

**CITY OF DANA POINT**  
**AGENDA REPORT**

Reviewed By: DH X CM X CA
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**DATE: JULY 22, 2013**

**TO: CITY MANAGER/CITY COUNCIL**

**FROM BRAD FOWLER, DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES**

**SUBJECT: ADOPTION OF A RESOLUTION APPROVING A JOINT PARTICIPATION AGREEMENT WITH SOUTH COAST WATER DISTRICT FOR REIMBURSEMENT OF COSTS TO SCWD TO CONSTRUCT THE CITY'S STORM DRAIN IMPROVEMENTS AS PART OF THE TOWN CENTER PHASE 1 PROJECT**

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**RECOMMENDED ACTION:**

That the City Council:

- 1) Rescind prior Joint Participation Agreement Resolution No. 13-06-18-01 of June 18, 2013;
- 2) Adopt a Resolution (Action Document A) entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING A JOINT PARTICIPATION AGREEMENT BETWEEN THE CITY OF DANA POINT AND THE SOUTH COAST WATER DISTRICT FOR THE REIMBURSEMENT OF COSTS TO SCWD TO CONSTRUCT THE CITY'S STORM DRAIN IMPROVEMENTS AS PART OF THE TOWN CENTER PHASE 1 PROJECT;

3) authorize the City Manager to execute the Agreement; 4) authorize a budget appropriation in accordance with the Fiscal Section; and 5) authorize the City Manager to provide the construction cost deposit amount to SCWD (includes base bid plus a fifteen percent contingency) as indicated in the Agreement.

**ISSUES:**

Whether or not to approve the subject Resolution and associated actions.

**BACKGROUND:**

The City of Dana Point (City) and South Coast Water District (SCWD) have met together via the Ad-Hoc Water Sewer Committee Meeting to discuss phasing and other issues related to the construction of the PCH/Del Prado Streetscape Improvement Project.

Several of the key resolutions that came from those meetings were as follows:

1. Construct the Project in four phases instead of five.
2. Support SCWD constructing their underground improvements before the City's streetscape improvements.
3. Include a portion of the City's underground storm drain improvements as part of the first phase of SCWD underground construction to reduce the construction schedule time and impacts to residents and businesses, and reduce cost & underground coordination conflicts.

It is important to note that the storm drain improvements described in Item #3 are the City's obligation to construct, but SCWD has agreed to accomplish them via their Contract on the City's behalf. SCWD advertised their Phase 1 Project for construction bids, and expects the SCWD Board of Directors to consider awarding the Project on July 11, 2013, which includes the City's storm drain improvements subject to approval of this reimbursement agreement.

**DISCUSSION:**

In order to allow the City's Storm Drain Improvements to be constructed as part of the SCWD Town Center Phase 1 Improvements, a Joint Participation (Reimbursement) Agreement is required. The City and SCWD have successfully used these agreements in the past when in the public interest. The City and SCWD worked jointly to prepare the Joint Participation Agreement (Agreement), which was reviewed and approved on June 18, 2013. That Agreement and its approval did not specify a dollar amount for the "stranded water/sewer costs". Subsequent to that action, low bid construction costs for the project have been received, and SCWD has proposed that the \$450,000 stranded cost amount be shared 50/50 with the City, i.e., that the City reimburse SCWD \$225,000 in this revised Agreement. Action Document A reflects the newly revised and proposed agreement showing this amount in Paragraph 3.2. Several other minor adjustments are also shown underlined in the document. Rather than amend the previous Joint Participation Agreement, the proposed Action rescinds the June 18<sup>th</sup> version and replaces it with Action Document A.

The stranded costs come about because portions of the water and sewer systems will be removed and still have remaining useful life. The portions of the system subject to this discussion are being removed to accommodate the installation of new water/sewer main lines necessary for Town Center development. The \$225,000 will cover the

stranded costs for SCWD water & sewer on both PCH and Del Prado as clarified with their Board at their July 19<sup>th</sup> Adoption Hearing.

**NOTIFICATION/FOLLOW-UP:**

South Coast Water District

**STRATEGIC PLAN IMPLEMENTATION**

This action is in compliance with the Strategic Plan Initiative to restore and maintain the integrity of our ocean waters and beaches.

**FISCAL IMPACT:**

Construction costs for the City storm drain work have been previously approved. However, approval of the Recommended Action in this report requires appropriation of an additional \$225,000 for the stranded water/sewer costs to be reimbursed to SCWD, by September 1, 2013; therefore, it is recommended that \$225,000 be appropriated to CIP Project #1242 from the undesignated balance of the Capital Improvement Projects Fund.

**ALTERNATIVE ACTIONS:**

- 1. Other alternatives as determined by the City Council.

**ACTION DOCUMENTS:**

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A. <a href="#">Resolution approving agreement</a> .....	3
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**ACTION DOCUMENT A: Resolution Approving Agreement****RESOLUTION NO. 13-06-18-XX****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING A JOINT PARTICIPATION AGREEMENT BETWEEN THE CITY OF DANA POINT AND THE SOUTH COAST WATER DISTRICT FOR THE REIMBURSEMENT TO SCWD OF COSTS TO CONSTRUCT THE CITY'S STORM DRAIN IMPROVEMENTS AS PART OF THE TOWN CENTER PHASE 1 PROJECT**

THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

WHEREAS, South Coast Water District (SCWD) and the City of Dana Point (City) are working jointly to construct the PCH/Del Prado Streetscape Project and all of the associated improvements, including SCWD water/sewer utilities and City storm drains;

WHEREAS, SCWD and the City wish to enter into a Joint Participation Agreement to allow SCWD to contract for construction of the City' underground storm drain improvements as part of other underground utility work SCWD will complete.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Dana Point does hereby resolve as follows:

Section 1. The City of Dana Point:

- A. Approves the Agreement included in "Attachment A" and agrees to comply with all requirements of the subject Agreement; and
- B. Designates the City Manager or designee as the authorized representative to sign the Agreement, and deposit funds on behalf of the City.

Section 2. City Clerk is directed to certify the Resolution.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Steven Weinberg, Mayor

ATTEST:

\_\_\_\_\_  
Kathy M. Ward, City Clerk

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF DANA POINT )

I, Kathy M. Ward, City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 06-18-13-XX adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES:

NOES:

ABSENT:

(SEAL)

\_\_\_\_\_  
Kathy M. Ward, City Clerk

## Attachment A

### Joint Participation Agreement Water and Sewer System Improvements

This Agreement is made and entered into this \_\_\_ day of July, 2013, by and between the City of Dana Point, California ("City") and the South Coast Water District, a County Water District organized and existing under Section 30,000 et seq. of the California Water Code ("District"). In this Agreement, the City and the District are sometimes individually referred to as each "Party" and collectively referred to as the "Parties."

#### **Recitals**

- A. Pursuant to Section 6250 of the California Government Code, the City and District desire to enter into a cooperative agreement for the purpose of jointly carrying out the construction of certain water, sewer and storm water improvements to be installed within the public right of way generally along and across portions of Pacific Coast Highway and Del Prado in an area known as Town Center, Dana Point, California (the "Improvements").
- B. The District desires to fund and construct portions of the Improvements within Pacific Coast Highway as set forth in those certain Plans and Specifications entitled "SCWD – Dana Point Town Center Infrastructure Improvements – Phase I" dated May 2013 ("Water and Sewer Improvements"). The Water and Sewer Improvements are within the power and authority of the District under State law to construct.
- C. The City desires to fund and construct portions of the Improvements, namely storm drain improvements, as set forth in those certain Plans and Specifications entitled "City Storm Drain Plans – The Dana Point Town Center Streetscape Improvement – Phase 1A," dated June 18, 2013 ("Storm Drain Improvements"). The Storm Drain Improvements are within the power and authority of the City under State law to construct.
- D. Each of the Parties desires to coordinate the installation of the Improvements (as the work will take place generally in the same streets, sidewalks and adjacent areas) in order that contractor work and traffic flow is managed well, which will lower costs and avoid disruption to residents and businesses.
- E. The City has requested and the District is willing to contract for and manage the Storm Drain Improvements to be constructed with the full cost thereof to be paid by the City all in accordance with the terms of this Agreement.
- F. The District has requested and the City is willing to expedite certain approvals in order to allow for the Water and Sewer Improvements to proceed to construction concurrent with the Storm Drain Improvements all in accordance with the terms of this Agreement. The City has requested the Water and Sewer Improvements to be completed along Pacific Coast Highway in advance of other City Street Improvements.
- G. Each of the Parties has prepared and approved certain documents consistent with the California Environmental Quality Act, including that certain Town Center Mitigated Negative Declaration adopted May 13, 2010 by the District and the Environmental Impact Report (EIR) for the PCH/Del Prado Streetscape Project adopted by the City on January 17, 2012, including a June 18, 2013 Addendum.

Now, therefore, in consideration of the mutual covenants and conditions herein contained, the Parties hereby agree as follows:

**1 Work Requirements.**

- 1.1 Joint Exercise of Powers. The Parties agree that the construction of the Improvements is a project consistent with the intent of Section 6250 et seq. of the Government Code for the joint exercise of the powers of each. For the purposes of carrying out this Agreement, the Parties agree to the selection of the requirements applicable to the work to be carried out hereunder as the same apply to County Water Districts (as set forth in Section 30,000 et seq. and elsewhere), and the applicable procedures and requirements of the South Coast Water District as of the date of this Agreement shall apply to the manner and method of carrying out the provisions of this Agreement (consistent with Government Code Section 6509). The Parties elect by this Agreement to require each from the other bonds in the amount of \$0 for the purposes of securing the obligations hereunder; provided however, that the contractor payment and performance bond requirements shall inure to the benefit of each Party in the amount of the Improvements to be paid for by each Party.
- 1.2 Improvement Design and Preparation Costs. Each of the Parties has incurred certain costs in the planning, preliminary design, design, environmental compliance, permitting, and CEQA analysis of the Improvements prior to the date of this Agreement (“Project Design and Preparation Costs”) and neither Party shall be responsible for the costs incurred by the other Party in preparing to fund and construct the Improvements. From the date of this Agreement through the Date of Completion (as defined below), the District shall remain the responsible agency for Project Design and Preparation Costs for the Water and Sewer Improvements, and the City shall remain the responsible agency for Project Design and Preparation Costs for the Storm Drain Improvements, unless specifically set forth herein or in a subsequent amendment to this Agreement approved by both Parties.

**2 Improvement Construction, Construction Inspection, Construction Design Change.**

- 2.1 The District has assembled the bid package for the Improvements utilizing the Plans and Specifications provided and approved by each Party as described in Recitals B and C of this Agreement. The bid and contract award shall proceed in accordance with the District’s standard contracting procedures. Prior to the issuance by the District of a Notice to Proceed for the Improvements, the City shall be responsible for providing engineering and management support to the Storm Drain Improvements, and any direction or request to the contractor for clarification of any item associated with the Storm Drain Improvements shall be issued in writing from the City to the District and from the District to the contractor. The City shall provide an authorized representative to all construction meetings held prior to the Notice to Proceed and throughout the course of construction of the Storm Drain Improvements, and the authorized representative shall be the agent of the City.
- 2.2 Upon issuance of the Notice to Proceed to the Contractor, the District shall manage the construction of the Storm Drain Improvements and the Water and Sewer Improvements in accordance with the applicable Plans and Specifications and to the extent possible avoiding conflicts between the two projects as work proceeds. In the event that the two projects conflict in a manner that may create an unforeseen or unplanned cost to either of the Parties or a substantial change to the schedule set for the projects, the Parties shall meet and confer and resolve the conflict or cost in a manner that is reasonable within general engineering and project management standards.

- 2.3 The Inspector selected by City shall provide inspection services for the Storm Drain Improvements, and the Inspector shall report to the District Representative as the work proceeds. The District shall meet and confer with the City regarding inspection reports and give regular updates on the progress of construction of the Storm Drain Improvements.

### **3 Value of Improvements, Deposits, Payments and Change Orders**

- 3.1 Each Party has reviewed and takes responsibility for the approval of the Plans and Specifications applicable to the work being funded by that Party. The District shall fund the actual cost based on the bid received for the construction cost of the Water and Sewer Improvements in the amount of \$1,913,540 for work proceeding along Pacific Coast Highway and in the vicinity of the Storm Drain Improvements. The City shall fund the actual cost based on the bid received for the construction cost of the Storm Drain Improvements in the amount of \$666,146. The total of the actual cost of the Improvements through the filing of the notice of completion for the Improvements may differ from the engineer's estimate and from the construction bids based on change orders or factors not anticipated at the time of execution of this Agreement. Any design revision or change occurring after the Notice to Proceed for the Improvements, of whatever nature or cause, shall be for the account of the City with respect to the Storm Drain Improvements or for the account of the District for the Water and Sewer Improvements. The costs of the payment and performance bonds, mobilization and demobilization, storm water pollution prevention plans for the construction, traffic control and excavation safety measures is \$122,000, and the parties shall share in proportion to their cost of the Improvements, with the City share being \$32,940 and the District share being \$89,060 for those costs. The City shall fund the costs of any increases occurring for the Storm Drain Improvements and the District shall fund the costs of any increases occurring for the Water and Sewer Improvements above the amounts stated in this Section 3.1.

On receipt of the bids for construction of the Improvements, the District and City shall meet and review the bids received and applicable to the Improvements funded by each, and the District's standard criteria for scoring and selection of contractors shall apply to selection of the contractor(s) to carry out the Improvements. Notice shall be given in writing from District to City setting forth the contract bid amount, and requesting a deposit for the Storm Drain Improvements. The City shall also deposit with the District the actual bid amount for the Storm Drain Improvements plus a fifteen percent (15%) contingency, estimated at a total of \$740,000, to be used by the District for the Storm Drain Improvements. On receipt of the deposits, the District shall issue a notice to proceed, and the District may expend the funds on deposit for the Storm Drain Improvements on a monthly basis as work progresses. The City shall on submission of approvals make prompt review of the progress payment/invoices per Section 3.4. In the event the City requests that the District withhold a progress payment or any portion thereof, the District shall promptly schedule a meeting with the Parties to resolve the matter. Any costs occurring to the District due to the delay in payments for Storm Drain Improvements progress payments or invoices shall be paid for by the City.

- 3.2 In addition to the costs provided for in Section 3.1, the City shall pay to the District on or before September 1, 2013, the amount of \$225,000.
- 3.3 The District shall award the construction contract for the Improvements and compensate the contractor in accordance with the District's obligations under the construction contract. Documents applicable to the Storm Drain Improvements including the construction schedule shall be provided to the City.
- 3.4 The District shall prior to the issuance of payments to the contractor deliver the submitted monthly contractor invoices to the City for review and comment, and District shall deliver with the invoices an accounting of cash on hand remaining from the City deposit after each payment to the contractor for the Storm Drain Improvements. In the event a change order is requested and approved for the Storm Drain Improvements, the City shall deposit with the District an amount equal to the value of the



- change order, if the same is over the contingency amount, within ten (10) days of the delivery of the following monthly contractor invoicing from the District. Following the issuance of the Notice of Completion and after the expiration of dates applicable to the filing of liens, the District shall file with the City a final report of all money deposited and expended on the Storm Drain Improvements, and any unspent City deposits for the Storm Drain Improvements shall be promptly returned to the City.
- 3.5 The District shall manage any change order requests applicable to the Storm Drain Improvements in a manner consistent with its standard practices for consideration of change orders; provided, however, that the District shall hold for City approval prior to the continuation of the work requested as a change order any non-critical additions requested by the contractor until the consideration of the City is received and approval for the change order given. Should the delay in response to the contractor create a cost, due to the City giving consideration to the change order request, the added cost will be the responsibility of the City. If the District determines that the change order request is critical to the prosecution of the work for either Party, then District shall give telephone notice to the City and may proceed with the change order, and the City shall be responsible for that cost to the extent it arises from the Storm Drain Improvements. In no event will the City be responsible for any change orders issued by the District applicable to the Water and Sewer Improvements.
- 3.6 Each of the Parties shall be responsible for reviewing the as built drawings for the portion of the work it funded. Nothing herein shall be construed to commit the District to install other or further water or sewer facilities in advance of construction within the City of Dana Point and/or in advance of funding by private developers for such improvements to serve private development.
- 4 Requirement of Contractor, Indemnifications and Insurance.**
- 4.1 The construction contract shall contain provisions in accordance with the District's standard contracting requirements, which name the District and the City as indemnified parties and as additional insureds for the general liability policies insuring the contractor for the work on the Improvements. Payment and Performance bonds will be required from the Contractor in the value of the Improvements. The activities of the District with respect to the construction of the Improvements (where the District is not covered as an additional insured under the contractor policies) shall be covered by the District's agreements with the Joint Powers Insurance Authority (ACWA/JPIA) applicable to the general liabilities of the District and a certificate of insurance shall be provided to the City.
- 4.2 The Water and Sewer Improvements shall on completion be the sole property of the District. The Storm Drain Improvements shall on completion be the sole property of the City. Each Party shall have no interest in the property of the other. Each Party agrees to provide any documentation related to the Improvements to the other on request.
- 4.3 This Agreement shall inure to the benefit of, and be bind upon the Parties hereto and their respective successors and assigns.
- 4.4 Notices, demands, and communications between the Parties shall be given by personal delivery, fax, or U.S. mail, postage prepaid. Notices shall be deemed effective on receipt and addressed to:

South Coast Water District  
Attention: Director of Engineering  
31592 West Street  
Laguna Beach, CA 92651

City of Dana Point  
Attention: City Engineer  
33282 Golden Lantern

Dana Point, CA 92629

- 4.5 No Third Party Beneficiaries. Nothing in this Agreement is intended to create any third-party beneficiaries to the Agreement, and no person or entity other than the District and City, and the permitted successors of either of them, shall be authorized to enforce the provisions of this Agreement.
- 4.6 Assignment. Neither Party may assign their interest in this Agreement without the prior written consent of the other, which will not be unreasonably withheld.
- 4.7 Further Assurances. The District and City agree to execute, acknowledge and deliver any and all additional papers, documents, and other assurances and shall perform any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the Parties. Nothing in this Agreement is intended to modify, alter or relinquish the authority of each of the Parties to require payment of capacity charges, costs of construction and related costs, development charges or fees, or to set other standards, criteria, fees or charges otherwise applicable to any person or entity connecting to the water and sewer system or obtaining permits and approvals to construct within the City of Dana Point.
- 4.8 Entire Agreement, waivers and amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged. A waiver of the breach of covenants, conditions or obligations under this Agreement by either Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or obligations of this Agreement. All amendments and modifications hereto must be in writing and signed by the appropriate authorities of the District and City.
- 4.9 Prevailing Party. In the event of any proceeding between the Parties, their successors or assigns, to interpret this Agreement or to enforce any provision or right hereunder, the prevailing party shall be entitled to recover all costs and expenses incurred including, but not limited to, the fees of attorneys and expert witnesses. These amounts shall be included as a part of the judgment or award rendered in such proceedings.
- 4.10 Agreement Negotiated. The text of this Agreement is the product of negotiation among the Parties and their counsel and is not to be construed as having been prepared by one party or another.
- 4.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 4.12 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 4.13 Due Authorization. The District and City have complied with all legal requirements and the undersigned representatives are duly authorized to enter into this Agreement.

Executed by and between South Coast Water District and the City of Dana Point.

“City of Dana Point”

“South Coast Water District”

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

Betty C. Burnett  
Name

\_\_\_\_\_  
Title

General Manager  
Title

Approved as to Form:

\_\_\_\_\_  
Patrick Munoz, City Attorney

Attest:

\_\_\_\_\_  
Kathy M. Ward  
City Clerk