



Agenda Item No. \_\_\_\_\_

File Code No. \_\_\_\_\_

# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

### Item 10

**AGENDA DATE:** July 21, 2015

**TO:** Mayor and Councilmembers

**FROM:** Engineering Division, Public Works Department

**SUBJECT:** Reactivation Of The Charles E. Meyer Desalination Facility

**RECOMMENDATION:** That Council:

- A. Introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Authorizing the Approval and Execution by the Public Works Director of an Installment Sale Agreement in Connection with the Desalination Plant Reactivation Project Drinking Water State Revolving Fund Project No. 4210010-005C;
- B. Introduce and subsequently adopt, by reading of title only, an Ordinance of the Council of the City of Santa Barbara Authorizing the Approval and Execution by the Public Works Director of a Contract to Design, Build, and Operate the Charles E. Meyer Desalination Facility with IDE Americas, Inc., in the amount of \$43,437,234 and approve expenditures up to \$1,864,420 to cover any cost increases that may result from contract change orders for extra work and differences between estimated bid quantities and actual quantities measured for payment;
- C. Introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Authorizing the Acceptance and Execution by the Public Works Director of a Lease For a Term of 25 Years with the State Of California State Lands Commission for the Continued Use and Maintenance of One 48-inch Diameter Sewer Outfall Pipeline and Maintenance of One 42-inch Diameter Non-operational Outfall Pipeline and Associated Facilities as Further Described on Exhibit "A" Attached Thereto;
- D. Authorize the Public Works Director to pay the \$500,000 for work on a project to restore the upper Devereaux Slough in accordance with National Pollutant Discharge Elimination System permit special conditions;
- E. Approve a purchase order in the amount of \$60,000 to Acciona Agua as stipend for submitting a proposal in response to the Request for Proposals for the Recommissioning Of The Charles E. Meyer Desalination Facility;
- F. Authorize the City Attorney to execute an Amendment to Legal Services Agreement No. 24,935 with Lathan & Watkins LLP to increase the "Do Not Exceed Limit" from \$200,000 to \$220,000 for legal support related to the local Coastal Development

- Permit;
- G. Authorize the City Attorney to execute a Third Amendment to Legal Services Agreement No.24,835 with Hanson Bridgett LLP to increase the "Do Not Exceed Limit" from \$150,000 to \$175,000 for legal services related to negotiating and drafting the DBO contract; and
  - H. Increase estimated revenues and appropriations in the Water State Revolving Fund Loan Fund in the amount of \$8,000,000 for the Charles E. Meyer Desalination Facility for a total amount of \$55,000,000.

#### **DISCUSSION:**

On June 16, 2015, Council authorized a professional services contract with IDE Americas, Inc., (IDE) in the amount of \$1,320,000 to begin the design phase for the Design, Build, and Operate (D/B/O) contract for the Charles E. Meyer Desalination Facility (Desal Facility) to keep the reactivation of the Desal Facility on schedule for completion in fall 2016.

#### **Project Status Update**

With the acceptance of the State Revolving Fund (SRF) loan, the City can award the full D/B/O contract with IDE. The cost of the project, as submitted by IDE, was \$44,757,234. The approval of the contract for \$43,437,234 realizes the \$1,320,000 awarded on June 16, 2015, to begin the design phase for the project. The change order authority is five percent of the construction cost submitted by IDE, or \$1,864,420, which is appropriate for this type of project.

The SRF loan has a repayment term of 20 years. One requirement of the loan is that the City must demonstrate that it has real property rights in all locations occupied by project facilities that, if those rights are not owned in fee, must have a term at least as long as the term of the loan. The City had an existing lease with the State of California State Lands Commission (SLC) for the use of the 48-inch outfall pipeline for the El Estero Wastewater Plant and the 42-inch diameter non-operational outfall pipeline that was associated with the original wastewater plant with 9 years remaining on the term. The Desal Facility will be using the 48-inch outfall in conjunction with the El Estero plant for brine disposal. Due to the requirement of the SRF loan with a 20-year term, the SLC has terminated the current lease and approved a new lease with a term of 25 years. A special condition has been added requiring that by June 2020, the City must submit a plan to the SLC for removal or other disposition of the non-operational 42-inch pipeline.

The City will also be spending \$500,000 to contribute to a project to restore the upper Devereaux Slough to fulfill requirements placed on the project by the Regional Water Quality Control Board, per the National Pollutant Discharge Elimination System permit.

As part of the Request for Proposal process, the City offered a stipend of \$60,000 to the proposers to help defray the costs of submitting the proposals for the reactivating of the

Desal Facility to the firms who were not the successful bidders. This is typical for a large, time intensive project.

The law firm of Hanson Bridget LLP has provided legal assistance with negotiating and drafting the DBO contract. The firm has extensive experience in public entity contracting for complex public infrastructure projects including design, build, and operate type procurement projects. Extensive negotiation and drafting of the DBO contract occurred in May and June and was necessary to finalize the contract. The additional \$25,000 is necessary to cover costs incurred in this final effort to complete the contract and as may be necessary to cover any final issues that may arise.

Finally, one of the last permit requirements prior to reactivation is the local Coastal Development Permit. In 1991, the City approved a coastal development permit (CDP) allowing the Desalination Facility to operate as a 5-year temporary facility, and in 1995, the City approved a CDP allowing the Desalination Facility to be converted to a permanent facility. Although the Desalination Facility has been in long-term stand-by mode since 1997, the City has continued to conduct routine maintenance activities, preserving the facility for reactivation if necessitated by drought or other water supply shortage conditions. Now, the Public Works Department proposes to reactivate the Desalination Facility consistent with the Planning Commission's prior CDP approvals and approved plans for the facility. The revisions to the facility are proposed to be reviewed through a substantial conformance request to be submitted by the Public Works Department.

Due to the unique and complex nature of the Coastal Development Permit regulatory process and substantial conformance determination, specialized legal assistance is recommended. Latham & Watkins LLP is extremely experienced and knowledgeable with all aspects of coastal development review. The original legal services contract contained a "not to exceed limit" of \$200,000 which may be reached prior to securing all necessary coastal permits for the reactivation. It is recommended that the "not to exceed limit" be increased by an additional \$20,000 to allow additional work if needed.

**FUNDING:**

The City has received the Installment Sale Agreement for a SRF loan to execute in the amount of \$55 million from the State Water Resources Control Board Division of Drinking Water. The terms of the loan are 1.663 percent interest for 20 years, which is a debt service of approximately \$3.2 million per year. Because the agreement is for a 20-year period, the acceptance of the loan must be by Ordinance. Costs making up the loan amount are as follows:

Estimated Project Costs

	Reactivation Costs
IDE D/B/O Contract	
Design/Engineering/Planning	\$7,468,832
Construction Costs	\$37,288,402
Extra Services	\$1,864,420
Design/Engineering/Planning – City and others	\$1,710,296
Engineering/Admin during Construction - Carollo	\$2,235,884
Engineering/Admin during Construction - City	\$255,739
Legal and Other Costs	\$821,744
NPDES Permitting Fees – Intake and Potable Reuse Study and contribution	\$3,221,651
Contingency	\$133,032
<b>TOTAL COSTS</b>	<b>\$55,000,000</b>

**BUDGET/FINANCIAL INFORMATION:**

Project costs for the Desal Facility will be tracked in the Water SRF Loan Fund. The budgeted amount for Fiscal Year 2016 was \$47 million. With the acceptance of the loan, the amount will be increased by \$8 million, for a total of \$55 million in appropriations.

**PREPARED BY:** Pat Kelly, Assistant Public Works Director/CityEngineer/LS/kts

**SUBMITTED BY:** Rebecca J. Bjork, Public Works Director

**APPROVED BY:** City Administrator's Office