

MEMO

**Consent
Item #: 4**



Meeting Date: October 17, 2022

To: Board of Directors
From: Director of Engineering and Compliance, Guy R. Petraborg
Approved by: General Manager, Felipe Melchor

Subject: Authorize the General Manager to Execute a City of Marina MOU Agreement for Partial Funding of up to \$75,000 in Support of an Odor Attribution Study Subject to Concurrence to Form by District Legal Counsel

Recommendation

That the Board authorize the General Manager to execute a City of Marina Memorandum of Understanding (MOU) Agreement for partial funding of up to \$75,000 in support of an Odor Attribution Study subject to concurrence to form by District Legal Counsel.

Background

In the Spring and Fall of 2016, ReGen began receiving reports of odor that were occurring in north Marina from time-to-time. The odor reports continued from time-to-time in 2017 thru 2019 on a similar seasonal basis; and to a lesser extent since 2019. Coincidentally in 2016, there was a large area of agricultural field development that occurred on the former Armstrong Ranch property located on the northern border of Marina and south and west of both the Monterey One Water's (M1W) Regional Treatment Plant (RTP for municipal wastewaters and ReGen's solid waste treatment facilities (Monterey Peninsula Landfill, Materials Recycling Facility, or windrow composting of mixed food and yard waste materials). The field development of the former Armstrong Ranch (cattle grazing) had begun in 2014 in small areas prior to the large expansion in 2016. Nonetheless, since 2016 a variety of odors have been reported in the City of Marina from time-to-time and under a variety of prevailing wind conditions. Some of the reported odors from time-to-time appear to be similar to those that can be observed from time-to-time at the agricultural fields, the RTP, and/or at ReGen's facilities. Given the variety of odor types that had been reported and the variety of prevailing wind conditions that were occurring at the time of reporting, ReGen staff in 2018 began recommending that a field study be conducted over a 12-month period to monitor and document any odors so that all odor sources could be identified and focus mitigation measures could be defined that would be appropriate for the specific odor source identified.

Discussion

The City of Marina recently completed a public solicitation process in search of professional environmental services from qualified consultants to perform an odor attribution study over the next year or so. Two consultants reportedly submitted their qualifications and proposals for the odor attribution study. At the City's Council Meeting last month, the City Council i) adopted a draft

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Let's not waste this.



MOU Agreement between the City, ReGen Monterey (Monterey Regional Waste Management District) and Monterey One Water (M1W) for partial funding of an odor attribution study, and ii) approved a professional services agreement between the City and SCS Engineers for environmental services for the odor attribution study project in the approximate amount of \$150,000. The draft MOU Agreement is presented as Attachment A to this Board Report and is for the Board's review and consideration of approval for the General Manager to execute the agreement on behalf of ReGen Monterey. Should the Board support executing the MOU Agreement with the City of Marina, then ReGen's Legal Counsel will review the agreement for concurrence to form prior to the General Manager's signature of a final agreement document.

Financial Impact

The financial impact for ReGen Monterey associated with the City of Marina's MOU Agreement is \$75,000. These funds are included in the Approved Budget for FY 22-23 and no other action is required by the Board other than approving the General Manager's execution of the MOU Agreement. The M1W Board will separately review their funding of \$75,000 for the study; for a combined total funding of \$150,000 from the two agencies. The decision of ReGen's Board to provide partial funding for the study is separate and independent of those of M1W's Board. Nonetheless, it is staff's understanding that there is similar support for partially funding Marina's Odor Attribution Study by M1W as there is by ReGen.

Strategic Plan

The joint agency collaboration with the City of Marina for an Odor Attribution Study to investigate a variety of odors that have been detected from time-to-time aligns with our Community and Environment stewardship interests. Both agencies receive liquid sewage or solid wastes from the City of Marina similar to the other municipalities served by the two agencies. Both agencies then perform waste treatment services for the implementation of local, state, and federal regulations for the protection of the public health and environment.

Conclusion

Given the past four to five years of ReGen's staff's recommendation and Board's support for a field study to help identify various sources of odor that are reported in the City of Marina from time-to-time, staff requests that the Board authorize the General Manager to execute a City of Marina Memorandum of Understanding (MOU) Agreement for partial funding of up to \$75,000 in support of an Odor Attribution Study subject to concurrence to form by District Legal Counsel.

Attachment:

A) Memorandum of Understanding between the Monterey Regional Waste Management District, Monterey One Water, and the City of Marina Regarding an Odor Attribution Study

MEMORANDUM OF UNDERSTANDING

BETWEEN THE MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT,
MONTEREY ONE WATER, AND THE CITY OF MARINA REGARDING AN ODOR
ATTRIBUTION STUDY

This Memorandum of Understanding (“MOU”) is made and entered into as of the date of the signatures set forth below by and between the MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT (“MRWMD”), a California Garbage and Refuse Disposal District, MONTEREY ONE WATER (“M1W”), a California public agency; and the CITY OF MARINA (“City”), a California charter city. Collectively these entities shall be known herein as “Parties” or individually as a “Party.”

Recitals

- A. A number of odor complaints have been reported to the CITY and the Monterey Bay Air Resources District (“MBARD”) by residents of the CITY in recent years.
- B. A public meeting was held on January 27th, 2021 where representatives of MRWMD, M1W, MBARD, Monterey County Health Department, as well as experts in agriculture and composting participated on an informational panel to answer questions from the public and investigate potential collaborative and coordinated action for addressing the odor attribution in and near the City of Marina.
- C. The Parties have determined that it is in their best interests to coordinate their activities related to this topic.
- D. The Parties further determined that MRWMD and M1W operations may be identified as possible sources of odors and therefore, it is appropriate for the CITY to hire an independent consultant to conduct an odor attribution study to avoid the actual or apparent conflict of interest.
- E. MRWMD and M1W have each agreed to reimburse the CITY in an amount not to exceed \$75,000 for a total of \$150,000 to fund the odor attribution study.

NOW THEREFORE, in consideration of the mutual benefits to be derived by the Parties, and of the promises contained in this MOU, the Parties agree as follows:

Section 1. Recitals: The recitals set forth above are incorporated herein.

Section 2. Purpose: The purpose of this MOU is to provide a structure for MRWMD and M1W to reimburse the CITY for costs of a consultant to conduct an odor attribution study on behalf of the Parties and the City’s interests in this matter.

Section 3. Voluntary: This MOU is voluntarily entered into by the Parties for the purpose of addressing the public concerns regarding the odor complaints.

Section 4. Term: This MOU shall become effective on the last day of its execution by the Parties and shall remain in effect until terminated by the Parties.

Section 5. Scope of Work, Costs & Cost Sharing: The scope of work for the CITY includes:

- Issuing the Request for Proposal (RFP) for consultant to perform the study
- Evaluating the proposals and selecting consultants for the interview process
- Conducting interviews with qualifying consultants
- Entering into an agreement with the final selected consultant
- Managing performance of the study through the execution period
- Sharing the deliverables of study with the Parties at the end of each phase of the work
- Selected consultant's costs of the study

MRWMD and M1W shall each reimburse the CITY, in equal shares, in an amount not to exceed \$75,000 for a total of \$150,000 in funding to reimburse the City for the services and related costs of a consultant to perform the study.

MRWMD and M1W may elect to pay the CITY all, or portions of, their share of the reimbursement in advance of receiving an invoice from CITY.

Section 6. CITY Agrees:

(a) CITY shall manage the scope of work identified in Section 5, above, which includes contracting with third-party vendors when reasonably necessary and paying those vendors for contracted costs.

(b) CITY will confer with the Parties to determine if an amendment to this MOU is needed in the event unforeseen conditions arise during performance of the study that necessitate a material cost increase over and above the \$150,000 agreed to as the cost of the study.

(c) The City will invoice MRWMD and M1W for their respective share of costs as described in Section 5, above. MRWMD and M1W shall pay the amount of the invoice to CITY within thirty (30) days of receipt of the invoice.

(d) CITY will maintain an accounting of activities and expenses incurred under the scope of work, and provide reconciliation of payments at the conclusion of the study. CITY shall reimburse MRWMD and M1W in equal shares for any unused funds remaining after completion of the study.

Section 7. MRWMD and M1W Each Agree:

(a) To reimburse the CITY for their proportionate share of costs and expenses incurred by the CITY under this MOU pursuant to the Agreement for Professional Services attached as Exhibit A to this MOU, excluding all the hours expended by CITY staff on this

project, in accordance with the proportionate share of MRWMD and M1W as described in Section 5.

(b) To make a full-faith effort to cooperate with the Parties to achieve the purposes of this MOU by providing information, reviewing information in a timely manner, and informing their respective administration and governing bodies.

Section 8. Termination. Any Party may terminate its participation in this MOU upon providing 30 days advance written notice to the CITY. Within ten days following a Party's termination date, such Party shall pay CITY all charges then due and payable and shall pay when determined any additional charges that shall later come due under the MOU, subject to the limits set out in Section 5.

Section 9. General Provisions.

(a) This MOU is binding and for the benefit of the respective successors, heirs, and assigns of each Party and the City; provided however, no Party may assign its respective rights or obligations under this MOU without the prior written consent of the City.

(b) This MOU is governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

(c) If any provision of this MOU is determined by any court to be invalid, illegal, or unenforceable to any extent, then the remainder of this MOU will not be affected, and this MOU will be construed as if the invalid, illegal, or unenforceable provision had never been contained in this MOU.

(d) Waiver by any Party to this MOU of any term, condition, or covenant of this MOU will not constitute a waiver of any other term, condition or covenant. Waiver by any Party of any breach of the provisions of this MOU will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this MOU.

(e) This MOU may be executed in any number of counterparts, each of which is an original but all of which taken together will constitute one and the same instrument, provided, however, that such counterparts have been delivered to all parties to this MOU.

(f) All Parties acknowledge they have been represented, or have had the opportunity to be represented, by counsel in the preparation and negotiation of this MOU. Accordingly, this MOU will be construed according to its fair language. Any ambiguities will be resolved in a collaborative manner by the City and the Parties and must be rectified by amending this MOU.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized representatives as of the date of their respective signatures.

CITY OF MARINA

By: _____

DATE: _____

APPROVED AS TO FORM:

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT (MRWMD)

By: _____

DATE: _____

APPROVED AS TO FORM:

MONTEREY ONE WATER (M1W)

By: _____

DATE: _____

APPROVED AS TO FORM:

Attachment A: Agreement for Professional Services