



Regular Meeting of the Metro Commission and Metro Wastewater JPA

AGENDA

Thursday November 7, 2019 - 12:00 p.m.

9192 Topaz Way (PUD MOC II) Auditorium, San Diego, California

"The Metro JPA's mission is to create an equitable partnership with the San Diego City Council and Mayor on regional wastewater issues. Through stakeholder collaboration, open dialogue, and data analysis, the partnership seeks to ensure fair rates for participating agencies, concern for the environment, and regionally balanced decisions."

Note: Any member of the Public may address the Metro Commission/Metro Wastewater JPA on any Agenda Item. Please complete a Speaker Slip and submit it to the Administrative Assistant or Chairperson prior to the start of the meeting if possible, or in advance of the specific item being called. Comments are limited to three (3) minutes per individual.

Documentation
Included

1. ROLL CALL
2. PLEDGE OF ALLEGIANCE TO THE FLAG
3. PUBLIC COMMENT
Persons speaking during Public Comment may address the Metro Commission/ Metro Wastewater JPA on any subject matter within the jurisdiction of the Metro Commission and/or Metro Wastewater JPA that is not listed as an agenda item. Comments are limited to three (3) minutes. Please complete a Speaker Slip and submit it prior to the start of the meeting.
- X 4. **ACTION:** CONSIDERATION AND POSSIBLE ACTION TO APPROVE THE MINUTES OF THE SPECIAL MEETING OF [October 3, 2019](#) (**Attachment**)
- X 5. **ACTION:** CONSIDERATION AND POSSIBLE ACTION TO APPROVE THE MEETING CALENDAR FOR 2020 (**Attachment**)
- X 6. **INFORMATION:** SAN DIEGO KELP FOREST ECOSYSTEM MONITORING PROJECT (2019-2024) (Ryan Kempster/Ami Latker) (**Attachment**)
- X 7. **ACTION:** CONSIDERATION AND POSSIBLE ACTION TO APPROVE AN AGREEMENT WITH GRANICUS LLC FOR WEBSITE HOSTING AND RELATED SERVICES FOR UP TO THREE YEARS, INCLUDING AUTHORIZATION FOR CHAIR OR DESIGNEE TO EXECUTE AGREEMENT (Roberto Yano/General Counsel) (**Attachment**)
- X 8. **ACTION:** CONSIDERATION AND POSSIBLE ACTION TO ADOPT THE 2019 STRATEGIC PLAN UPDATE (Jerry Jones/John Gavares) (**Attachment**)

November 7, 2019

Metro Commission/Metro
Wastewater JPA Special
Meeting Agenda

- X 9. METRO TAC UPDATE/REPORT (Standing Item) (**Attachment**) (Roberto Yano)
10. CITY OF SAN DIEGO SECONDARY EQUIVALENCY LEGISLATION (Standing Item) (Shauna Lorange)
11. PURE WATER PROGRAM UPDATE (Standing Item) (Shauna Lorange)
 b. Receive Information Regarding AGC v. *City of San Diego* Litigation and AB 1290 (Tom Zeleny)
12. IROC UPDATE (Standing Item) (Jerry Jones)
13. PURE WATER AD HOC COMMITTEE UPDATE (Standing Item) (Jerry Jones)
14. FINANCE COMMITTEE (Standing Item) (John Mullin)
15. REPORT OF GENERAL COUNSEL (Standing Item) (Nicholaus Norvell)
16. PROPOSED AGENDA ITEMS FOR THE NEXT METRO COMMISSION/METRO WASTEWATER JPA MEETING **December 5, 2019**
17. METRO COMMISSIONERS' AND JPA BOARD MEMBERS' COMMENTS
18. ADJOURNMENT OF METRO COMMISSION AND METRO WASTEWATER JPA

The Metro Commission and/or Metro Wastewater JPA may take action on any item listed in this Agenda whether or not it is listed "For Action."

Materials provided to the Metro Commission and/or Metro Wastewater JPA related to any open-session item on this agenda are available for public review by contacting L. Peoples at (619) 548-2934 during normal business hours.

***In compliance with the
AMERICANS WITH DISABILITIES ACT***

The Metro Commission/Metro Wastewater JPA requests individuals who require alternative agenda format or special accommodations to access, attend, and/or participate in the Metro Commission/ Metro Wastewater JPA meetings, contact E. Patino at (858) 292.6321, at least forty-eight hours in advance of the meetings.

Metro JPA 2019 Meeting Schedule

January 3, 2019	February 7, 2019	March 7, 2019
April 4, 2019	May 2, 2019	June 6, 2019
July 4, 2019	August 1, 2019	September 5, 2019
October 3, 2019	November 7, 2019	December 5, 2019
November 7, 2019		Metro Commission/Metro Wastewater JPA Special Meeting Agenda

Attachment 4

Minutes of the
Regular Meeting
of October 3,
2019



**Regular Meeting of the Metro Commission
and Metro Wastewater JPA**

**9192 Topaz Way (MOC II) Auditorium
San Diego, California**

**July 11, 2019
DRAFT Minutes**

Chairman Jones called the meeting to order at 12:05 p.m. A quorum of the Metro Wastewater JPA and Metro Commission was declared, and the following representatives were present:

1. ROLL CALL

<u>Agencies</u>	<u>Representatives</u>	<u>Alternate</u>
City of Chula Vista	Steve Padilla	Jill Galvez
City of Coronado	Whitney Benzian	X
City of Del Mar	Sherryl Parks	X
City of El Cajon	Gary Kendrick	X
City of Imperial Beach	Ed Spriggs	Mark West
City of La Mesa	Bill Baber	(No Representative)
Lemon Grove San District	Jerry Jones	X
City of National City	Ron Morrison	(No Representative)
City of Poway	John Mullin	X
County of San Diego	Dianne Jacob	(No representative)
Otay Water District	Mark Robak	X
Padre Dam MWD	Jim Peasley	X
Metro TAC Chair	Roberto Yano	X

Others present: Metro JPA Assistant General Counsel Nicholas Norvell - BBK Law; Metro JPA Secretary Lori Anne Peoples; Beth Gentry – City of Chula Vista; Ed Walton – Coronado; Joe Bride – City of Del Mar; Yazmin Arellano – City of El Cajon; Eric Minicilli – City of Imperial Beach; t; Roberto Yano – City of National City; Bob Kennedy – Otay Water District; Augie Scalzetti – Padre Dam Municipal Water District; John Heideman and Jessica Parks – City of Poway; Shauna Lorange Director - City of San Diego Public Utilities; Christine Lenore – Chief Deputy City Attorney, City of San Diego; Dan Brogadir – County of San Diego; Scott Tulloch – NV5

2. PLEDGE OF ALLEGIANCE TO THE FLAG

Vice Chair Peasley, Padre Dam Municipal Water District led the pledge.

3. PUBLIC COMMENT

None

**4. ACTION: CONSIDERATION AND POSSIBLE ACTION TO APPROVE THE MINUTES
OF THE SPECIAL MEETING OF JULY 11, 2019**

ACTION: Motion by Vice Chair Peasley, seconded by Commissioner Parks to approve the minutes. Motion carried unanimously.

5. INFORMATION: SAN DIEGO KELP FORESTECOSYSTEM MONITORING PROJECT (2019-2024)

This item was continued to the next regular meeting as the presenter was unable to attend.

6. ACTION: CONSIDERATION AND POSSIBLE ACTION TO APPROVE THE METRO COMMISSION/METRO WASTEWATER JPA FY 2017 EXHIBIT E AUDIT

Charles Modica, Deputy Director of Finance, Public Utilities Division, City of San Diego and Kevin Starkey of MGO provided a brief verbal overview of the audit noting that a clean unmodified opinion had been issued.

ACTION: Motion by Vice Chair Peasley, seconded by Commissioner West to approve the Exhibit E Audit. Motion carried unanimously.

7. ACTION: CONSIDERATION AND POSSIBLE ACTION TO APPROVE THE METRO COMMISSION/METRO WASTEWATER JPA FY 2017 JPA BUDGET RECONCILIATION

Karen Jassoy, Treasurer for the Metro Wastewater JPA provided a brief overview of the budget reconciliation noting that it had gone to and been unanimously approved by the Finance Committee.

ACTION: Motion by Vice Chair Peasley, seconded by Commissioner West to approve the reconciliation. Motion carried unanimously.

8. ACTION: CONSIDERATION AND POSSIBLE ACTION TO ADOPT THE STRATEGIC PLAN UPDATE

Chair Jones introduced the item and explained the committee process to this date. John Gavares, Consultant provided a brief verbal overview and Power Point presentation of the update and responded to questions of the Commissioners.

ACTION: Consensus of the Commission was to continue this item to the next meeting and bring it back in completed form for the full Commission review and comment.

9. METROTAC/UPDATE/ REPORT

Yazmin Arellano, MetroTAC Vice Chair, provided a verbal overview of the items that came before MetroTAC in September. A copy of her report is attached as Exhibit A to these Minutes.

10. CITY OF SAN DIEGO SECONDARY EQUIVALENCY LEGISLATION

Christine Leone, Chief Deputy City Attorney, City of San Diego reported that as of October 1, the legislature was prepared to introduce it any day now and has bi-partisan signoff by Hunter and Peters.

11. PURE WATER PROGRAM UPDATE

Sauna Lorange, newly appointed Director of Public Utilities, City of San Diego for 2 months, introduced herself and noted that the Legislature had introduced and passed and is now on the Governor's Desk. The PLA's have until October 13th to act and will provide an update at the next meeting as Sacramento overrules any local initiative.

12. IROC UPDATE

Chair Jones stated he had no report.

13. PURE WATER AD HOC COMMITTEE UPDATE

Chair Jones reported there had been no meeting.

14. FINANCE COMMITTEE MEETING

Vice Chair Peasley had chaired the last Finance Committee meeting in the absence of Chair Mullin. He stated that all items covered had been heard in the first items in this meeting.

15. REPORT OF GENERAL COUNSEL

Assistant General Counsel Nicholaus Norvell stated that the FPPC was updating their Conflict of Interest provisions (form 700) including business interests.

16. PROPOSED AGENDA ITEMS FOR THE NEXT METRO COMMISSION/METRO WASTEWATER SPECIAL JPA MEETING NOVEMBER 7, 2019

Chair Jones noted that the Kelp report and Strategic Plan will be brought back in November.

17. METRO COMMISSIONERS' AND JPA BOARD MEMBERS' COMMENTS

None.

18. ADJOURNMENT

At 1:05 p.m., there being no further business, Chair Jones declared the meeting adjourned.

Recording Secretary

Attachment 5

Meeting Calendar 2020

**Metro Commission/Metro Wastewater JPA
and
MetroTAC Committee**

2020 Meeting Schedules

METRO COMM/METROJPA 1st Thursday of the month		METRO TAC 3rd Wednesday of the month	
December 5, 2019	12:00 – 1:00	December 18, 2019	11:00 – 1:30
January 2, 2020 (if needed)	12:00 – 1:00	January 15, 2020	11:00 – 1:30
February 6, 2020	12:00 – 1:00	February 19, 2020	11:00 – 1:30
March 5, 2020	12:00 – 1:00	March 18, 2020	11:00 – 1:30
April 2, 2020	12:00 – 1:00	April 15, 2020	11:00 – 1:30
May 7 2020	12:00 – 1:00	May 20, 2020	11:00 – 1:30
June 4, 2020	12:00 – 1:00	June 17, 2020	11:00 – 1:30
July 2, 2020	12:00 – 1:00 (SANDIST meeting immediately following)	July 15, 2020	11:00 – 1:30
August 6, 2020	12:00 – 1:00	August 19, 2020	11:00 – 1:30
September 3, 2020	12:00 – 1:00	September 16, 2020	11:00 – 1:30
October 1, 2020	12:00 – 1:00	October 21, 2020	11:00 – 1:30
November 5, 2020	12:00 – 1:00	November 18, 2020	11:00 – 1:30
December 3, 2020	12:00 – 1:00	December 16, 2020	11:00 – 1:30
January 7, 2021 (if needed)	12:00 – 1:00	January 20, 2021	11:00 – 1:30

Meetings are held at
MWWD PUD II Auditorium, 9192 Topaz Way, SD, CA 92023
(unless otherwise noted on the agenda)

Attachment 6

San Diego Kelp Forest Ecosystem

Presentation to: Metro TAC

San Diego Kelp Forest Ecosystem Monitoring Project (2019-2024)

September 18, 2019

Ami K. Latker (Marine Biologist III)

Ryan M. Kempster, Ph.D. (Senior Marine Biologist)

Peter S. Vroom, Ph.D. (Deputy Public Utilities Director)



City of San Diego Ocean Monitoring Program

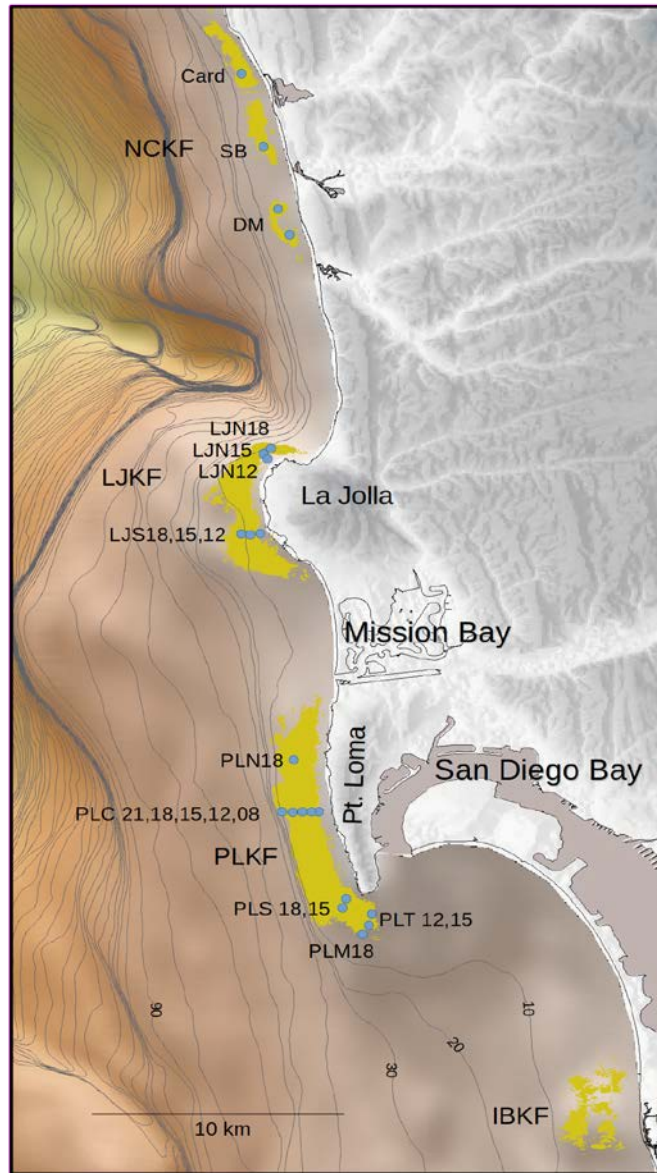
- ❖ One of largest, most comprehensive monitoring programs of its kind
 - Three wastewater treatment plants, two ocean outfalls
 - Total area ~340 mi² from northern San Diego to Baja California
 - Sampling ~200 days/year, beaches to offshore depths ≥ 500 m
- ❖ Three main components:
 - Core Monitoring
 - Regional Monitoring
 - Special Studies & Enhanced Monitoring *

**** San Diego Kelp Forest Ecosystem Monitoring Project***





San Diego Kelp Forest Ecosystem Monitoring Project





Project Background & History

Long-term studies of San Diego region kelp forests

- Core program conducted by Scripps since 1971
- Linked to earlier work in 1950s

City Involvement (1992 – present)

- Provided critical support to City in evaluating effects of 1992 Point Loma outfall break
- Partial funding provided from 1992 – 2002
- Expanded to multi-year projects in 2002 to support City's waiver applications for Point Loma
 - ◆ 2002 – 2006
 - ◆ 2006 – 2010
 - ◆ 2010 – 2014
 - ◆ 2014 – 2019
 - ◆ *2019 – 2024 (current 5– year agreement)*





Project Benefits to the City

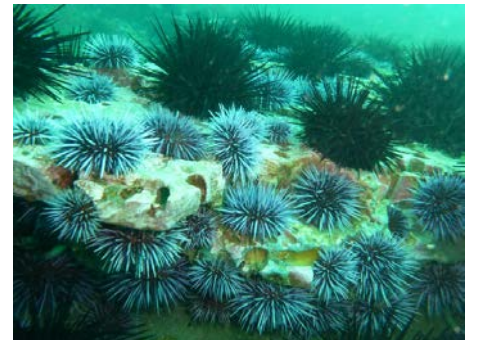
- ✓ Represents significant part of City's enhanced ocean monitoring efforts for the San Diego region.
- ✓ Fulfills a "special study" permit requirements.
- ✓ Continues unique long-term program essential to assessing the health and stability of the region's kelp forests and nearshore recreational waters.
- ✓ Helps monitor any effects of wastewater discharge on the marine ecosystem relative to other anthropogenic or natural factors.
- ✓ Provides critical scientific information in support of the City's 301(h) modified permit (waiver) for the Point Loma Wastewater Treatment Plant.





Agreement Summary

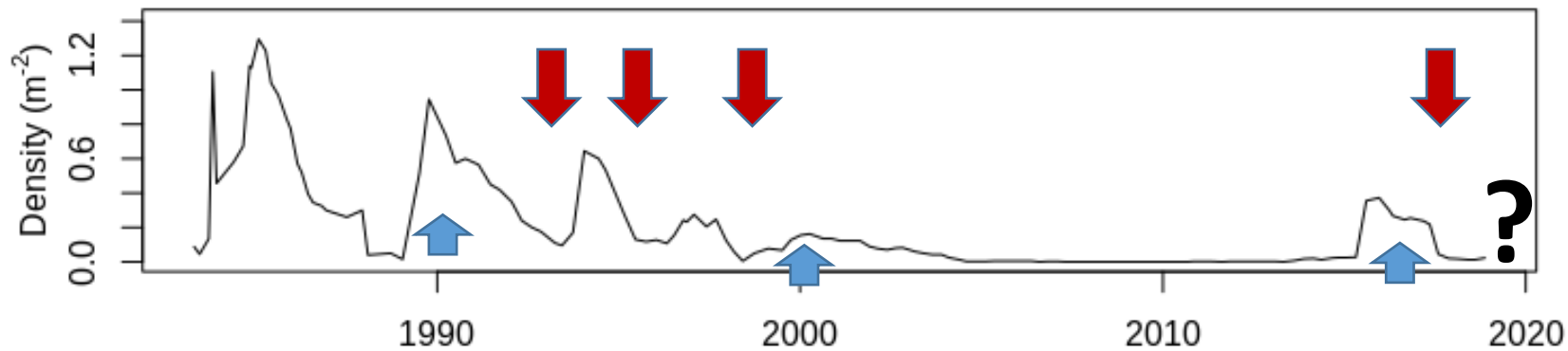
- **Total cost = \$3,554,121**
- **Term of agreement**
 - Extends kelp forest monitoring project and City/Scripps partnership through June 2024
- **Study areas**
 - Large Point Loma and La Jolla kelp forests
 - Smaller kelp beds of San Diego County
- **Main project components**
 - Kelp habitat monitoring (giant kelp & other kelps)
 - Sea urchin monitoring
 - Kelp forest fish and invertebrate populations
 - Oceanographic measurements
- **Field effort**
 - ~450 dives/year





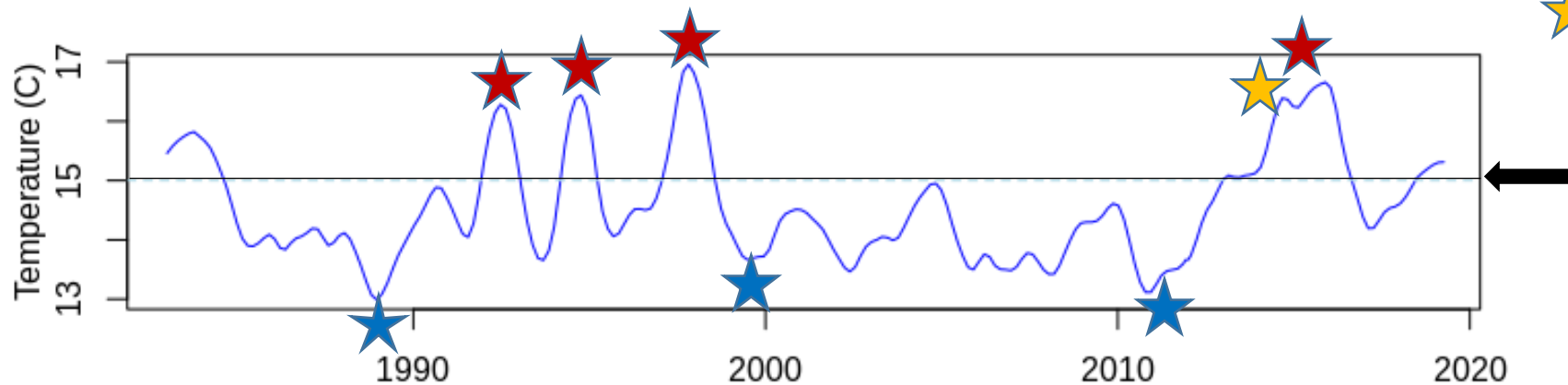
Status of the San Diego Kelp Forest Ecosystem

Giant Kelp Density



- ★ = El Niño
- ★ = La Niña
- ★ = The Blob

Bottom Temperature Trend





Questions / Contacts



Ami K. Latker

Marine Biologist III, Project Manager

alatker@san Diego.gov

Ryan M. Kempster, Ph.D.

Senior Marine Biologist

rkempster@san Diego.gov

Peter S. Vroom, Ph.D.

Deputy Public Utilities Director

pvroom@san Diego.gov



P. Ed Parnell, Ph.D.

Associate Research Oceanographer

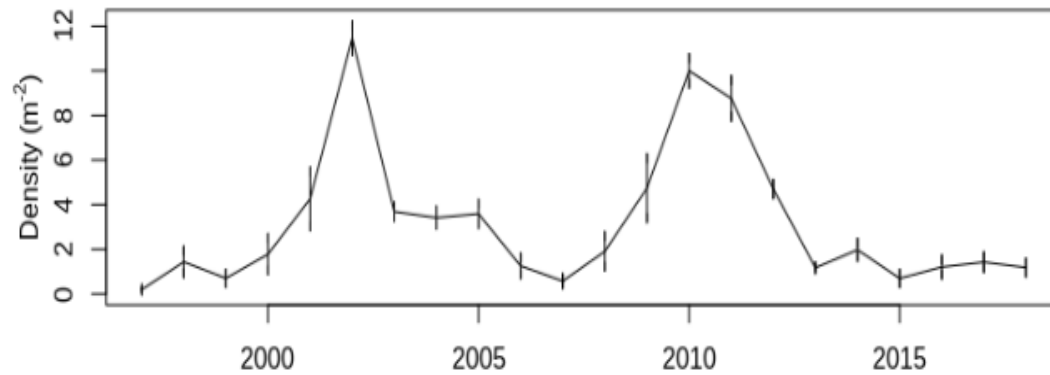
eparnell@ucsd.edu

Paul K. Dayton, Ph.D.

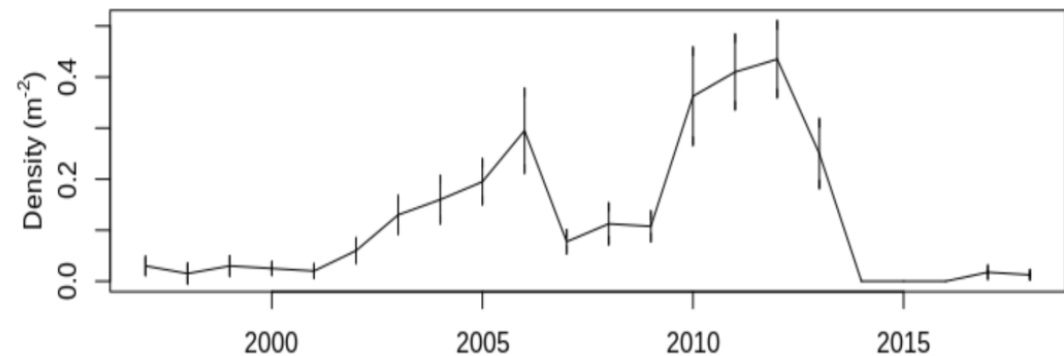
Professor / Research Biologist

pdayton@ucsd.edu

Sea Urchin Density



Seastar Density



Attachment 7

Granicus Contract

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN METRO WASTEWATER JOINT POWERS AUTHORITY
AND GRANICUS**

This agreement ("Agreement") is made and entered into as of November 7, 2019, by and between the METRO WASTEWATER JOINT POWERS AUTHORITY (hereinafter referred to as the "Metro JPA"), a joint powers authority organized and operating pursuant to California Government Code section 6500 *et seq.*, and GRANICUS, LLC (hereinafter referred to as "Consultant"), a Minnesota limited liability company d.b.a. Granicus. Metro JPA and Consultant are sometimes referred to individually as "Party" and collectively as "Parties."

RECITALS

A. Metro JPA is a public agency of the State of California and is in need of professional services for the following project: Website Hosting, including hosting, maintenance, security, and technical support for Metro JPA's website, as well as training related thereto.

B. Consultant warrants that it has the necessary qualifications and experience to provide such services.

C. The Parties desire by this Agreement to establish the terms for Metro JPA to retain Consultant to provide the services described herein.

AGREEMENT

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the Metro JPA with the services described in the Scope of Services ("Services") attached hereto as Exhibit "A" and incorporated herein ("Scope of Services"), and the Terms and Conditions attached hereto as Exhibit "B" and incorporated herein ("Terms and Conditions"). In the event of a conflict between any provision of the Scope of Services and any provision of the Terms and Conditions, the Scope of Services shall prevail. In the event of a conflict between any provision of the Scope of Services and any provision of this Agreement, or any provision of the Terms and Conditions and any provision of this Agreement, the provisions of this Agreement shall prevail.

2. Compensation.

a. Subject to paragraphs 2(b) and 2(c) below, Metro JPA shall pay for Services in accordance with the Schedule of Charges set forth in Exhibit "C" and incorporated herein.

b. In no event shall the total amount paid for Website Hosting services exceed **\$8,255.86** without the written approval of Metro JPA. Periodic payments shall be made within thirty (30) days of receipt of an annual invoice. Payments to Consultant for Website Hosting services will pre-paid on an annual basis in the amounts stated in Exhibit "B"; provided,

however, that if this Agreement is terminated during its term, Consultant shall refund a pro-rata share of the applicable annual payment to Metro JPA, computed on a monthly basis.

c. Training not included with Website Hosting services shall be provided on an as-needed basis at the rates stated in Exhibit "C." In no event will the total amount paid for training services rendered by Consultant exceed the sum of **\$4,540.00** for the term of this Agreement. Payments for training services shall be made within thirty (30) days of receipt of an invoice.

3. Additional Work.

If changes in the work seem merited by Consultant or the Metro JPA, and informal consultations with the other Party indicate that a change is warranted, it shall be processed by the Metro JPA in the following manner: a letter outlining the changes shall be forwarded to the Metro JPA by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the Metro JPA and executed by both Parties before performance of such services, or the Metro JPA will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Warranty

a. Service Warranty. Consultant warrants that all Services provided under this Agreement will be performed in a professional, competent and workmanlike manner in accordance with Exhibits "A" and "B." Consultant shall further provide a sufficient number of properly trained and competent staff to carry out the Services in a skilled and professional manner consistent with the best practices in Consultant's industry.

b. Service Level Commitment. Consultant warrants that Website Hosting will be available and accessible in accordance with the uptime commitment contained in the Exhibit "A" and that Consultant will utilize industry standard security protocols and monitoring to protect the Website from unauthorized access.

5. Maintenance and Ownership of Records; Backup.

a. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the Agreement for inspection by Metro JPA. Consultant shall obtain the written consent of Metro JPA prior to destroying any such records or any work product prepared by Consultant as a result of the Services provided under this Agreement.

b. All reports, records, data, memoranda, plans, studies, specifications, files or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement (including such files or materials uploaded by Metro JPA to the Website) shall be and remain the property of Metro JPA ("Metro JPA Content"). Consultant

hereby agrees to deliver all Metro JPA Content in its original condition and format to Metro JPA upon termination or expiration of this Agreement.

c. Consultant will take commercially reasonable efforts to protect, back up, and control access to Metro JPA Content.

6. Time of Performance; Term.

Consultant shall perform the Services in a prompt and timely manner and shall commence performance beginning December 15, 2019, with no interruption in the Services from the prior contract between Metro JPA and Consultant (as the successor in interest to Vision Internet Providers). This Agreement shall terminate on December 14, 2022, unless otherwise extended by a written amendment signed by both Parties or otherwise earlier terminated pursuant to Section 16 of this Agreement.

7. Delays in Performance.

Neither Metro JPA nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; and sabotage or judicial restraint.

Should such circumstances occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

8. Compliance with Law. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.

9. Standard of Care.

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

10. Assignment and Subconsultant.

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the Metro JPA, which will not be unreasonably withheld. Nothing contained herein shall prevent Consultant from employing independent associates and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

11. Independent Consultant.

Consultant is retained as an independent contractor and is not an employee of Metro JPA. No employee or agent of Consultant shall become an employee of Metro JPA. The work to be performed shall be in accordance with the work described in Exhibit "A," subject to such directions and amendments from Metro JPA as herein provided.

12. Insurance.

a. Commercial General Liability.

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to Metro JPA.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Contractual Liability with respect to this Agreement
- (6) Broad Form Property Damage
- (7) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (A) contractual liability; (B) cross liability exclusion for claims or suits by one insured against another; or (C) products/completed operations liability; or (D) contain any other exclusion(s) contrary to the terms or purposes of this Agreement.

(v) The policy shall give Metro JPA, the Board and each member of the Board, its officers, employees, agents and Metro JPA designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the Metro JPA, and provided that such deductibles shall not apply to Metro JPA as an additional insured.

b. Automobile Liability.

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for non-owned and hired vehicles, in a form and with insurance companies acceptable to the Metro JPA. In the event Consultant owns any vehicles, coverage shall also include owned autos.

(ii) Coverage for Automobile Liability Insurance shall be at least as broad as coverage Symbols 8 and 9 (or Symbol 1 in the event Consultant owns any vehicles).

(iii) Subject to written approval by Metro JPA, the automobile liability program may utilize deductibles, but not a self-insured retention, provided that such deductibles shall not apply to Metro JPA as an additional insured.

(iv) The policy shall give Metro JPA, the Board and each member of the Board, its officers, employees, agents and Metro JPA designated volunteers additional insureds status.

c. Workers' Compensation/Employer's Liability.

(i) Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Technology Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain technology professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the Metro JPA and in an amount indicated herein. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Consultant in this Agreement, including, but not limited to: claims involving infringement of intellectual property, copyright and trademark; invasion of privacy violations; information theft; release of private information; extortion; and network security. The policy shall include, or be endorsed to include, property damage liability for damage to, alteration of, loss of, or destruction of electronic data and/or informational property of Metro JPA in the care, custody or control of Consultant. If not covered by such policy, such property coverage of Metro JPA property may be included or endorsed in a cyber liability policy in an

amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or informational property of Metro JPA that will be in the care, custody or control of Consultant.

This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Workers' Compensation	Statutory
Employer's Liability (if applicable)	\$1,000,000 per occurrence
Technology Professional Liability	\$2,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirement of specific coverage or minimum limits contained in this section are not intended as a limitation on coverage, limits or any other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required.

Prior to execution of the Agreement, the Consultant shall file with the Metro JPA evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with all required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount

of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required.

(i) Consultant shall provide Metro JPA at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s), including the General Liability Additional Insured Endorsement, to Metro JPA at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Liability Policy shall contain a provision stating that the Consultant's policies are primary insurance and that any insurance, self-insurance or other coverage maintained by Metro JPA or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of Metro JPA, the Board and each member of the Board, its officers, employees, agents and Metro JPA designated volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against Metro JPA, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to Metro JPA and shall not preclude Metro JPA from taking such other actions available to Metro JPA under other provisions of the Agreement or law.

h. Qualifying Insurers.

(i) All policies required shall be issued by acceptable insurance companies, as determined by the Metro JPA, which satisfy the following minimum requirements:

(ii) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of

insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions.

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by Metro JPA, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Metro JPA has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Metro JPA will be promptly reimbursed by Consultant or Metro JPA will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Metro JPA may cancel this Agreement.

(iii) Metro JPA may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Agreement.

(iv) Neither Metro JPA nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to Metro JPA that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name Metro JPA as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, Metro JPA may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

13. Indemnification.

To the fullest extent permitted by law, Consultant shall defend (with counsel of Metro JPA's choosing), indemnify and hold Metro JPA, its Board, members of the Board, employees, and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that

arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Metro JPA, its Board, members of the Board, employees, or authorized volunteers.

14. California Labor Code Requirements.

Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold Metro JPA, its member agencies, elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

If the services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Agreement and require the same of any subconsultants. The Services under this Agreement may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

15. Laws, Venue, and Attorneys' Fees.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the Parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

16. Termination or Abandonment.

a. Metro JPA has the right to terminate or abandon any portion or all of the work under this Agreement by giving ninety (90) calendar days' written notice to Consultant. In such event, Metro JPA shall be immediately given title and possession to all Metro JPA Content, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. Metro JPA shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for which a payment request has not been received, the

charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by Metro JPA and Consultant of the portion of such task completed but not paid prior to said termination. Metro JPA shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to Metro JPA only in the event of substantial failure by Metro JPA to perform in accordance with the terms of this Agreement through no fault of Consultant.

17. Notice.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

METRO JPA:	CONSULTANT:
Metro Wastewater JPA c/o National City City Hall 1243 National City Blvd. National City, CA 91950 Attn: Roberto Yano, City of National City	Granicus LLC Contracts 408 St. Peter Street, Suite 600 St. Paul, MN 55102 Attn: Contracts

and shall be effective upon receipt thereof.

18. Third Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Metro JPA and the Consultant.

19. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

20. Integration.

This Agreement represents the entire understanding of Metro JPA and Consultant as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder.

This Agreement may not be modified or altered except in writing signed by both Parties hereto.
This is an integrated Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement for Professional Services as of the date first written above.

METRO WASTEWATER JPA:

GRANICUS LLC:

By: _____
Jerry Jones
Chair

By: _____
Dawn Kubat
Vice President of Legal

APPROVED AS TO FORM:

Paula C. P. de Sousa Mills
General Counsel
METRO WASTEWATER JPA

EXHIBIT “A”

Scope of Services

Consultant shall provide the following services:

- govAccess Website Hosting, which shall include hosting, maintenance, security, and technical support services. Such services shall be provided in a manner consistent with the “Help Desk Services” document attached to this Exhibit.
- Training for use of Granicus Solutions, including in-person or live training for at least two (2) representatives of Metro JPA and a written manual for Metro JPA’s use of Granicus Solutions.

EXHIBIT “B”

Terms and Conditions

Limitation of Liability

1. **EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES.** UNDER NO CIRCUMSTANCES SHALL CONSULTANT BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, CONSULTANT SHALL NOT BE LIABLE FOR: (A) ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF METRO JPA DATA; (B) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (C) LOSS OF BUSINESS; (D) DAMAGES ARISING OUT OF ACCESS TO OR INABILITY TO ACCESS THE SERVICES, SOFTWARE, CONTENT, OR RELATED TECHNICAL SUPPORT; OR (E) FOR ANY MATTER BEYOND CONSULTANT’S REASONABLE CONTROL, EVEN IF CONSULTANT HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES.
2. **LIMITATION OF LIABILITY.** EXCEPT FOR AN INDEMNITY CLAIM PURSUANT TO SECTION 13 OR A CLAIM COVERED BY AN INSURANCE POLICY REQUIRED UNDER SECTION 12, IN NO INSTANCE SHALL EITHER PARTY’S LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR OTHERWISE) EXCEED THE FEES PAID BY METRO JPA FOR THE GRANICUS PRODUCTS AND SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM FOR DIRECT DAMAGES. CONSULTANT SHALL NOT BE RESPONSIBLE FOR ANY LOST PROFITS OR OTHER DAMAGES, INCLUDING DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR ANY OTHER DAMAGES, HOWEVER CAUSED. NEITHER PARTY MAY INSTITUTE AN ACTION IN ANY FORM ARISING OUT OF NOR IN CONNECTION WITH THIS AGREEMENT MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ARISEN. THE ABOVE LIMITATIONS WILL NOT LIMIT METRO JPA’S PAYMENT OBLIGATIONS.

EXHIBIT “C”

Schedule of Charges

Website Hosting

Service	Period	Annual Fee
govAccess Website Hosting	12/15/19 – 12/14/20	\$2,568.00
govAccess Website Hosting	12/15/20 – 12/14/21	\$2,747.76
govAccess Website Hosting	12/15/21 – 12/14/22	\$2,940.10

Training

Service	Period	Cost
In-person training	As requested by Metro JPA	\$4,540 total for two days (includes all costs, expenses, travel, incidentals, etc.)
Live online training	As requested by Metro JPA	\$1,000 per day

Payment Terms:

- Payments for Website Hosting are due at the beginning of the period of performance.
- Payments are subject to the not-to-exceed amounts set forth in paragraph 2 of the Agreement.

EXHIBIT “D”

Insurance Certificates

Insurance documentation is included on the following pages.

Attachment 8

Strategic Plan Update

2019 Proposed STRATEGIC GOALS - Strikeouts and Additions to 2015 STRATEGIC GOALS

Strategic Goal 1 - Oversight of METRO System Management and Operations

The METRO JPA and METRO TAC must continue their oversight of the City of San Diego's management and operation of the METRO System on behalf of the Participating Agencies' ratepayers. .

Strategic Initiatives

SI#1: Oversight of Service and Billing

Oversee City of San Diego Public Utilities Department to ensure that services provided to METRO member agencies are efficiently delivered, professional and accurately billed.

Assigned To: METRO TAC and Finance Committee

Continuing

SI#2: Oversight of Costs and Rates

Oversee the City of San Diego's METRO wastewater programs, including Pure Water, sewer fees, and recycled water rates to protect the interests of METRO member agencies.

Assigned To: METRO TAC and Finance Committee

Continuing

SI#3: Oversight of Capital Improvements and Maintenance

Operations to protect ratepayers & the environment

Oversee the City of San Diego's METRO wastewater system capital improvement program (CIP) and maintenance operations, to protect **the environment and** the investment of METRO member agencies.

Assigned To: METRO TAC (Note - This existing SI was suggested to be modified on 9/5/19 to include the highlighted language in red. The intent of modifying this SI is to capture the key environmental stewardship goal of the MC-JPA.)

Continuing

SI#4: Audit Process

Maintain the integrity of the annual audit of the City of San Diego to ensure that only METRO wastewater costs are billed to METRO member agencies. ~~Conduct a full system audit every three years (next in 2016)~~ (Discussed at the 9-18-19 TAC Meeting)

Assigned To: METRO TAC and Finance Committee

Continuing

SI#5: Strategic Initiative #5 - Develop and maintain key partnerships: Create positive working relationships and endorse and explain Secondary Equivalency at Pt. Loma and Pure Water San Diego, local and regional business groups, San Diego County Board of Supervisors, city councils, water district boards, legislators, the Regional Water Quality Control Board, congressional representatives, and stakeholders from the environmental community. (This SI#5 was suggested for addition at the 9/5 workshop. The addition of this SI captures the important

relationship-building activity that is the essence of SG#3. It was recommended on 9/5 that SG#3 and SG#4 would be deleted from the Strategic Plan.)

Strategic Goal 2

Oversight of the City of San Diego's Water Reuse Planning (Pure Water San Diego) As the City of San Diego expands the scope of its wastewater operations to include the Pure Water San Diego program, the scope of oversight provided by the METRO JPA and the METRO TAC expands, as well.

Strategic Initiatives

SI#1: Oversight of USEPA Modified Permit for Pt. Loma/ Pt. Loma Secondary Equivalency Permit

Maintain ongoing technical, financial and regulatory analyses of the permit process and provide comments to the City of San Diego, METRO Commission and METRO JPA as needed. . Maintain METRO JPA involvement in the City's negotiations with environmental groups. Focus on the following issues:

1. Permit application and processing
2. Definition of secondary equivalency at Pt. Loma
3. Regulatory change to accept secondary equivalency at Pt. Loma
4. A facility plan for Pure Water
5. A cost allocation plan for Pure Water
6. An outreach plan for Pure Water

Assigned To: METRO TAC, FINANCE COMMITTEE and METRO JPA

(Note: This existing SI was suggested to be modified on 9/5/19 to include the highlighted language in red. This new language reflects the work that has been done and a new reality in relation to Secondary Equivalency.)

Continuing

SI#2: Oversight of Post-2015 Permit Planning

Maintain ongoing technical, financial and regulatory analyses and provide comments to the City of San Diego, METRO Commission and METRO JPA as needed.

Assigned To: METRO TAC

Continuing

SI#3: Oversight of Recycled Water Pricing Study

Maintain ongoing technical, financial and regulatory analyses and provide comments to the City of San Diego, METRO Commission and METRO JPA as needed.

Assigned To: METRO TAC

Continuing

SI#4: Participate in San Diego Integrated Regional Water Management Planning Group

Cooperate with this group of agencies, which is developing integrated regional water management strategies and projects, has administrative support from the San Diego County Water Authority, and has access to Proposition 84 grant funds.

Assigned To: METRO JPA and METRO TAC

Continuing

SI#5: Oversight of ~~Water Purification Demonstration Project~~ Pure Water Program and any Associated Projects:

Maintain ongoing technical, financial and regulatory analyses and provide comments to the City of San Diego, METRO Commission and METRO JPA as needed. Focus on key questions below. (Note: This existing SI was suggested to be modified on 9/5/19 to include the highlighted language in red. This changed language modifies the original language that read “Oversight of Water Purification Demo Project,” as this is considered outdated. The Strategic Initiative is retained, as oversight of the Pure Water Program and associated projects is a key focus of the MC-JPA

Assigned To: METRO TAC

Continuing

SI#6: Monitor Potable Reuse Regulatory Development

Regulations do not currently exist for some of the planned potable reuse projects in the region. Without regulatory guidance, permitting and acceptance of projects will be challenging. Potential pathways are in place for some regulatory adoption. We must monitor, participate and advocate where appropriate for regulatory adoption.

Assigned To: METRO TAC and METRO JPA

Continuing

Key Questions / Water Reuse

Do San Diego's plans

Ensure fair rates for Participating Agencies?

Show concern for the environment?

Reflect regionally balanced decisions?

Can costs be reduced by

Integrated planning?

Integrated development?

Using existing facilities?

Using non-METRO facilities?

Minimizing conveyance distances?

Minimizing pumping?

New technology?

Process improvement?

Design improvement?

Is the goal of the region to

Decrease reliance on imported water?

Save money through an integrated approach
?

Achieve environmental goals?

Strategic Goal 3: Develop and Maintain Key Partnerships: The leaders of San Diego County's business community and environmental community are concerned about the reliability of the region's imported water supplies and are advocating the development of potable reuse. They want to see water, wastewater and stormwater agencies integrate their efforts. The METRO JPA and METRO TAC should participate in these regional efforts.

Strategic Initiatives

Speakers Bureau

Endorse and explain Secondary Equivalency at Pt. Loma and Pure Water San Diego, local and regional business groups, San Diego County Board of Supervisors, city councils, water district boards, legislators and congressional representatives. Solicit advocates. Consider public affairs staff from Participating Agencies to prepare presentations.

Assigned To: METRO JPA and METRO TAC

Continuing

Media Outreach

Endorse and explain Secondary Equivalency at Pt. Loma and Pure Water San Diego owners, publishers and editors of San Diego County's print, television, radio and online media. Provide progress reports. Request support. Consider public affairs staff from Participating Agencies to prepare presentations.

Assigned To: METRO JPA and METRO TAC

Continuing

Regulatory Partnerships

Support Secondary Equivalency and Pure Water San Diego at the Regional Water Quality Control Board

Assigned To: METRO JPA and METRO TAC

Continuing

Environmental Stakeholders Partnerships

Relationships have been forged with stakeholders from the environmental community. They are in support of Secondary Equivalency and Pure Water San Diego. Continue to work with them and maintain their support and retain them as allies. Their influence is essential to the success of these programs. Assigned To: METRO JPA and METRO TAC

Continuing

Regional Governance (On Hold)

Assess feasibility and appropriateness of implementing, governing and managing a distributed treatment plan and regional wastewater management plan in partnership with the City of San Diego. Assess the issues and opportunities associated with activating the Special Act District formed by the legislature in 1992.

On Hold

Strategic Goal 4 Develop Customer Relationships: Customer relationships are important. Support from stakeholders should be maintained. Strive to enhance the public understanding of the importance, complexity of our business. Tell our story and what we are trying to achieve.

Strategic Initiatives

Visual Information

Create technical illustrations to show the safety of advanced water purification. Visual information can be used in print, presentations, and on the web.

Assigned To: METRO TAC

Continuing

Financial Transparency

Regional wastewater agencies have difficulty explaining sewer collection and treatment costs to their customers. Developing a simplified, visual explanation of costs is necessary in order to explain cost savings.

Assigned To: METRO TAC and Finance Committee

Continuing

Website & Social Media

Use website to effectively communicate advantages of Secondary Equivalency at Pt. Loma and Pure Water San Diego

Assigned To: METRO TAC

Continuing

San Diego and Padre Dam Demonstration Project Tours

Promote tours of the demonstration projects

Assigned To: METRO TAC and METRO JPA

Continuing

~~“What Not To Flush” Public Outreach~~

~~Combine information about fats, oils and grease, information about other products that should not be flushed, and information about water reuse to create a single public outreach campaign that raises awareness of water reuse. Consider utilizing public affairs staff from Participating Agencies. Provide outreach tools for all Participating Agencies~~

~~Assigned To: METRO TAC~~

Continuing

Key Questions

~~How do residents~~

~~Know when a large infrastructure project is a good value?~~

~~Know that a regional approach is better than local control?~~

Attachment 9

MetroTAC Update/Report

Metro TAC & JPA Work Plan
Active & Pending Items
June 2019
Updated Items in Red Italics

Active Items	Description	Member(s)
<i>Strategic Plan Ad HOC</i>	<i>The JPA last updated their strategic plan in 2015. The Ad Hoc was formed to determine should there be a 2019 strategic plan update and if so what format it should follow. First meeting held June 2019. Two work sessions to be held in August are planned with the goal of presenting a draft 2019 Strategic Plan to the JPA in October 2019.</i>	<i>Whitney Benzian Jerry Jones Gary Kendrick John Mullin Ed Spriggs JPA staff</i>
<i>SB 332 Working Group</i>	<i>SB 332 (Hertzberg/Weiner) relates to wastewater treatment for recycled water and agencies with ocean outfalls. It requires the entity that owns the wastewater treatment facility that discharges through an ocean outfall and affiliated water suppliers (it defines water not wastewater suppliers) to reduce the facilities annual flow as compared to the average annual dry weather wastewater discharge baseline volume as prescribed by at least 50% on or before January 1, 2030 and by at least 95% on or before January 1, 2040. The working group was formed to track the process of this legislation.</i>	<i>Yazmin Arellano Beth Gentry Hamed Hashemian</i>
Muni Transportation Rate Study Working Group	San Diego has hired Carollo Engineers to review the existing transportation rate structure. A work group has been formed to review and give input. First meeting will be in December 2017. Although this is a muni issue it is included on the work plan due to its significance and potential effect on all Metro TAC members. 3/18: Technical consultants to meet with PUD staff and Carollo on 3/22/18 to review model in detail 6/18: JPA technical consultants continue to work with PUD staff on understanding rate calculations 1/19: Working group still meeting with PUD staff & consultants. <i>6/19: Working Group has presented an alternative plan in November 2018 which the City and their consultants are reviewing.</i>	Roberto Yano Yazmin Arellano Dan Brogadir Carmen Kasner Mark Niemiec Dexter Wilson SD staff
Point Loma Permit Ad Hoc	Metro Commission/JPA Ad Hoc established 9/17. GOAL: Create regional water reuse plan so that both a new, local, diversified water supply is created AND maximum offload at Point Loma is achieved to support legislation for permanent acceptance of Point Loma as a smaller advanced primary plant. Minimize ultimate Point Loma treatment costs and most effectively spend ratepayer dollars through successful coordination between water and wastewater agencies. 10/17: Group has met several times. Discussions are ongoing. 3/18: Group continues to meet at least monthly. 6/18: Group continues to meet monthly. Outreach subgroup formed. <i>1/19: This group continues to meet as needed.</i>	Jerry Jones Jim Peasley Ed Spriggs Bill Baber Steve Padilla Metro TAC staff & JPA consultants
Phase II Pure Water Facilities Working Group	Created to work with SD staff & consultants on determining Phase II facilities. 1/19: Work group has eliminated two alternatives and continues to review updated facilities and their costs. Presentation to Metro TAC by Stantec re: Phase 2 Flows and Loads. Copy attached to Metro TAC minutes. <i>6/19: Phase II alternative presented to Metro TAC in May and JPA in June 2019. Copy of presentation can be found in minutes to those meetings. Alternatives narrowed to two main alternatives.</i>	Roberto Yano Seval Sen Scott Tulloch Dexter Wilson SD staff & consultants

Metro TAC & JPA Work Plan
Active & Pending Items
June 2019
Updated Items in Red Italics

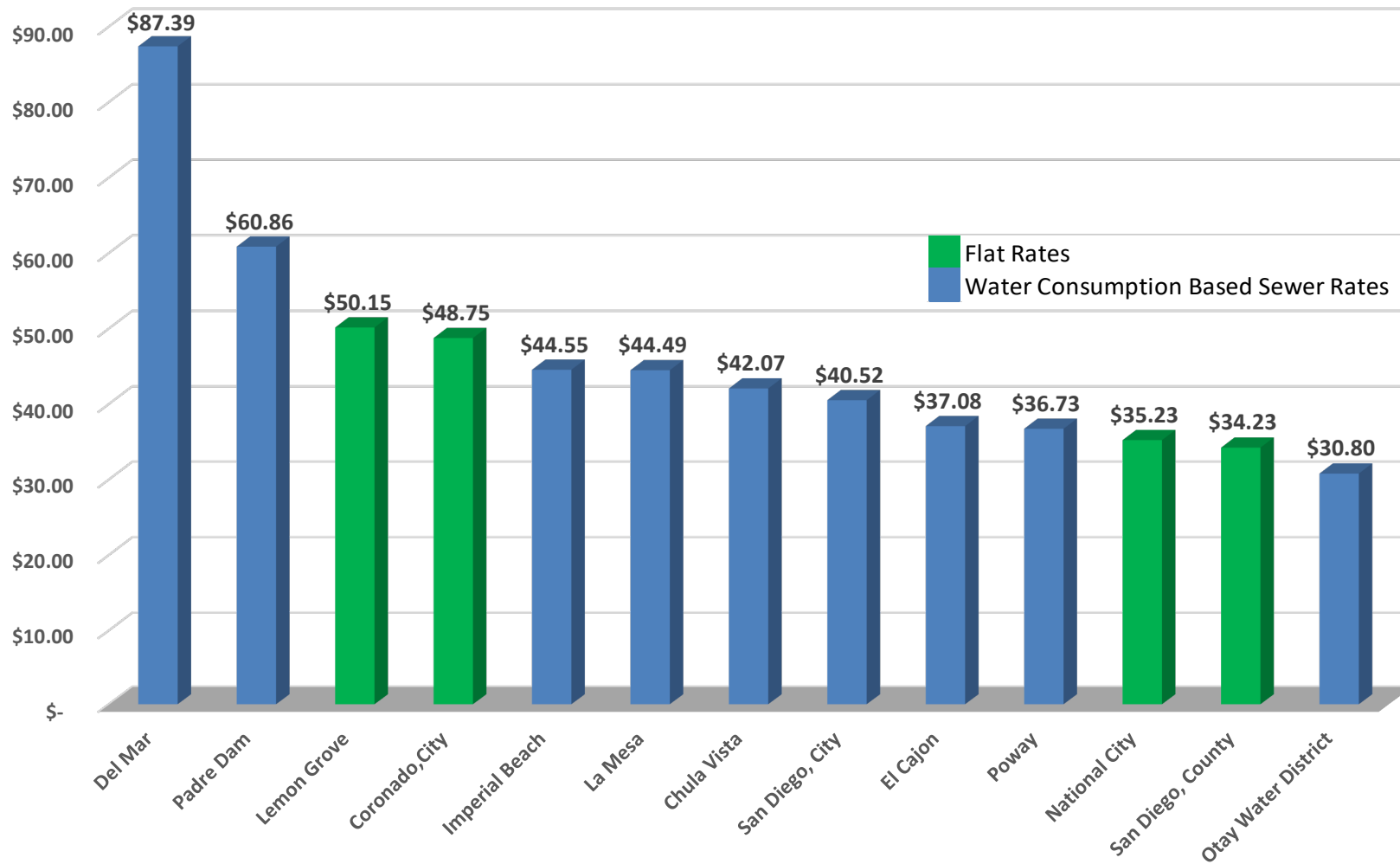
Active Items	Description	Member(s)
Residuals Management Working Group	This working group was formed to continue work on Sections 2.9.2 and 2.9.3 of the Amended and Restated Agreement regarding the potential transfer of the East Mission Gorge Pumps Station and the disposal, treatment, or transfer of residuals. 1/19: Group continues to meet. 3/19: Working Group has been meeting w/Padre Dam, Coronado, & Otay. <i>6/19: Draft agreement has been prepared and is being reviewed/refined.</i>	Eric Minicilli Yazmin Arellano Dan Brogadir Seval Sen Scott Tulloch Dexter Wilson SD staff & consultants
Phase I Financial Implementation Working Group	This working group was formed to continue to work on Section 2.9.1 and other financial implementations issues associated with the Amended Restated Agreement. 1/19: Working group had formation meeting. Has prepared draft task list and task assignments for group members and SD staff. Will meet at least monthly until tasks are complete. Ownership of EMGPS determined. Appraisal in complete. <i>6/19: Group will start meeting in July 2019 on a regular basis.</i>	Roberto Yano Karyn Keese Dexter Wilson SD staff & consultants
Phase II Disposal Agreement Working Group	This group replaces the Debt Allocation Working Group with the approval of the Amended and Restated Agreement for Phase 1. 1/19: Group will start meeting in February.	Roberto Yano Karyn Keese Scott Tulloch Dexter Wilson SD staff & consultants
Pretreatment Working Group	Formed to work with San Diego on new standards for industrial waste discharge. 1/19: SD has received draft report from consultant but has sent back for revisions. Second draft will be reviewed by working group. <i>6/19: Working group has met and reviewed draft of report. Presentation made by Stantec of recommendations to Metro TAC. Copy attached to June agenda.</i>	Yazmin Arellano Mark Niemiec Ed Walton Beth Gentry Dexter Wilson SD Staff & Consultants
JPA Website Update Working Group	The JPA Website, especially the New Director Manual, has not been updated for several years. As we have several new Directors, the manual needs to be updated. 1/19: Working group formed. First meeting 2/20/19. <i>6/19: Group continues to meet and work on updating website. Goal is to totally revise New Director's Manual by end of October once Strategic plan is completed.</i>	Roberto Yano Karyn Keese Lori Peoples Susan Spotts
Exhibit E Audit	<i>1/19: FYE 2017 fieldwork complete. 3/19: FYE 2018 entrance conference complete. Sample selection complete. 6/19: FY 2018 fieldwork completed week of June 17, 2019.</i>	Karen Jassoy Karyn Keese Dexter Wilson
IRWMP	Members should monitor funding opportunities at: http://www.sdirwmp.org 1/19: PA representatives continue to report monthly at Metro TAC 3/19: Minutes from 3/20/19 Meeting attached to work plan. <i>6/19: Metro TAC given monthly updates. See Metro TAC minutes for updates.</i>	Yazmin Arellano Beth Gentry
Strength Based Billing Evaluation	San Diego will hire a consultant every three years to audit the Metro metered system to insure against billing errors. 1/19: 2019 is the year for the billing review. Scope to be discussed at Financial Implementation Work Group and then brought to TAC. This group combined w/ Sample Rejection Protocol Working Group. SBB workshop by SD staff still outstanding. 3/20: JH will provide training schedule for SBB at April TAC meeting.	Dan Brogadir Dennis Davies? Karyn Keese Mark Niemiec Dexter Wilson SD Staff



Metro TAC & JPA Work Plan
Active & Pending Items
June 2019
Updated Items in Red Italics

Active Items	Description	Member(s)
Changes in water legislation	Metro TAC and the Board should monitor and report on proposed and new legislation or changes in existing legislation that impact wastewater conveyance, treatment, and disposal, including recycled water issues	Inactive; Members added as needed

Sewer Rate Comparison for Metro Participating Agencies
Single Family Monthly Rates Based on 7 HCF of Water Usage
Effective March 1, 2019 for FY 2019



Metro TAC

Participating Agencies

Selection Panel Rotation

Agency	Representative	Selection Panel	Date Assigned
County of San Diego	Dan Brogadir	As-Needed Condition Assessment Contract	3/24/2015
Chula Vista	Roberto Yano	Out on Leave	6/10/15
La Mesa	Greg Humora	North City to San Vicente Advanced Water Purification Conveyance System	6/10/15
Poway	Mike Obermiller	Real Property Appraisal, Acquisition, and Relocation Assistance for the Public Utilities Department	11/30/15
El Cajon	Dennis Davies	PURE WATER RFP for Engineering Design Services	12/22/15
Lemon Grove	Mike James	PURE WATER RFP Engineering services to design the North City Water reclamation Plant and Influence conveyance project	03/16/15
National City	Kuna Muthusamy	Passes	04/04/2016
Coronado	Ed Walton	As-Needed Environmental Services - 2 Contracts	04/04/2016
Otay Water District	Bob Kennedy	As Needed Engineering Services Contract 1 & 2	04/11/2016
Del Mar	Eric Minicilli	Pure Water North City Public Art Project	08/05/2016
Padre Dam	Al Lau	Biosolids/Cogeneration Facility solicitation for Pure Water	08/24/2016
County of San Diego	Dan Brogadir	Pure Water North City Public Art Project	08/10/2016
Chula Vista	Roberto Yano	Design Metropolitan Biosolids Center (MBC) Improvements Pure Water Program	9/10/2016
La Mesa	Greg Humora	Design of Metropolitan Biosolids Center (MBC) Improvements	9/22/16
Poway	Mike Obermiller	Electrodialysis Reversal (EDR) System Maintenance	12/7/16
El Cajon	Dennis Davies	As-Needed Construction Management Services for Pure Water	3/13/17
Lemon Grove	Mike James	Morena Pipeline, Morena Pump Station, Pure Water Pipeline and Dechlorination Facility, and the Subaqueous Pipeline	8/7/17
National City	Vacant	North City and Miramar Energy Project Landfill Gas and Generation- Pass	1/31/2018
Coronado	Ed Walton	North City and Miramar Energy Project Landfill Gas and Generation	1/31/2018
Otay Water District	Bob Kennedy	As Needed Engineering Services - Contracts 3 and 4 (H187008 & H187009)	2/16/2018
Del Mar	Joe Bride	Request for Proposal Owner Controlled Insurance Program (OCIP) Pure Water – 1 st email sent on 5/23/18 & 2 nd email sent on 5/29/18	5/23/18
Padre Dam	Al Lau	Request for Proposal Owner Controlled Insurance Program (OCIP) Pure	5/31/18

		Water (Mark Niemiec will participate)	
County of San Diego	Dan Brogadir	Request for Owner Controlled Insurance Program Interview (Pure Water)	2/25/19
Chula Vista	Frank Rivera Beth Gentry	Request for Owner Controlled Insurance Program Interview (Pure Water)	2/26/19
Imperial Beach	Eric Minicilli		
La Mesa	Hamed Hashemian		
Poway	Mike Obermiller Rudy Guzman		
El Cajon	Dennis Davies Yazmin Arellano		
Lemon Grove	Mike James		
National City	Roberto Yano		
Coronado	Ed Walton		
Otay Water District	Bob Kennedy		
Del Mar	Joe Bride		
Padre Dam	Mark Niemiec Sen Seval		
County of San Diego	Dan Brogadir		
Chula Vista	Frank Rivera		
Imperial Beach	Eric Minicilli		
La Mesa	Hamed Hashemian		
Poway	Mike Obermiller Rudy Guzman		
El Cajon	Dennis Davies Yazmin Arellano		
Lemon Grove	Mike James		
National City	Roberto Yano		
Coronado	Ed Walton		
Otay Water District	Bob Kennedy		
Del Mar	Joe Bride		
Padre Dam	Mark Niemiec Sen Seval		
County of San Diego	Dan Brogadir		
Chula Vista	Frank Rivera		
Imperial Beach	Eric Minicilli		
La Mesa	Hamed Hashemian		

Attachment 11b

Info Re AGC vs.
City of San Diego
Litigation



BACKGROUND AND UPDATE REGARDING PURE WATER LITIGATION & LEGISLATION

ISSUE:

The construction contract process for Phase I of the San Diego Pure Water program has been stopped due to litigation between the San Diego Chapter of the Associated General Contractors of America (“AGC”) and the City of San Diego (“City”) in a dispute over labor requirements included in certain Pure Water contracts. State legislation intended to allow the City to potentially avoid the legal issues raised in the AGC and move forward with the Pure Water construction contract process has been passed by the Legislature and is awaiting the Governor’s signature.

RECOMMENDATION:

Receive report on status of litigation and legislation.

BACKGROUND:

In 2012, City of San Diego voters approved Proposition A, which adopted an ordinance prohibiting the City from requiring a “project labor agreement” (“PLA”) on City construction projects, except where required by state or federal law as a contracting or procurement obligation, or as a condition of state or federal funds.

A PLA is generally defined as a collective bargaining agreement between a contractor and a labor organization setting terms and conditions of employment for a specific project. PLAs can address a number of project issues, including wages, benefits, strikes, and lockouts.

In February 2019, the City began soliciting construction contract proposals for the North City Advanced Water Treatment Facility (“AWT Facility”), which is part of Phase I of the Pure Water program. Before bids were opened for AWT Facility construction, the San Diego chapter of AGC sought a preliminary injunction, arguing that the proposed contract contained labor requirements which violated the ordinance adopted by Proposition A. On June 24, 2019, the Superior Court granted AGC’s request for a preliminary injunction.

Recently, the California Legislature passed a bill (AB 1290, Gloria) that is intended to allow the City to proceed with the Pure Water contract process despite the legal challenge by AGC. Specifically, the legislation would expressly require, as a condition of receiving certain state funding, that any Pure Water construction contracts awarded

on or after January 1, 2020 require the contractor to enter into a project labor agreement that meets the requirements of Section 2500 of the Public Contract Code. As of the date of this report, the legislation has not yet been signed by the Governor.

A copy of the Superior Court's decision on the preliminary injunction and a copy of AB 1290 are attached with this report.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 06/24/2019

TIME: 01:59:00 PM

DEPT: C-64

JUDICIAL OFFICER PRESIDING: John S. Meyer

CLERK: Herlinda Chavarin

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2019-00026631-CU-WM-CTL CASE INIT.DATE: 05/23/2019

CASE TITLE: **ASSOCIATED GENERAL CONTRACTORS OF AMERICA SAN DIEGO CHAPTER INC
vs CITY OF SAN DIEGO [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

APPEARANCES

The Court, having taken the above-entitled matter under submission on June 21, 2019 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, CONFIRMS its tentative ruling:

Motion for Preliminary Injunction

Plaintiffs/Petitioners Associated General Contractors of America, San Diego Chapter, Inc. and Associated General Contractors of America, San Diego Chapter, Inc. Apprenticeship and Training Trust Fund (referred to jointly as "AGC") bring this motion, seeking a preliminary injunction enjoining Defendants/Respondents City of San Diego, et al. ("the City") from requiring that bidding contractors for the North City Pure Water Facility project use apprentices registered in Joint Labor Management Apprentice Programs ("JLMAP"). AGC contends that the City's requirement that bidding contractors use apprentices registered in a JLMAP violates SDMC §22.4402.

"[T]he question whether a preliminary injunction should be granted involves two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief." *White v. Davis* (2003) 30 Cal.4th 528, 554.

On February 19, 2019, the City began soliciting construction contract proposals for the "North City Pure Water Facility" ("the Contract"), which purportedly has an "Estimated Bid Value" of \$398,000,000. Bids for the Contract were due by May 31, 2019, but the City agreed to extend the bidding process until after this preliminary injunction could be heard.

The Contract's specifications, and its "Submittal Requirements," include the following labor force condition: "[A]ll apprentices used on the Project shall further be registered in Joint Labor Management Apprentice Programs [("JLMAP")] approved by the State of California." See Bidding Documents for the North City Pure Water Facility, §11.1. Further, the "Submittal Requirements" state that documentation "demonstrating that all apprentices working on the Project will be registered in a Joint Labor

Management Apprenticeship Program" shall be "submitted to the City within 30 days after bid opening, unless additional time is granted by the City in its sole discretion." *Id.* § 11.2.

The "Fair and Open Competition - Prohibition on Requiring Project Labor Agreements" Ordinance states:

"Except as required by state or federal law as a contracting or procurement obligation, or as a condition of the receipt of state or federal funds, the City shall not require a Contractor on a Construction Project to execute or otherwise become a party to a Project Labor Agreement as a condition of bidding, negotiating, awarding or the performing of a contract." SDMC §22.4402.

The City does not dispute that the JLMAP requirement is counter to the intent of the Ordinance, which mandates that no contractor may be required to become a party to a Project Labor Agreement ("PLA") as a condition to bidding on a City contract.

Apprentices working for unionized contractors receive their training through union-sponsored apprentice programs, known as JLMAPs. Apprentices working for non-union contractors receive their training through non-JLMAPs, such as AGC Apprentice Program.

Instead, the City argues that the exception stated in SDMC §22.4402 applies. "[A] major exemption in Proposition A states the City can use PLA's if it is using State of California funding for a project." [Oppo. 4:3-4, emphasis added] The City does not state the City must use PLAs if the exception applies, only that it has discretion to require PLAs.

According to the City, the City of San Diego has been allocated \$30 million in state grants to various Pure Water San Diego Phase 1 projects, including the North City Pure Water Facility. The City also applied to the California State Water Resources Control Board for a Clean Water State Revolving Fund ("SRF") loan. "The North City Pure Water Facility project application received a total SRF loan allocation of \$282,030,000 in state funds." [R. Charvel decl., ¶4]

Although there is evidence of state funding, there is no evidence that the State has conditioned receipt of these funds by requiring a Contractor execute or be a party to a PLA. The exception set forth in SDMC §22.4402 applies in cases when there is a State requirement as a condition to receiving state funds.

The City contends that the state law requires that the City have discretion to implement a PLA as a condition of the receipt of state funds, citing Public Contract Code §2502:

"If a charter provision, initiative, or ordinance of a charter city prohibits the governing board's consideration of a project labor agreement that includes all the taxpayer protection provisions of Section 2500 for a project to be awarded by the city, or prohibits the governing board from considering whether to allocate funds to a city-funded project covered by such an agreement, then state funding or financial assistance shall not be used to support that project." PCC §2502.

Accordingly, PCC §2502 prohibits state funding if there is an ordinance that prohibits PLAs that include the protections set forth in PCC §2500.

The City's Ordinance does not prohibit PLAs. The City's Ordinance prohibits requiring a PLA as a condition to being awarded a contract on a City construction project. PCC §2502 does not support the

City's position.

The City cites Resolution R-309276, which the City states was passed in response to Public Contract Code §2502. The Resolution resolves "that as required by California Public Contract Code section 2500-2503, and under the exception clause of San Diego Municipal Code section 22.4402, the City and the City Council are not prohibited, limited or constrained in any way from adopting, requiring or utilizing PLAs that include the taxpayer protection provisions of California Public Contract Code section 2500 on any construction projects awarded by the City."

Resolution R-309276 is puzzling because it appears to be an attempt to amend or repeal SDMC §22.4401, et seq., which is precluded under the Ordinance. "This Ordinance shall not be amended or repealed except by a majority vote of the voters of the City of San Diego." SDMC §22.4406.

Based on the foregoing, it appears that the City is claiming the City can choose to ignore SDMC §22.4402 if there is any state funding, as opposed to complying with §22.4402 except when the State requires a PLA that includes the protections set forth in PCC §2500 as a condition of receipt of state funds.

The City next contends that the JLMAP "requirement can be implemented in this contract without requiring a PLA." [Oppo., 5:12-13] This contention only highlights the City's discretionary approach to SDMC §22.4402.

Under the bid specifications, the bidder can satisfy the JLMAP requirement by providing a written commitment with a JLMAP to provide JLMAP apprentices by submitting (1) a PLA, (2) Collective Bargain Agreement; (3) a contract with a JLMAP to provide and use JLMAP apprentices, or (4) written correspondence to the bidder from a JLMAP committing to provide JLMAP apprentices for the project.

Accordingly, a PLA (or CBA) is not required; what is actually required are JLMAP apprentices. In other words, only union apprentices are allowed to work on the project.

The City doesn't explain why JLMAP apprentices are required when, according to AGC, AGC apprentices also receiving training that is certified by the State of California. There is no explanation for this preferential treatment. This is contrary to the intent of SDMC §22.4401: "[T]he City should treat union and non-union Contractors equally and not give special advantages to either. All City Construction Project job opportunities should be open equally to both union and non-union workers."

"In considering the purpose of legislation, statements of the intent of the enacting body contained in a preamble, while not conclusive, are entitled to consideration. Although such statements do not confer power, determine rights, or enlarge the scope of a measure, they properly may be utilized as an aid in construing a statute." *Audio Visual Services Group, Inc. v. Superior Court* (2015) 233 Cal.App.4th 481, 492.

Based on the foregoing, the likelihood that plaintiffs/petitioners will prevail on the merits has been demonstrated.

There is obvious harm to AGC apprentices: They have no chance to obtain work on the project unless they forego their training program, join a union and register with a JLMAP training program.

Moreover, "the loss of an opportunity to fairly compete on future government contracts constitutes

irreparable harm. *RhinoCorps Ltd. Co. v. United States*, 87 Fed.Cl. 673, —, No. 08-410C, 2009 WL 1362843, at (2009). This is because "[a]n action at law only allows recovery of 'bid preparation costs in a suit for damages, but not loss of anticipated profits.'" *Bannum, Inc. v. United States*, 60 Fed.Cl. 718, 730 (2004) (quoting *Essex Electro Eng'rs, Inc. v. United States*, 3 Cl.Ct. 277, 287 (1983)), *aff'd*, 404 F.3d 1346 (Fed.Cir.2005); see 28 U.S.C. § 1491(b)(2) (limiting this court's ability to award monetary relief in bid protests 'to bid preparation and proposal costs')." *ViroMed Laboratories, Inc. v. U.S.* (Fed. Cl. 2009) 87 Fed.Cl. 493, 503.

The City contends that it will be harmed by delay in the project. According to the City, if it does not open bids and proceed with the construction of the North City Pure Water Facility by August 2016, delays will cost the City approximately \$4 million per month. There is also consideration that the North City Pure Water Facility is one of eleven separate construction projects in Phase 1 of the City's Pure Water San Diego Program (which, according to AGC, those separate projects do not include the JLMAP requirement).

However, the City has not provided the Court with information as to the length of a delay if the bidding remained opened for a reasonable period in order to allow non-union contractors the opportunity to submit bids on the Contract without the JLMAP requirement.

In balancing the harm that is likely to result, plaintiffs/petitioners are likely to suffer significant harm whereas the City is likely to suffer a slight delay in the bidding process.

THEREFORE, the motion for a preliminary injunction is **GRANTED**.

Defendants/Respondents City of San Diego; City of San Diego Public Utilities Department, and Kevin L. Faulconer are enjoined and restrained from requiring that bidding contractors for the North City Pure Water Facility project use apprentices registered in Joint Labor Management Apprentice Programs. They are further enjoined and restrained from closing or completing the bidding process for the North City Pure Water Facility, or awarding a contract for the North City Pure Water Facility, based on a requirement that bidders use apprentices registered in Joint Labor Management Apprentice Programs.

Counsel for plaintiffs/petitioners shall prepare an Order, approved as to form by the City, for the Court's approval and signature.

Request for Judicial Notice

The Court grants AGC's request for judicial notice of the November 30, 2012 Memorandum of Law from the City Attorney's Office. However, it has limited application here inasmuch as that Memorandum discusses PCC §2503, which is not raised or discussed by the parties in this motion.

IT IS SO ORDERED:



Judge John S. Meyer