novato resident
David Keller, former Petaluma City Council Member
Margaret Keller
Heidi Heffelfinger, Novato resident

PUBLIC COMMENT:

Dennis Welsh, Novato resident and former District employee, requested the following item be placed on the August 10th Agenda: One third reduction of salary compensation for the Manager-Engineer, the Deputy Manager-Engineer, the District Board members and any manager whose employees are being reduced by one-third due to the transfer of these employees to Veolia Water.

BOARD MEMBER REPORTS:

Member Quesada questioned how Public Comment should be facilitated in regards to the Brown Act. District Counsel Kent Alm explained that the public can bring up items during Public Comment that are not on the Agenda. He stated that for items that are on the Agenda, the public may comment when that item comes up and, in addition, the Board may set time limitations for public comment as they feel appropriate.

Member Fritz asked for the Board Member Reports portion of the July 13th Board meeting minutes be changed to reflect the following: "Member Fritz stated that on June 25th he had the pleasure of flying over the Novato Sanitary District treatment facility with

Mr. Sam Renati, former Board Member. *This trip was to continue photographic documentation of the treatment facility upgrade project."*

President Di Giorgio requested the public act with integrity and decorum during the Board meeting.

REVIEW OF MINUTES:

On motion of Member Fritz, seconded by Member Long, and passed unanimously as amended with above comments by Member Fritz, the Board meeting Minutes of July 13, 2009 were approved.

CONSENT CALENDAR:

On Motion of Member Quesada, seconded by Member Fritz, and carried unanimously, the following Consent Calendar items were approved:

- a. Board Meeting schedule as follows: August 10th and 24th, September 14th and 28th, October 12th and 26th.
- b. Approval of regular disbursements in the amount of \$380,375.92 and project account disbursements in the amount of \$77,302.23.

COLLECTION SYSTEM IMPROVEMENTS: PROJECT 72706, PHASE B – STATE ACCESS ROAD SEWER PROJECT:

Consider making CEQA findings, approving plans and specifications and authorizing advertising for bids. Deputy Manager Sandeep Karkal gave an overview of the State Access Road Sewer project. He stated that Nute Engineering has completed the plans and specifications for this project and the project is ready to bid with the Engineer's Estimate for this work at \$434,000. He noted that the project involves work on the District's sewer on the State Access Road area. In addition, he stated that District staff has completed the California Environmental Quality Act (CEQA) documentation and has determined that the project is categorically exempt. For this reason, he recommends the Board direct staff to make CEQA findings, approve plans and specifications, and authorize the advertising for bids. He stated bids are expected to be received on August 20, 2009 and will be presented to the Board at their August 24th Regular Board meeting.

Member Fritz questioned the placement of District easements in the public right of ways. The Deputy Manager noted that normally no easements are allowed in public streets, but this project is an exception and the District has a recorded easement in the State Access Road area.

On motion of Member Fritz, seconded by Member Long and carried unanimously, the Board authorized Staff to make CEQA findings, approve the plans and specifications

and authorize the advertising of bids for the Collection System Improvements Project #72706, Phase B – State Access Road Sewer Project.

STAFF REPORTS:

Update on fraudulent internet access to the District's bank accounts: Administrative Services Manager June Brown gave an update on the fraudulent internet access to the District's bank accounts, noting that of the \$514,543.45 loss from the Bank of Marin account, 84% of those funds have been recovered, or \$432,615.91. She discussed the District's actions immediately following the notification of the breach and the ongoing actions the District is taking. She stated that there is no evidence to justify rumors of embezzlement or pilfering by District employees.

Norman Stone, Novato resident, asked the Board if there was any evidence that the fraudulent activity was caused by negligent conduct or lack of conduct by a District employee. District Counsel Kent Alm stated that the investigative report by outside computer forensic consultants shows no mis-conduct by District employees. In addition he stated that there were several other local businesses that suffered the same type of loss. He stressed that investigative reports secured at this time have not indicated any negligence by the District.

North Bay Water Reuse Authority (NBWRA) Coordination Committee Meeting: The Manager noted that the NBWRA Coordination Committee met on July 20th at 9:30 a.m. She stated that the Committee is looking into a regional water recycling project for Marin, Sonoma and Napa Counties. She discussed the MOU that the Committee is preparing and noted Member Long was also in attendance at the NBWRA meeting.

Member Long commented that he had hoped the NBWRA would receive some stimulus funding but stated that none was received through the Title 16 Program. He stated the NBWRA is still trying to receive funds at the Federal and State levels and that he remains optimistic.

State Proposition 1A suspension: The Manager noted that the California Legislature recently adopted a State budget which includes suspension of Proposition 1A. She explained that the State will be taking an 8% share of local property taxes which translates into a District budget loss of \$160,000. She stressed that this is an amount much smaller than anticipated and will not impact the overall District budget by a great deal.

WASTEWATER TREATMENT PLANT UPGRADE PROJECT 72609B:

Consider making CEQA findings and adoption of an addendum regarding contracting for the operation and maintenance of the treatment facilities. District Counsel Kent Alm outlined the CEQA process in relation to the operation by a private contractor of the upgraded Novato Sanitary District Wastewater Treatment Facility. He addressed several questions to outline why the District has begun the CEQA process and why the

process is progressing at this time. He discussed the definition of a CEQA project as outlined in CEQA Guidelines section 15378. He discussed the appropriateness of moving forward with a CEQA finding in light of the substantial community opposition to the hiring of a contract operator. Mr. Alm discussed the exemption for existing facilities as outlined in Section 15301 of the CEQA Guidelines: "operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination" can be considered an exemption. He stated given the significance and controversy attached to the current situation he felt the District should go beyond the minimal steps required.

He stated that District staff has also reviewed the 2005 EIR and the criteria in section 15162 of the CEQA Guidelines to determine whether the proposed operation, maintenance and management of the Project Facilities by Contractor is a modification to the Project requiring a subsequent or supplemental EIR. He noted there are no substantial changes in the circumstances under which the Project will be undertaken. The proposed operation, maintenance and management of the treatment facilities by the Contractor does not involve any changes to the physical design, construction, or operation of the existing, transitional or new WWTP facilities comprehended in the Project. In addition, he stated the environmental setting and physical environmental conditions for the area have not changed from those anticipated in the 2005 EIR.

Mr. Alm stated he believes there has been fair and reasonable notice that the District plans to proceed at the current Board meeting with both the decision of whether the Board seeks to move forward with negotiating a contract with one of the contract operations proposals and secondly, undertaking the CEQA compliance as appropriate for this type of decision.

Mr. Alm pointed out that under CEQA Guidelines section 15164, an Addendum need not be circulated for public review but can be included in or attached to the final EIR and that the Board shall consider the addendum coupled with the previously adopted final EIR in making its decision. In addition, he stated, the Addendum should contain an explanation of the decision not to prepare a subsequent EIR and that explanation must be supported by substantial evidence.

Mr. Alm recommended that the Board adopt the Addendum that has been provided as well as acknowledging the comments in the Staff report and include these as the basis of moving forward on a discretionary act with regard to contracting out the operations and maintenance of the Novato Sanitary District treatment plant facility if that is the decision of the Board.

Eric Ruby, questioned the wording "operations, repairs and maintenance" and asked if these also include materials. District Counsel Kent Alm responded by quoting excerpts from CEQA Guidelines section 15301, "Categorical Exemptions".

Lynn Axelrod, Marin County resident, asked how, under CEQA, Novato citizens are to understand how CEQA is governing the contract when the citizens have not been allowed to see the contract. District Counsel Kent Alm responded.

Suzanne Brown Crow, Novato resident, discussed comments made by Mr. Alm in his presentation, disagreeing with some of his findings. She requested the Board postpone their decision to adopt the EIR. District Counsel Kent Alm clarified his statements with further details.

Pam Welsh, Novato resident, read a letter written to President Di Giorgio from the law firm of Shute, Mihaly & Weinberger, LLP. The letter discussed the Board actions from the July 20th Board meeting and urged the Board to postpone the approval of the Addendum until the public has had an adequate opportunity to review the document in conjunction with the final contract.

The Manager addressed the audiences questions regarding the bank fraud incident and the EPA investigation, noting that the District is cooperating fully with the investigations.

Dean L. Heffelfinger, Novato resident, discussed previous Board meetings and the Board member comments regarding the Eisenhardt Report's motives and intentions. He discussed The Eisenhardt Group's advertisements which listed their experience with procuring public-private partnerships. He also discussed meetings between the Eisenhardt Group and the District's public relations firm, Martin Rauch, on January 26, 2009, in which they discussed public outreach in support of a public-private partnership. He also noted that the Eisenhardt Group had listed on their time sheet for January 2009 meeting with District personnel to prepare RFQ and RFP requests.

Bill Scott, Novato resident and business manager for the Marin County Building Trades Council, discussed items on the Novato Sanitary District website which listed labor costs. He stated the Council noted that Veolia wages were lower than District's costs but questioned how this was possible due to the fact that the labor hours would be the same. He stated that the Council felt the decision to move forward with negotiations to hire a contract operator is premature and the District should allow more time for information to be disseminated to the public.

Member Long asked District Counsel Kent Alm if he recommends the Board move forward with passage of the CEQA Addendum. Mr. Alm stated that the Board is in a position to approve the Addendum; however is not required to move forward. He stated that if the Board wishes to move forward with the negotiating of a contract with Veolia Water, the adoption of the Addendum should take place. Member Long asked if there would be consequences if the Board did not move forward. Mr. Alm stated that in circumstances such as this, there is always the possibility for a lawsuit. However, he stated that if the Board postponed their decision, the basic facts would remain the same.

The Manager stated that the adoption of the CEQA Addendum had been agendized for this Board meeting and was clearly noticed to the Public. She stated that a CEQA decision must take place prior to a significant decision, such as what the Board is proposing by entering into negotiations with Veolia Water.

District Counsel Kent Alm explained further that making a CEQA decision must be done prior to any final decisions. For that reason, CEQA is completed as early in the process as is possible prior to making any irreversible action. Mr. Alm stated that, in his judgment, the Board has reached a point where the basic issues have been developed and despite the disagreement on those issues, with regards to an environmental effect, the basic issues are before the Board. If the Board takes an action to move forward in negotiations, he believes that comes very close to an irrevocable commitment to move forward with the project, unless there is some problem with negotiations. He stated he believes this is an appropriate time frame to make this decision.

Member Quesada stated he moves approval of the Addenda. He clarified that by moving approval of the Addendum, the Board is also approving all of the addenda that are composed in the Addendum. Member Long seconded the motion at this time.

Member Fritz commented that he feels time is running out and the Board should move forward in their decision.

District Counsel Kent Alm clarified for the Board that items (a) and (b) could be moved with the same motion, or done seriatim after the Board's discussion of item (b).

President Di Giorgio noted that a motion and a second had been called and that the Board would now move to discussion on item (b).

Consider authorizing District staff to negotiate an agreement with Veolia Water North America Operating Services to operate, manage, and maintain the District's wastewater treatment facilities.

Member Fritz moved approval and Member Quesada seconded the motion.

The Manager noted that the Board faces a significant decision and she stated she strongly recommends the Board authorize staff to negotiate an agreement with Veolia Water. She stated she felt the decisions made during closed session address some of the staff's concerns and treats the employees fairly. She outlined the process the Board has taken in determining the best possible solution for operating the new treatment plant facilities and stated the process has been very thorough. She stated Veolia's staff and experience will be valuable to the District. She referenced the well validated savings of \$7 million and recommended the Board of Directors authorize District staff to negotiate an agreement with Veolia Water North America Operating Services to manage the operation and maintenance of the District's wastewater treatment facilities including the Novato Treatment Plant, the Ignacio Treatment Plant, the sludge storage

ponds, the Dechlorination Facility, and the Ignacio Transfer Pump Station and Equalization basins.

President Di Giorgio opened the meeting to public comment.

President Di Giorgio read the comment from Gene Noble: "Refer to the Marin Independent Journal Editorial in July 27th. I agree with the editorial to hire a private firm to operate the District's new treatment plant as outlined in the editorial."

Gary Wetstein commented on the current employees' lack of District provided training on the new equipment at the upgraded facility. He referenced charts that were displayed on the walls and disputed the figures.

Tom Pierce, 30 year Novato resident, stated he is concerned about what is currently happening to the District. He discussed Veolia's track record and discussed problems that have taken place with other Veolia Water operated Districts.

Joseph Feller, Chairman of the Advisory Committee of Healthy Communities Network, read a letter addressed to the Board of Directors from the California Healthy Communities Network (Network). He read four requests the Network would like to make.

Dennis Fishwick, Novato resident, discussed actions the Board could take at this time. He discussed Veolia's contract and hopes the Board votes against the contract.

David Keller, former Petaluma City Council Member, discussed Petaluma's new Ellis Creek treatment facility and noted this facility is completely publicly owned. He discussed Petaluma's former circumstances when they were operated by private contract operators and discussed Petaluma's transition back to a publicly operated facility. He discussed the Boards proposed actions and urged the Board to bring the final bid documents before the public so they may provide comments, suggestions and scrutiny to the Board.

Paul Eisenhardt, the Eisenhardt Group, addressed the Board and clarified what services the Eisenhardt Group provides to their clients.

Dale Robbins, Secretary/Treasurer with Teamsters Local 315, clarified that the Teamsters Union does not recommend the private contractor option. He discussed the employee benefits Union members have with their District employment and how they would be adversely changed if the Board chose the contract operator option. He asked the Board to take into consideration actions that would impose the least disruption on their benefits.

Margaret Keller discussed the four page document that she faxed to the Board members the morning of July 27th. She stated she feels the District has the appropriate

resources to manage the upgraded facility, but feels management did not appropriately utilize these resources.

Heidi Heffelfinger discussed past Board meetings and the way the Board has dealt with the public. She discussed the Eisenhardt Group report and the numbers that were used for consultants. She stated that consultants would not need to be used for five years as stated in the report. She gave numerous examples of why the District should not proceed with their decision.

Dr. Robert Ovetz, Professor of Political Science, discussed data he procured from the Food and Water Watch website which showed rate increases that have taken place in other wastewater facilities that are operated by private contractors.

Dean B. Heffelfinger, Novato resident and NSD employee, discussed discharge violations noting that the violations were a cause of the aging wastewater treatment facility not the cause of operator error. He discussed District employee strengths and their ability to work together in emergency situations.

Phil Tucker, Project Director of CA Healthy Communities Network, discussed comments that were made by District Counsel Kent Alm at the July 20th meeting regarding CEQA. He stated that negotiating the contract with Veolia Water is intricately tied to CEQA and without having a contract that can be reviewed by the public, he felt this undermined the entire CEQA process. He stated that the public wants transparency, time to review the contract and an adequate opportunity to respond.

Lynne Axelrod stated she was surprised that the Board would be making a decision to enter into a contract with Veolia Water without a final report from the FBI investigation. She stated that the public should be allowed to see a draft of points which show why the Board is proceeding with the negotiations.

Dennis Welsh, Novato resident and former NSD employee, discussed his employment as an operator at the Petaluma Treatment facility. He discussed Petaluma's ability to start-up their new upgraded treatment facility without the help of consultants or an outside contract operator.

President Di Giorgio closed Public Comment.

District Counsel Kent Alm spoke to questions the audience brought forth with regard to being unable to move forward with the CEQA Addendum. He noted that there is substantial information available on the Novato Sanitary District website. Mr. Alm addressed the public comment that there had been a change to the stated plans to move forward with beginning contract operations at this Board meeting. He stated that there have been numerous notices, staff papers and the posted Agenda which stated the negotiations were going to be addressed by the Board at their July 27th meeting. He stated there has been substantial notice and the Board has legal basis for moving

forward at this meeting. Mr. Alm addressed a procedural issue and directed the Board on how to proceed regarding an earlier motion that was brought forth.

Member Long made a motion to table the motion to adopt the Addendum to the EIR as per District Counsel's recommendation.

On motion of Member Long, seconded by Member Fritz, a Motion to table the Motion to adopt the Addendum to the EIR was passed.

Hearing no opposition to the Motion, President Di Giorgio announced the Motion carried 5-0.

Member Long asked for clarification regarding the need for consultants for a period of five years and what duties the consultants would perform. The Manager stated the cost estimates for consultants as shown in the Eisenhardt Report listed their fees for a five year period. To clarify, she stated the cost estimate was for a certain scope of work not for a projected time frame and the need for consultants could be completed prior to a five year period but the funds expended would remain the same

Member Long stated he fully understands that the current employees are quite capable to operate the upgraded treatment facility, however there is a significant need for training on the new equipment and controls. He stated that with the \$90 million treatment facility, a strong team is needed to operate the facility. He stated that since 1972, Veolia Water has started-up or transitioned over 500 treatment facilities which shows a great amount of experience and expertise. He stated that the employee combination of compensation and benefits needs to be equivalent. He encouraged staff to proceed with the contract negotiations as expeditiously as possible.

Member Quesada stated the Board must move forward.

Member Fritz commented that he feels the Eisenhardt Group has produced a factual document and believes the Board should move forward to negotiate a contract with Veolia Water.

President Di Giorgio discussed the actions the management and Board has taken to prepare for the operation of the upgraded facility. He stated his concerns are to ensure the efficient operation of the facility, to ensure protection of the environment, to ensure the contract operator performs as specified, and to ensure sewer service charges are regulated. He discussed the operation of the Petaluma treatment facility.

The Manager stated that the Board could vote in one combined motion or separately to move Agenda Item 11 a. and 11 b. District Counsel Kent Alm stated either method is acceptable.

President Di Giorgio noted that the Board would now be voting on Item 11 b.:

Consider authorizing District staff to negotiate an agreement with Veolia Water North America Operating Services to operate, manage, and maintain the District's wastewater treatment facilities.

(The motion was earlier moved by Member Fritz and seconded by Member Quesada.)

The motion was carried unanimously with a 5-0 vote.

Member Long discussed with District Counsel Kent Alm the proper procedures necessary to move forward with approval of Agenda Item 11 a. The Board was instructed to un-table the motion before proceeding with the motion.

On motion of Member Long, seconded by Member Fritz, and carried unanimously, the following motion was taken off the table: Consider making CEQA findings and adopt an Addendum regarding contracting for the operation and maintenance of the treatment facilities.

President Di Giorgio noted that the Board would now be voting on Item 11 a.:

Consider making CEQA findings and adoption of an Addendum regarding contracting for the operation and maintenance of the treatment facilities.

(The motion was earlier moved by Member Fritz and seconded by Member Quesada.)

The motion was carried unanimously with a 5-0 vote.

District Counsel Kent Alm clarified that the Boards vote included adopting the Addendum that was attached with the other documentation and the findings contained within the CEQA document attached.

President Di Giorgio announced a short recess at 8:47 p.m.

President Di Giorgio reconvened the Board meeting at 9:00 p.m.

LIABILITY CLAIM:

Consider rejection of claim from Deva Sherman, 113 Caribe Isle, Novato. The Manager noted that a claim for damages at the JMB Caribe Isle construction site on June 7, 2009, was received from Deva Sherman. She stated that the District's insurance claims adjuster recommended the District reject the claim and direct the claimant to JMB Construction.

On motion of Member Fritz, seconded by Member Quesada and carried with the following vote, the Board rejected the insurance claim from Deva Sherman: Ayes: Di Giorgio, Fritz, Long, and Quesada. Noes: none. Absent: Member Knutson.

BEL MARIN KEYS PUMP STATIONS REHABILITATION PROJECT 72403:

Consider approval of a contract amendment in the amount of \$65,000 with the Covello Group for construction management services on a time and materials basis. The Manager explained that The Covello Group had been contracted to provide construction management services for the construction of the Bel Marin Keys Pump Stations Rehabilitation project which was awarded to JMB Construction as the low bidder. However, due to several factors, additional intense construction management and oversight was need for this project. She recommends the Board approve an amendment to The Covello Group's contract in the amount of \$65,000. She outlined JMB Construction's experience.

On motion of Member Fritz, seconded by Member Long and carried unanimously, the Board approved a contract amendment in the amount of \$65,000 with The Covello Group for construction management services on a time and materials basis.

The Board discussed with the Manager the circumstances surrounding the selection of JMB Construction and the need for additional construction management.

District Counsel Kent Alm discussed ways in which a contractor could be disqualified for a construction project even if they presented the lowest bid.

MANAGER'S ANNOUNCEMENTS:

The Manager discussed the upcoming CASA meeting being held in San Diego between August 12th through August 14th.

ADJOURNMENT: There being no further business to come before the Board, President Di Giorgio adjourned the meeting at 9:05 p.m.

Respectfully submitted,

Beverly B. James
Secretary

Julie Borda, Recording

NOVATO SANITARY DISTRICT BOARD AGENDA ITEM SUMMARY

TITLE: Wastewater Treatment Plant Operations: Emergency Consulting Agreement	MEETING DATE: October 14, 2009 AGENDA ITEM NO.: 4 a
RECOMMENDED ACTION: Adopt CEQA findings that no further environmental review is required and approve the Emergency Consulting Services Agreement with Veolia Water West Operating Services, Inc.	
SUMMARY AND DISCUSSION: <p>On September 21, 2009, the District received a letter from Robert Perlmutter of Shute Mihaly & Weinberger representing The Alliance of Concerned Citizens of Novato and Healthy Communities Network stating that they intended to referend the District Board's decision to contract for wastewater treatment services.</p> <p>The District legal counsel advises that this decision is not subject to referendum at this time because:</p> <ul style="list-style-type: none"> • If there is a referendable legislative act it took place on July 27, 2009; and/or • The Sanitary District Act specifically delegates the authority to enter into contracts to the Board of Directors of the District, not the public at large. <p>Despite this, these organizations have been gathering signatures on a petition to referend the Board's decision, which may put the District's ability to operate the wastewater treatment facilities in accordance with applicable laws in jeopardy since by the time the organizations gave notice of their intent to referend the District no longer had an operator with the necessary Grade IV certification to manage the plant operation.</p> <p>In order to prudently prepare for the disruption this may cause, the District has entered into discussions with Veolia to provide the emergency consulting services needed to ensure the continued safe operation of the wastewater treatment facilities in the event the referendum proceeds or other events prevent Veolia from proceeding under the original Service Agreement.</p> <p>While this Emergency Consulting Services Agreement would not have many of the advantages of the existing agreement, it would provide Grade V operators with the necessary certifications and experience to oversee the plant start up and operation until such time as the referendum issue is decided either by election or legal action.</p> <p>A copy of the final draft of the Agreement is attached.</p> <p>We have reviewed the CEQA requirements (see the attached document) and found that no further environmental review is required for the consulting agreement.</p>	
ALTERNATIVES: Do not enter into the Agreement	
BUDGET INFORMATION: These consulting services will be funded from the Budget Account 61000 for contract operations. The estimated cost is \$40,000/month plus expenses.	
DEPT.MGR.:	MANAGER:

***Agreement For
Emergency Consulting Services***

THIS AGREEMENT is entered into this ____ day of _____ 2009, by and between

the **Novato Sanitary District**, with its principal address at 500 Davidson Street, Novato, California 94945 (hereinafter “DISTRICT”);

and

Veolia Water West Operating Services, Inc., with offices at 2300 Contra Costa Blvd., Suite 350, Pleasant Hill, CA 94523 (hereinafter “VWWOS”)

(Collectively, the DISTRICT and VWWOS will be referred to as the “PARTIES” or individually as “PARTY”.)

RECITALS

| A. The DISTRICT owns and provides for the operation of wastewater and related treatment facilities.

| B. The DISTRICT and VWWOS have entered into an agreement (“Original Agreement”) under which VWWOS is to assume, generally, responsibility for the operations, maintenance and management of the Novato wastewater treatment facility located at 500 Davidson Street, Novato, California, the Ignacio treatment plant and the Ignacio Transfer Pump Station (ITPS) located at 445 Bel Marin Keys Boulevard, Novato, CA, and the sludge storage decant ponds located at the District’s reclamation facilities off Highway 37 (“Facilities”), as more specifically provided in the Original Agreement.

| C. The PARTIES acknowledge that a citizen group, the Alliance of Concerned Citizens of Novato (“ACCN”), has threatened to file a law suit alleging that the DISTRICT violated the California Environmental Quality Act (CEQA) (the “CEQA Suit”) with respect to the actions taken towards implementation of the Original Agreement.

| D. The PARTIES have become aware that ACCN has initiated collection of signatures to require a referendum on the DISTRICT’s approval of the Original Agreement with VWWOS (the “Referendum”).

| E. The PARTIES do not believe that the approval and execution of the Original Agreement is subject to referendum and therefore the Referendum would be a legal nullity.

F. VWWOS is concerned that if a court were to determine that the execution of the Original Agreement is subject to referendum, the commencement of performance by VWWOS under the Original Agreement may be interrupted or precluded.

G. The DISTRICT needs the expertise and assistance of VWWOS to bring on-line certain upgrades and new operational or Facility units currently under construction because the DISTRICT does not have employees of its own that are certified to operate the Facilities. Specifically, the existing and new Facility units will require an operator certified at a minimum Grade IV level, and the DISTRICT has no employees certified at the Grade IV level or higher as of the time of the execution of this Consulting Agreement.

H. Bringing the Facility upgrades online in the immediate future is necessary in order to comply with the terms of a Cease and Desist Order issued by the San Francisco Bay Regional Water Quality Control Board, avoid potential threats to public health and the environment, and fully comply with the Clean Water Act. The upgrades are designed to result in a more reliable system of wastewater treatment and a more consistent ability to meet the requirements of the DISTRICT's NPDES permit; however, the initial period for transitioning from the existing treatment facilities to the new facilities will require additional efforts by experienced operations personnel. Failure to successfully bring these new facilities online could result in fines and penalties to the DISTRICT and its ratepayers that could potentially amount to millions of dollars.

I. For the immediate preservation of the public health, and safety, and for the protection of the environment, and for the preservation of ratepayers' funds, the DISTRICT deems it prudent to establish a contingency plan now, so that there is one in place in the event the PARTIES are unable to perform under the Original Agreement.

J. VWWOS has indicated its willingness to perform for a time under the Original Agreement, despite the risk that it may not be compensated for work done between the Commencement Date of the Original Agreement and the effective date of this Consulting Agreement.

K. VWWOS has indicated its willingness to assist the DISTRICT in keeping the Facilities operating and well-maintained by providing the services identified in this Consulting Agreement including, without limitation, the services of certified personnel whose presence is required under the District's permits and other personnel with expertise as required to operate the Facilities in a safe and compliant manner, notwithstanding the uncertainty arising from the Referendum.

L. Due to the circumstances described above, VWWOS may be precluded from performing under the Original Agreement by court order or may, after having commenced performance under the Original Agreement, determine in its sole and absolute discretion, that the legal/financial risk associated with its continuing performance under the Original Agreement is not acceptable in light of the Referendum and/or the CEQA Suit (each a "Triggering Event").

M. The occurrence of a Triggering Event will cause an emergency situation for the District insofar as the District requires the services of VWWOS in order to continue the proper management, operation and maintenance of the Facilities, and to continue to bring upgrades to

the Facilities on-line in a timely fashion in order to operate in compliance with the environmental laws and regulations.

N. In the event of the occurrence of a Triggering Event, the DISTRICT desires to engage VWWOS to provide consulting services on an interim, emergency basis as may be necessary to continue the proper management, operation and maintenance of the Facilities, and to continue to bring upgrades to the Facilities on-line in a timely fashion in order to avoid releases of untreated or partially treated sewage and to avoid the imposition of fines for failure to comply with the NPDES permit or with the Cease and Desist Order, and VWWOS desires to perform such services on a “time and materials” basis for the compensation provided for herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, DISTRICT and VWWOS agree as follows:

AGREEMENT

1 General

- 1.1 The services to be provided under this Agreement For Emergency Consulting Services (the “Consulting Agreement”) are referred to as the “Emergency Consulting Services.”
- 1.2 All land, buildings, structures, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by DISTRICT shall remain the exclusive property of DISTRICT unless specifically provided for otherwise in this Consulting Agreement.
- 1.3 Upon the effective date of this Consulting Agreement, the District agrees that then-employees of VWWOS pursuant to the Memorandum of Agreement (MOA date) will be offered jobs by the DISTRICT consistent with the MOA and District’s Personnel Rules and Procedures applicable to rehiring of laid off employees and shall receive compensation at the same level as before being laid off and hired by VWWOS.
- 1.4 VWWOS shall have the right to assign this Consulting Agreement without DISTRICT’s consent, (i) to an affiliate that has the technical and financial ability to perform VWWOS’s obligations hereunder; or (ii) in conjunction with a merger, consolidation or sale of substantially all of the assets of VWWOS. VWWOS shall provide prior written notice to DISTRICT of any such transfer, along with evidence of the technical and financial ability of the transferee. VWWOS may also collaterally assign this Consulting Agreement and/or its right to any payments hereunder, but not its obligations to perform services hereunder, to one or more lenders providing financing to VWWOS or any affiliate thereof. Any other transfer or assignment by either VWWOS or the DISTRICT of this Consulting Agreement shall be null and void unless authorized by the other

PARTY in writing in advance, such authorization not to be unreasonably withheld.

- 1.5 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively given when delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express; delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt requested; or received by the party for which notice is intended, if given in any other manner.
- 1.6 This Consulting Agreement is the entire agreement between the PARTIES for the provision of Emergency Consulting Services. This Consulting Agreement may be modified only by written agreement signed by both PARTIES. Wherever used, the terms "VWWOS" and "DISTRICT" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Consulting Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood that the relationship of VWWOS to DISTRICT is that of independent contractor. The services provided under this Consulting Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for consulting firms and contract operators similarly situated. However, such services shall not be considered engineering services, and nothing herein is intended to imply that VWWOS is to supply professional engineering services to DISTRICT, unless specifically stated in this Consulting Agreement.
- 1.9 If any litigation is necessary to enforce the terms of this Consulting Agreement, the prevailing party shall be entitled to reasonable attorney's fees that are directly attributed to such litigation, in addition to any other relief to which it may be entitled.
- 1.10 Nothing in this Consulting Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).
- 1.11 Prior to the commencement of work under this Consulting Agreement, each party shall designate in writing an employee or other representative of the designating party who shall have full authority to approve changes in the Scope of Work and compensation therefore, execute written Change Orders reflecting such changes, render decisions promptly, and furnish information expeditiously to the other party when necessary.

- 1.12 Pursuant to California Code, Business and Professions Code, Division 3, Chapter 9, Article 2, Section 7030(a), every person licensed pursuant to that chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor:

“CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS’ STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS’ STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.”

- 1.13 The terms of this Consulting Agreement are different from the terms of the Original Agreement. Except where there is specific reference to the Original Agreement, the provisions of the Original Agreement do not apply to this Consulting Agreement.
- 1.14 This Consulting Agreement shall be governed by and interpreted in accordance with the laws of the State of California

2 VWWOS’s Services

- 2.1 VWWOS will staff the Consulting Services with employees who have met appropriate licensing and certification requirements of the State of California respecting the environmental services to be provided hereunder.
- 2.2 VWWOS shall provide only those services that VWWOS and the DISTRICT deem necessary to allow the DISTRICT to continue prudent and proper operations of the DISTRICT’s wastewater treatment plant, Ygnacio pump facility, and all appurtenant and incidental facilities including equipment and inventory (the “Facilities”). The use of the term “Facilities” hereafter has the same meaning as the defined term “Facilities” as set forth in Section 1.0 of the Original Agreement.

Such services will include provision of three individual consultants: the Chief Plant Operator (“CPO”), who will have the appropriate licensing to operate the Facilities and will provide direction and recommendations to the DISTRICT’s operating staff regarding day-to-day operations and maintenance of the Facilities; an Operations Supervisor, who will assist the CPO; and an Administrative

Assistant. The rate schedule for the three positions is included in Appendix B. These VWWOS consultants and the DISTRICT's operating staff shall conduct operations of the Facilities generally in accordance with direction from the CPO with respect to all matters for which the CPO is legally responsible by virtue of his or her position and licensing, but the DISTRICT's operating staff shall be employed by the DISTRICT and under the ultimate management and control of the DISTRICT.

Such services shall include directing the phase-out of existing facilities and the start-up, operation and maintenance of new or additional "upgrade" facilities, and oversight (including recommendations of commendatory and disciplinary actions) of DISTRICT employees assigned to the operation of the Facilities. VWWOS's services may also include, as necessary: entering data into and maintaining the Facilities' computerized maintenance management system; monitoring and responding to after hour alarms as appropriate; making recommendations to the DISTRICT for capital improvements or other expenditures, as appropriate; ordering supplies and equipment, as appropriate; preparing and signing on behalf of the DISTRICT monthly, annual, and other reports to regulatory and administrative agencies as required by the District's permit(s), any Cease and Desist Order(s) and other directives from agencies; and generally using reasonable best efforts to assure compliance with all applicable regulatory requirements for the Facilities.

Such services shall not include those tasks not listed above or not required for day-to-day operations and maintenance of the Facilities or for the phase-out of existing facilities and start-up of the new facilities. For example, the following, without limitation, are not included in the scope of work of this Consulting Agreement: development of a new computerized maintenance management system; development of standard operating procedures; development of asset management program(s); purchase of electricity or fuel; purchase of chemicals, supplies or parts; and any construction, construction management or construction supervision.

With regard to other matters not listed above, or where there is a disagreement between the CPO and the DISTRICT's operating staff, or in the case of an emergency requiring a DISTRICT decision, the CPO and operating staff shall confer with the DISTRICT Manager-Engineer who will make the final decision, subject to DISTRICT Board of Directors approval when required.

- 2.3 Prior to the first day of each month, VWWOS will provide the DISTRICT with an estimate of the cost of VWWOS's services to the DISTRICT under this Consulting Agreement. VWWOS will not invoice the DISTRICT for an amount greater than the estimate without prior approval of the DISTRICT, which approval will not be unreasonably withheld.

2.3 In any emergency affecting the safety of persons or property, VWWOS may act at VWWOS's discretion to prevent threatened damage, injury or loss. VWWOS shall be compensated by DISTRICT for any such emergency work notwithstanding the lack of prior mutual consultation and agreement. Such compensation shall include VWWOS's costs for the emergency work plus a reasonable mark-up for overhead and profit. Nothing contained in this Section shall impose upon VWWOS a duty to perform any emergency work absent express written approval by the DISTRICT, and failure to perform any such emergency work for which there has not been a timely written approval by District shall not impose upon VWWOS any liability for errors and omissions.

3 [RESERVED]

4 [RESERVED]

5 [RESERVED]

6 DISTRICT's Duties

6.1 The DISTRICT shall fund directly all expenses of operating, maintaining or improving the Facilities except as otherwise expressly provided herein. VWWOS shall have no obligation to fund the cost of the DISTRICT's employees, or any costs of the DISTRICT whatsoever. VWWOS shall supply its employees as consultants to the DISTRICT hereunder and the DISTRICT shall be obligated to pay VWWOS therefore in accordance with the terms of this Consulting Agreement.

6.2 The DISTRICT shall keep in force all Facility warranties, guarantees, easements and licenses that have been granted to DISTRICT and are not transferred to VWWOS under this Consulting Agreement.

6.3 The DISTRICT shall pay all sales, excise, *ad valorem*, property, franchise, occupational and disposal taxes, or other taxes associated with the Facilities, if any, other than taxes imposed upon VWWOS's net income and/or payroll taxes for VWWOS employees.

6.4 The DISTRICT shall provide VWWOS, within a reasonable time after request and on an "as available" basis, with the temporary use of any piece of DISTRICT's heavy equipment that is available so that VWWOS may discharge its obligations under this Consulting Agreement in the most cost-effective manner.

6.5 The DISTRICT shall provide all registrations and licenses for DISTRICT's vehicles used in connection with the Facilities.

- 6.6 The DISTRICT shall provide for VWWOS's exclusive use all vehicles and equipment presently in full-time use at the Facilities.
- 6.7 The DISTRICT shall provide access into the Facilities and other DISTRICT facilities as necessary to perform Veolia's obligations under this Consulting Agreement.
- 6.8 The DISTRICT shall provide the Facilities with appropriate security personnel and/or devices to protect against any losses resulting from the theft, damage, or unauthorized use of property owned by DISTRICT and shall accept liability for such losses, except to the extent such losses are directly caused by the willful conduct or negligent acts or omissions of VWWOS.
- 6.9 The DISTRICT and VWWOS may agree, on such terms as may be agreeable between the District and VWWOS, that the DISTRICT will lease to VWWOS those employees of DISTRICT that VWWOS believes to be reasonably necessary to VWWOS's performance of this Consulting Agreement ("DISTRICT Employment Arrangement"). Such employees shall be provided to VWWOS for a consideration to be agreed upon between the PARTIES. If a DISTRICT Employee Arrangement is implemented hereunder, the DISTRICT employees subject thereto will remain employees of DISTRICT and will continue to receive all compensation and benefits due them as employees of the DISTRICT. This subsection shall be interpreted and applied so as to be consistent with the existing Collective Bargaining Agreement, if any, between DISTRICT employees subject to this subsection and the DISTRICT. Neither VWWOS nor the DISTRICT will enter into a DISTRICT Employment Arrangement unless such DISTRICT Employment Arrangement complies with all agreements and laws governing the DISTRICT's employment of its employees subject to the DISTRICT Employment Arrangement.
- 6.10 The DISTRICT shall appoint a Plant Manager whose job shall include working with VWWOS and implementing direction to be provided by VWWOS with respect to the maintenance and operation of the Facilities.
- 6.11 The DISTRICT is responsible for all costs of chemicals, petroleum products, energy-related commodities, and all other expenses involved with operating the Facilities.

7 Compensation

- 7.1 VWWOS's compensation under this Consulting Agreement shall consist of payments according to the rates set forth on the attached Rate Schedule, Appendix B. Rates shall be subject to adjustment each July 1 in accordance with the formula for adjustment of rates contained in Schedule 8 of the Original Agreement. VWWOS shall not be expected nor shall it be obligated hereunder to advance any sums whatsoever for the costs of protecting and maintaining the

Facilities (including, without limitation, real property, improvements to real property, equipment, furniture, electronics, and other assets of the District), including, without limitation, for goods, services and other expenses recommended by VWWOS to the DISTRICT in the course of VWWOS' consultancy hereunder. The sole costs to be advanced by VWWOS hereunder shall be the direct and indirect costs of the VWWOS employees providing services to the DISTRICT hereunder, and the DISTRICT shall bear responsibility for all other costs related to DISTRICT operations.

7.2 VWWOS understands and acknowledges that a court could interpret the law in such a way that VWWOS would not be compensated for its work under the Original Agreement. Notwithstanding that risk, VWWOS is willing to provide services under the Original Agreement for forty-five (45) days after the commencement of performance under the Original Agreement.

8 Payment of Compensation

8.1 All compensation to VWWOS is due upon receipt of VWWOS's invoice and payable within thirty (30) days.

8.2 DISTRICT shall pay interest at an annual rate equal to the Bank of America's prime rate plus four percent (4.0%), said rate of interest not to exceed any limitation provided by law, on payments not paid and received within thirty (30) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9 [RESERVED]

10 Indemnity, Liability and Insurance

10.1 VWWOS hereby agrees to indemnify and hold DISTRICT harmless from any liability or damages for bodily injury, including death, property damage, or any other harm, which may arise from VWWOS's negligence or willful misconduct under this Consulting Agreement; provided, VWWOS shall be liable only for that percentage of total damages that corresponds to its percentage of total negligence or fault.

10.2 DISTRICT hereby agrees to indemnify and hold VWWOS harmless from any liability or damages for bodily injury, including death, property damage, or any other harm which may arise from DISTRICT's negligence or willful misconduct under this Consulting Agreement; provided, DISTRICT shall be liable only for that percentage of total damages as between itself and VWWOS that corresponds to its percentage of total negligence or fault as compared to that of VWWOS.

- 10.3 Neither party nor their affiliated companies, nor the officers, agents and employees or contractors of any of the foregoing, shall be liable to the other in any action or claim for consequential damages, loss of profits, loss of opportunity, loss of product or loss of use. Consequential damages are those losses that do not flow directly and immediately from an injurious act, but that result indirectly from the act, as defined in Black's Law Dictionary. Any protection against liability for losses or damages afforded any individual or entity by these terms shall apply whether the action in which recovery of damages is sought is based on contract, tort (including sole, concurrent or other negligence and strict liability of any protected individual or entity), statute or otherwise. To the extent permitted by law, any statutory remedies which are inconsistent with these terms are waived.
- 10.4 Notwithstanding the above, VWWOS shall be liable for those administrative fines or civil penalties imposed by a regulatory or enforcement agency for violations of the DISTRICT's NPDES Permit occurring after the effective date of this Consulting Agreement that result from VWWOS' actions or omissions under the Consulting Agreement, but only for that portion of total fines or penalties attributable to matters under VWWOS' control pursuant to the terms of the Consulting Agreement. The PARTIES will assist each other to contest any such administrative or civil penalties or fines, if justification exists, prior to payment by VWWOS or the DISTRICT. Under such circumstances, each PARTY shall bear its own costs.
- 10.5 DISTRICT shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on DISTRICT and/or VWWOS that are not a result of VWWOS's negligence or are otherwise directly related to the ownership and operation of the Facilities and shall hold VWWOS harmless from the payment of any such fines and/or penalties.
- 10.6 To the fullest extent permitted by law and notwithstanding any other provision of this Consulting Agreement, VWWOS's liability for performance or non-performance of any obligation arising under the Consulting Agreement (whether arising under breach of contract, tort, strict liability, or any other theory of law or equity) including, but not limited to its indemnity obligations specified in Section 10.1 of the Consulting Agreement, shall be limited to: (i) general money damages in an amount equal to the amount of the total proceeds from insurance provided by VWWOS under its general liability or automobile liability policies as specified in Appendix A (including payments of any and all applicable deductible amounts by VWWOS); or (ii) to the extent an occurrence is not covered by the insurance required in Appendix A or proceeds of that insurance are not received, VWWOS' cumulative aggregate liability to the DISTRICT for the term of this Consulting Agreement is the amount of \$250,000.
- 10.7 Each PARTY shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix A. Each PARTY assumes the risk of loss or damage to its respective property, from any cause, including the actual or alleged

negligence or strict liability of the other PARTY, and shall maintain broad form property insurance in order to protect both PARTIES against any such loss. Each PARTY shall provide the other PARTY with satisfactory proof of insurance.

10.8 Indemnity agreements provided for in this Consulting Agreement shall survive the termination of the Consulting Agreement.

10.9 In the event that VWWOS or any employees, agent, or subcontractor of VWWOS providing services under this Consulting Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of DISTRICT, VWWOS shall hold harmless DISTRICT for the payment of any employee and/or employer contributions for PERS benefits on behalf of VWWOS or its employees, agents, or subcontractor, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of DISTRICT.

11 Commencement, Effect, Term, Termination and Default

11.1 This Consulting Agreement shall commence immediately upon written election to proceed under this Consulting Agreement by VWWOS, notice of which VWWOS may give to the DISTRICT at any time after VWWOS shall have, in its sole and absolute discretion, determined that a Triggering Event has occurred provided that such notice shall not be given sooner than the earlier of 45 days from the commencement of performance under the Original Agreement or the entry of a court order precluding VWWOS' performance under the Original Agreement. No inference of whether or not VWWOS has determined that a Triggering Event has or has not occurred as of the execution of this Consulting Agreement shall be drawn from this Consulting Agreement.

11.2 VWWOS' election to proceed under this Consulting Agreement shall suspend performance by both PARTIES under the Original Agreement. The Original Agreement shall survive the commencement of this Consulting Agreement and the PARTIES shall remain bound thereby with the recommencement of the Original Agreement commencing upon the later of the termination of this Consulting Agreement and the determination by Veolia that the rights and obligations of the PARTIES under the Original Agreement are valid and enforceable notwithstanding the Referendum and the CEQA Suit. The term of the Original Agreement shall be extended day for day for each day that the Original Agreement is suspended. Each PARTY to the Original Agreement shall be entitled to all of its rights and shall have all of its obligations under the Original Agreement upon its recommencement. The PARTIES agree that no re-execution of the Original Agreement shall be required.

- 11.3 The initial term of this Consulting Agreement shall be for one (1) month. Thereafter, this Consulting Agreement will be automatically renewed on a month to month basis unless terminated by one or the other of the PARTIES.
- 11.4 A Party may terminate this Consulting Agreement for a material breach of the Consulting Agreement by the other Party only after giving written notice of breach; and only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach, except in case of a breach by DISTRICT for non-payment of VWWOS's invoices, in which case termination may be immediate by VWWOS.
- 11.5 In the event that this Consulting Agreement is terminated or not automatically renewed by the DISTRICT for any reason other than material breach by VWWOS, DISTRICT shall pay to VWWOS a termination fee of \$20,000.
- 11.6 VWWOS may terminate this Consulting Agreement at any time by giving DISTRICT 30 days' written notice. The Consulting Agreement may be terminated within fewer than 30 days should the PARTIES so agree. Should VWWOS at its election terminate this Consulting Agreement for any reason or for no reason, the Original Agreement shall resume in force immediately upon the later of the termination of this Consulting Agreement and VWWOS' determination that the rights and obligations of the PARTIES under the Original Agreement are valid and enforceable notwithstanding the Referendum and the CEQA Suit. The written notice shall clearly indicate whether VWWOS has determined that the rights and obligations under the Original Agreement are valid and enforceable.

12 Disputes and Force Majeure

- 12.1 In the event activities by employee groups or unions cause a disruption in VWWOS's ability to perform its consulting services at the Facilities, DISTRICT, with VWWOS's assistance, may seek appropriate injunctive court orders. During any such disruption, VWWOS shall provide its consulting services the Facilities on a best-efforts basis until any such disruptions cease.
- 12.2 Neither party shall be liable for its failure to perform its obligations under this Consulting Agreement, if such failure is due to any Uncontrollable Circumstances (as defined in Section 1.0 of the Original Agreement) beyond its reasonable control or force majeure. However, this Section may not be used by either party to avoid, delay or otherwise affect any payments due to the other party.

Both PARTIES indicate their approval of this Consulting Agreement by their signatures below, and each party warrants that all corporate or governmental actions necessary to bind the parties to the terms of this Consulting Agreement have been and will be taken.

NOVATO SANITARY DISTRICT

VEOLIA WATER WEST OPERATING SERVICES, INC. / CA CONTRACTORS LICENSE NO. 866429

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CERTIFICATE OF COUNSEL

The undersigned, as counsel for the NOVATO SANITARY DISTRICT (“DISTRICT”) in this transaction, hereby certifies that (s)he has examined the circumstances surrounding the selection of Veolia West Operating Services, Inc. and the award and letting of the foregoing contract to VWWOS by DISTRICT, and has found that said selection and award process comply with the procurement laws of the State of California and DISTRICT.

_____ Date: _____
Counsel for DISTRICT

APPENDIX A

INSURANCE COVERAGE

VWWOS SHALL MAINTAIN:

1. Statutory workers' compensation for all of VWWOS's employees at the Facilities as required by the State of California.
2. Commercial General Liability insurance, insuring VWWOS's negligence, in an amount not less than \$1,000,000 each occurrence and \$2,000,000 aggregate for bodily injury and/or property damage.
3. Business Automobile Liability insurance, insuring owned, non-owned and hire automobiles in an amount not less than \$5,000,000 combined single limit.

DISTRICT SHALL MAINTAIN:

1. Statutory workers' compensation for all of DISTRICT's employees associated with the Facilities as required by the State of California.
2. Property damage insurance for all property, including vehicles owned by DISTRICT and operated by VWWOS under this Emergency Agreement. Any property, including vehicles, not properly or fully insured shall be the financial responsibility of the DISTRICT.

VWWOS will provide at least thirty (30) days' notice of the cancellation of any policy it is required to maintain under this Emergency Agreement. VWWOS may self-insure reasonable deductible amounts under the policies it is required to maintain to the extent permitted by law. Each party shall include the other party as an additional insured on the coverages, excluding workers' compensation, required to be maintained hereby and shall contain a waiver of subrogation in favor of the other part as respects any claims covered or which should have been covered by valid and collectible insurance including any deductibles or self insurance maintained thereunder.

APPENDIX B
[Rate Schedule]

Title	VWWOS Personnel	Monthly Rate
Chief Plant Operator	John Bailey (Grade V)	\$14,400
Operations Supervisor	Ed Mann (Grade V)	\$14,400
Administrative Assistant	Lynda Rodefer	\$11,200

1307361.1

CEQA Review of Emergency Services Consulting Agreement

On September 21, 2009, the District Board authorized signing a Service Agreement for Operations, Maintenance and Management of Wastewater Treatment Facilities ("Service Agreement") with Veolia Water West Operating Services, Inc. ("Veolia"). Veolia has since assumed general responsibility for the operations, maintenance and management of the existing, transitional and new wastewater facilities ("Facilities") comprehended in the 2005 Novato Sanitary District Wastewater Facility Plan Project ("Project") and hired certain former District employees in accordance with the Service Agreement.

Since the District's approval of the Service Agreement, the Alliance of Concerned Citizens of Novato ("ACCN") has initiated collection of signatures to require a referendum on the District's approval of the Service Agreement with Veolia. While the District does not believe that the Service Agreement is subject to a referendum, the District is concerned that if a court were to find otherwise, Veolia could be precluded from performing under the Service Agreement. Interruption or termination of Veolia's services under the Service Agreement would cause an emergency situation for the District because the District does not have the certified personnel or experience necessary to start-up, operate, maintain and manage the Facilities.

As a contingency plan to ensure the continued start-up, operations, maintenance and management of the Facilities, the District proposes to enter into an Agreement for Emergency Consulting Services ("Consulting Agreement") with Veolia, which would only take effect in the event Veolia is precluded from performing under the Service Agreement. Under the proposed Consulting Agreement, District employees who were hired by Veolia pursuant to the Service Agreement would be rehired by the District ("Rehired Employees") to operate the Facilities, and Veolia would provide a Chief Plant Operator, an Operations Supervisor and an Administrative Assistant to assist the Rehired Employees with phasing out the existing treatment facilities and with starting-up, operating and maintaining the Facilities. The term of the proposed Consulting Agreement is one month and the term would be automatically renewed on a monthly basis unless it is terminated by one of the parties.

District Staff reviewed the 2005 EIR for the Project and the criteria in section 15162 of the CEQA Guidelines to determine whether the proposed Consulting Agreement constitutes a modification to the Project requiring a subsequent or supplemental EIR. Under section 15162, where an EIR has been certified for a project, no supplemental or subsequent EIR shall be prepared unless the agency determines, based on substantial evidence that one or more of the following criteria are satisfied:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative;
or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

District Staff determined that the proposed Consulting Agreement does not meet any of the criteria in CEQA Guidelines section 15162. First, there are no substantial changes proposed to the Project. The proposed Consulting Agreement does not involve any changes to the physical design, construction, or operation of the Facilities. In addition, the mitigation measures identified in the 2005 EIR and adopted by the District as well as all existing Federal, State and local regulatory requirements, will continue to apply to the Project. Furthermore, the Facilities will be operated, maintained and managed by persons with the level of skill and expertise required by law because the Consulting Agreement requires that Veolia provide staff who have met appropriate licensing and certification requirements of the state of California.

Second, there are no substantial changes in the circumstances under which the Project will be undertaken. The proposed Consulting Agreement does not involve any changes to the physical design, construction, or operation of the Project Facilities. Moreover, the environmental setting and physical environmental conditions for the area have not changed from those anticipated in the 2005 EIR. There are no changes in the basic design, location or setting of the Project, the flow characteristics of the waste stream, the treatment units, location of treatment units, odor control facilities, energy conservation measures or planned treatment plant capacity. The basic means of treatment of the wastewater, and operational activities required to process the wastewater, are unchanged from those contemplated in the 2005 EIR. The Project will be required to comply with the same environmental permit conditions, regulations and standards, regardless of the specific personnel that operate the Facilities. There is also no contemplated substantial change in the number or skill of employees. The Facilities will continue to be operated, maintained and managed by the Rehired Employees who are familiar with the treatment facilities. Their activities will be overseen and supervised by the Chief Plant Operator, the Operations Supervisor and the Administrative Assistant, all of whom are experienced in starting up and operating facilities similar to the Project Facilities.

Third, there is no new information of substantial importance that was not known or could not have been known at the time the Project was approved.

Based on the foregoing, the consulting services proposed to be provided by Veolia under the proposed Consulting Agreement will not result in any significant environmental impacts not previously considered in the 2005 EIR, nor will the services provided increase the severity of the previously-identified significant environmental impacts. Moreover, the services proposed to be provided under the Consulting Agreement are much more limited in scope than those currently being provide by Veolia under the Service Agreement, and the District previously determined in the Addendum to the 2005 EIR that the Service Agreement would not result in any new significant environmental impacts or increase the severity of any impacts identified in the 2005 EIR. Accordingly, no further environmental review is required for approval of the Consulting Agreement.