



Metro Finance Committee
(Finance Advisory Committee to Metro JPA)

TO: Finance Committee Members and Metro Commissioners

DATE: Wednesday, April 28, 2021

TIME: 10:00 a.m.

IN ACCORDANCE WITH THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, MEMBERS OF THE METRO JPA FINANCE COMMITTEE WILL BE PARTICIPATING REMOTELY FOR THIS MEETING AND THERE WILL BE NO LOCATION FOR IN-PERSON ATTENDANCE. METRO JPA IS PROVIDING ALTERNATIVES TO IN-PERSON ATTENDANCE FOR OBSERVING AND PARTICIPATING IN THE MEETING. FURTHER DETAILS ARE BELOW.

Note: Any member of the public may provide comments to the Finance Committee on any agenda item or on a matter not appearing on the agenda, but within the jurisdiction of the Committee. Public comments must be submitted to lpeoples@ci.chula-vista.ca.us. Please indicate whether your comment is on a specific agenda item or a non-agenda item. When providing comments to the Committee, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Committee as a whole through the Chair. Comments are limited to four hundred (400) words on the form. If you have anything that you wish to be distributed to the Committee, please provide it to the Secretary via lpeoples@ci.chula-vista.ca.us, who will distribute the information to the Members. It is requested that comments and other information be provided at least two (2) hours before the start of the Board meeting. All comments received by such time will be provided to the Committee members in writing. In the discretion of the Chair, the first five (5) comments received on each agenda item, or on non-agenda matters, may be read into the record at the meeting. Comments received after the two (2) hour limit will be collected, sent to the Committee members in writing, and be part of the public record.

The public may participate using the following remote options

Join Zoom Meeting Link

<https://us02web.zoom.us/j/87509733829>

(NOTE: if this link does not work, please copy and paste it into your browser)

Meeting ID: 875 0973 3829

One tap mobile

+16699009128,,87509733829# US (San Jose)

+13462487799,,87509733829# US (Houston)

Dial by your location
+1 669 900 9128 US (San Jose)
+1 346 248 7799 US (Houston)
+1 253 215 8782 US (Tacoma)

***THIS NOTICE HAS BEEN DISTRIBUTED TO THE METRO FINANCE COMMITTEE MEMBERS
and METRO COMMISSIONERS***

1. **Roll Call**
2. **Public Comments**
Opportunity for members of the public to address the Committee on any items not on the agenda but within the jurisdiction of the Committee. Members of the public may use the e-mail noted above to provide a comment.
3. **ACTION:** Approval of Minutes from the July 22, 2020 Finance Committee Meeting (Attachment)
4. **ACTION:** Consideration and Possible Action to Recommend to the Metro Commission/Metro Wastewater JPA Approval of the Metro Wastewater Joint Powers Authority Treasurer's Report for Nine Months Ending March 31, 2021 (Karen Jassoy/Karyn Keze) (Attachment)
5. **ACTION:** Consideration and Possible Action to Recommend to the Metro Commission/Metro Wastewater JPA Approval of a Treasurers Contract with the City of El Cajon for up to Five Years (Eric Minicilli) (Attachment)
6. **ACTION:** Consideration and Possible Action to Recommend to the Metro Commission/Metro Wastewater JPA Approval of the FY 2022 Professional Services Agreement with The Keze Group, LLC for Financial Management Services (Eric Minicilli) (Attachment)
7. **ACTION:** Consideration and Possible Action to Recommend to the Metro Commission/Metro Wastewater JPA Approval of the FY 2022 Professional Services Agreement with NV5 for Engineering Services (Eric Minicilli/Karyn Keese) (Attachment)
8. **ACTION:** Consideration and Possible Action to Recommend to the Metro Commission/Metro Wastewater JPA Approval of the FY 2022 Professional Services Agreement with Dexter Wilson Engineering for Engineering Services (Eric Minicilli/Karyn Keese) (Attachment)
9. **ACTION:** Consideration and Possible Action to Recommend to the Metro Commission/Metro Wastewater JPA Approval of the FY 2022 Professional Services Agreement with Granicus for Website Hosting Services (Eric Minicilli) (Attachment)
10. **ACTION:** Consideration and Possible Action to Recommend to the Metro Commission/Metro Wastewater JPA Approval of the FY 2022 Metro Wastewater JPA Budget (Karen Jassoy/Karyn Keese) (Attachment)
11. Review of Items to be Brought Forward to the Metro Commission/Metro JPA

12. Other Business of the Finance Committee

13. Adjournment

The Metro Finance Committee may take action on any item listed on the Agenda whether or not it is listed “for action”.

Materials provided to the Metro Finance Committee related to any open-session item on this agenda are available for public review by contacting Karyn Keese (619) 733-8876 during normal business hours.

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

Metro JPA meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact lpeoples@ci.chula-vista.ca.us. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

ATTACHMENT 3

ACTION MINUTES FOR THE MEETING OF JULY 22, 2020



Metro Wastewater JPA Finance Committee
July 22, 2020
Minutes

Meeting called to order: 10:02 a.m. via Zoom by Committee Chairman Mullin

1. Roll Call

Attendees:

John Mullin, Chair, Poway
Jim Peasley, Vice Chair, Padre Dam
Sherryl Parks, Del Mar (became an observer at 10:15 am)
Ed Spriggs, Imperial Beach (logged in at 10:15 am)
Jerry Jones, Lemon Grove Sanitation District
Bill Baber, La Mesa

Support Staff:

Karyn Keese, The Keze Group, LLC (Called In)
Nicholas Norvell, BBK Law
Eric Minicilli, Vice Metro TAC Chair
Lori Anne Peoples, Metro JPA Board Secretary

City of San Diego Staff:

Charles Modica, Public Utilities Department, City of San Diego (PUD)
Edgar Patino, Public Utilities Department, City of San Diego (PUD)

General Public:

There were no general public members.

2. Public Comment

There was no public comment.

3. Approval of Minutes from the May 27, 2020 Finance Committee Meeting

ACTION: Upon motion by Committee Member Jones, seconded by Committee Member Parks, the May 27, 2020 Minutes were approved unanimously.

4. Consideration and Possible Action to Recommend Approval to the Metro Commission/Metro Wastewater JPA of the FY 2018 Exhibit E Audit

Charles Modica, Deputy Director, City of San Diego provided a quick overview of the Audited Financial Statement, commonly known as Exhibit E, for FY 2018. Karyn Keese, the

Keze Group added additional information that the \$321 million was an increase of 14%.

Karyn Keese then noted that they had a running total of Metro Pure Water to date under Note 9 and were working on going back to the beginning of the Pure Water Program to include costs incurred in FY 2014 and FY 2015

Edgar Patino, City of San Diego stated that the refunds would be processed around August and invoices will also with a 60 day net. If there is a timing issue of paying for the year-end invoice, he requested the PA's contact him to work something out so that interest will not be accrued for late payments

Karyn Keese, The Keze Group stated that Note 9 had been there since FY 2016. She has asked PUD staff for the inclusion of all Pure Water Costs incurred to be included in Note 9 for the FY 2019 audit,

Charles Modica, City of San Diego stated he was looking at the Amended/Restated Agreement and how individual wastewater costs are distributed, currently in the water fund, and will need to transfer over some, so he will bring forward in the future how the IBWC is funded.

ACTION: Motion by Committee Member Jones, seconded by Committee Member Baber, to approve the recommendation and move the item forward. The motion carried unanimously.

5. Consideration and Possible Action to Recommend Approval to the Metro Commission/Metro Wastewater JPA of the FY 2018 JPA Budget Reconciliation

Karyn Keese presented the FY 2018 Metro JPA Budget Reconciliation report. With the completion of the FY 2018 Audit the City of San Diego provided audited flows which enabled the JPA to adjust their FY 2018 JPA Budget Cost Allocation between the member agencies. Karyn noted that Table 2 showed the FY 2018 audit adjustment calculation and the original flows and strengths used for distributing the FY 2018 budget along with the audited flows and strengths. The far right column reflected some PA's in the green and some in the red.

ACTION: Motion by Committee Member Jones, seconded by Vice Chair Peasley, to approve the recommendation and move the item forward. The motion carried unanimously

6. Review of Items to be brought forward to the Metro Commission/Metro Wastewater JPA

Finance Committee Chair Mullin noted that both items would move forward to the Metro Commission/Metro Wastewater JPA for approval at their next meeting for approval.

7. Other Business of the Finance Committee

Chair Mullin expressed thanks to the Committee Members for their service.

Ms. Keese stated that the next meeting required of the Finance Committee would not be until next year when the Budget begins again.

8. Adjournment

The meeting was adjourned at 10:52 a.m.

ATTACHMENT 4

TREASURER'S REPORT FOR NINE MONTHS ENDING MARCH 31, 2021



Metro Wastewater Joint Powers Authority
Treasurer's Report
Nine months ending March 31, 2021

Metro Wastewater JPA
Treasurer's Report
Nine months ending March 31, 2021

Beginning Cash Balance at July 1, 2020	\$ 559,757
Operating Results	
Membership Dues & Interest Income	217,122
Expenses	<u>(161,891)</u>
Change in Net Position	55,231
Net change in Receivables & Payables	<u>70,417</u>
Cash used in Operations	<u>125,648</u>
Ending Cash Balance at March 31, 2021	<u><u>\$ 685,404</u></u>

Metro Wastewater JPA
Statement of Net Position

As of June 30, 2020 and Mar 31, 2021
Unaudited

	<u>June 30, 2020</u>	<u>Mar 31, 2021</u>	<u>\$ Change</u>
<u>ASSETS</u>			
Checking/Savings	\$ 559,757	\$ 685,404	\$ 125,648
Accounts Receivable	7,662	3,857	(3,805)
Total Assets	<u>\$ 567,419</u>	<u>\$ 689,261</u>	<u>\$ 121,842</u>
<u>LIABILITIES</u>			
Accounts Payable	\$ 44,133	\$ 38,407	\$ (5,726)
Unearned Membership Billings	-	72,338	72,338
Total Liabilities	<u>\$ 44,133</u>	<u>\$ 110,744</u>	<u>\$ 66,611</u>
<u>NET POSITION</u>			
Net Position at Beginning of Period	\$ 261,960	\$ 523,286	\$ 261,325
Change in Net Position	261,325	55,231	(206,094)
Net Position at End of Period	\$ 523,286	\$ 578,517	\$ 55,231
<u>TOTAL LIABILITIES & NET POSITION</u>	<u>\$ 567,419</u>	<u>\$ 689,261</u>	<u>\$ 121,842</u>

<i>Net Position at 12/31/20</i>	<i>\$ 578,517</i>
<i>FY '21 Required Reserve (4 months of Op Exp)</i>	<i>138,150</i>
<i>Over (under) required reserve</i>	<i>\$ 440,367</i>

Metro Wastewater JPA
Statement of Operations
Budget vs. Actual

Nine months ending March 31, 2021
Unaudited

	<u>Actual</u>	<u>Budget</u>	<u>Over (Under)</u> <u>Budget</u>	
Income				
Membership Dues	\$ 217,013	\$ 217,013	\$ -	
Interest Income	109	75	34	
Total Income	<u>\$ 217,122</u>	<u>\$ 217,088</u>	<u>\$ 34</u>	
Expense				
Administrative Assistant-LP	\$ 1,155	\$ 6,300	\$ (5,145)	(1)
Bank Charges	-	150	(150)	
Contingency	-	-	-	
Dues & Subscriptions	-	450	(450)	
Financial Services				
Audit Fees	4,700	9,000		(1)
Financial - The Keze Group	32,283	58,200	(25,918)	(3)
Treasurer - Padre Dam/El Cajon	7,954	15,000		(3)
JPA/TAC meeting expenses	-	3,750	(3,750)	
Miscellaneous	-	188	(188)	
Per Diem - Board	6,000	13,500	(7,500)	(3)
Printing, Postage, Supplies	269	188	82	
Professional Services				
Engineering - Dexter Wilson	69,250	81,000	(11,750)	(3)
Engineering - NV5	11,625	22,500	(10,875)	(2)
Legal - Procopio	3,322	52,500	(49,179)	(2)
Legal - BB&K	22,508	45,000	(22,492)	(3)
Strategic Planning	-	-	-	
Telephone	30	1,050	(1,020)	(1)
Website Maintenance & Hosting	2,796	2,063	733	
Total Expense	<u>\$ 161,891</u>	<u>\$ 310,838</u>	<u>\$ (137,601)</u>	
Net Income (Loss)	<u><u>\$ 55,231</u></u>	<u><u>\$ (93,750)</u></u>	<u><u>\$ 148,981</u></u>	

(1) Invoices received through 12/31/20

(2) Invoices received through 2/28/21

(3) Invoices received through 3/31/21

Metro Wastewater JPA
Statement of Cash Flows

Nine months ending March 31, 2021
Unaudited

OPERATING ACTIVITIES

Change in Net Position	\$ 55,231
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**Adjustments to Reconcile Change in Net
Position to Net Cash Provided by Operations:**

Accounts Receivable	3,805
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Accounts Payable	(5,726)
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Deferred Revenue	72,338
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Yeard ended June 30, 2020	125,648
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Net cash increase (decrease) for period	559,757
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Cash at end of period	<u><u>\$ 685,404</u></u>
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Metro Wastewater JPA
A/R Aging Summary
As of Mar 31, 2021

	<u>Current</u>	<u>1 - 30</u>	<u>31 - 60</u>	<u>60-90</u>	<u>>90</u>	<u>TOTAL</u>
City of San Diego Metro	<u>3,857</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>\$ -</u>	<u>\$ 3,857.00</u>
TOTAL	<u>\$ 3,857.00</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 3,857.00</u>

**Metro Wastewater JPA
Vendor Accrual Summary**

As of Mar 31, 2021

Best Best & Krieger	\$ 5,920.20
Dexter Wilson Engineering	12,080.00
Jerrold L. Jones	1,050.00
Keze Group LLC	7,120.00
Lori Anne Peoples	4,367.08
Mark Robak	150.00
NV5	1,900.00
Padre Dam	4,943.67
Procopio	876.00
Total	<u>\$ 38,406.95</u>

ATTACHMENT 5

TREASURER'S CONTRACT WITH CITY OF EL CAJON FOR UP TO FIVE YEARS

**AGREEMENT FOR TREASURER SERVICES BETWEEN
METRO WASTEWATER JOINT POWERS AUTHORITY
AND THE CITY OF EL CAJON**

This Agreement (“Agreement”) is made and entered into as of the 1st day of July, 2021 by and between the METRO WASTEWATER JOINT POWERS AUTHORITY (“Metro JPA”), a joint powers authority organized and operating pursuant to California Government Code section 6500 *et seq.*, and the CITY OF EL CAJON (the “El Cajon”), a California charter city. Metro JPA and El Cajon are sometimes individually referred to herein as the “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, certain agencies participating in the Metropolitan Sewerage System, including El Cajon, are members of Metro JPA (“Member Agencies”); and

WHEREAS, the activities of Metro JPA require the services of a treasurer to keep accounts, allocate costs and process accounts payable; and

WHEREAS, Metro JPA requires the services of a treasurer from one of its members; and

WHEREAS, Metro JPA desires to contract with El Cajon, and El Cajon desires to contract with Metro JPA, for El Cajon to provide treasurer services pursuant to the terms and conditions of, and by entering into, this Agreement.

AGREEMENT

IN CONSIDERATION of the mutual promises set forth herein, the Parties agree as follows:

1. **Treasurer Services.** El Cajon agrees to provide treasurer services to Metro JPA to include:
 - a. Transfer existing bank accounts/funds;
 - b. Maintain and reconcile bank accounts;
 - c. Prepare Member Agency annual billings;
 - d. Collect and deposit Member Agency billings;
 - e. Make authorized expenditures related to conducting Metro Commission and Metro JPA business;
 - f. Provide periodic unaudited financial reporting which reflects cash balances, outstanding receivables, and payables;
 - g. Provide periodic unaudited income statement financial reporting;

- h. Financial reporting will separately track Metro Commission and Metro JPA receipts and expenditures;
 - i. Accrual basis of accounting will be used to reveal outstanding receivables and payables to the extent known as of the financial statement date;
 - j. Attend staff and Board meetings as desired by the Metro Commission and Metro JPA;
 - k. Consult and respond to questions from Member Agencies concerning finances and billings; and
 - l. Other incidental services consistent with the Treasurer's position.
2. **Personnel.** El Cajon shall assign Lee Ann Jones-Santos, Senior Accountant, as the Treasurer to provide the above-referenced services. El Cajon may assign other staff to assist Ms. Jones-Santos in providing the treasurer services.
3. **Compensation.**
- a. Metro JPA agrees to reimburse El Cajon for treasurer services on an hourly basis. The hourly rate for said services shall not exceed El Cajon's fully burdened hourly rate for the El Cajon employee(s) providing the services (e.g., rate may account for salary, overtime, vacation, holidays, sick leave, insurance, retirement, payroll taxes, and other direct salary/benefit costs). It is estimated by the Parties that services will be performed for an estimated 10 hours per month with extra time spent in the beginning and end of the fiscal year for set up and year-end statements.
 - b. Total charges during the Initial Term or any Extended Term (each defined below) shall not exceed \$30,000 (with a total not-to-exceed amount of \$150,000), unless said amount is increased by an amendment to this Agreement.
4. **Term; Renewal; Termination.** The initial term of this Agreement shall begin on the date first set forth above and shall continue until June 30, 2022 ("Initial Term"). Unless terminated by one of the Parties in the manner described below, this Agreement shall automatically renew each July 1 for up to four (4) additional one (1) year terms (each an "Extended Term"). The term may be further extended by an amendment to this Agreement. At any time, either Party may terminate this Agreement upon ninety (90) days' written notice to the other Party.
5. **Indemnification.** Metro JPA agrees to protect and hold harmless El Cajon, Ms. Jones-Santos, and El Cajon's other officials, officers, agents and employees ("Indemnified Parties") from any and all claims, liabilities, expenses or damages arising out of or in any way connected with the performance of this Agreement by

the Indemnified Parties; provided, however, that Metro JPA's responsibility to protect and hold harmless shall not include any claim, liability, expense or damage arising from or related to the gross negligence or willful misconduct of the Indemnified Parties.

6. **Official Bond.** Pursuant to Section 6505.1 of the California Government Code and Article IV, Section 3 of Metro JPA's Bylaws, the Treasurer shall file an official bond in the amount of \$25,000. Metro JPA shall reimburse the Treasurer for the cost of the bond; provided, however, that such reimbursement shall not exceed \$1,500.

7. **General Provisions.**

- a. If any section, clause or phrase of this Agreement or the application thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder of the Agreement or the application of such provisions to any other Party or to other persons or circumstances shall not be affected thereby. Each Party hereby declares that it would have entered into this Agreement, and each subsection, sentence, clause and phrase thereof, irrespective that one or more sections, subsections sentences, clauses or phrases or the application thereof might be held invalid.
- b. This Agreement is made in the State of California, under the Constitution and laws of such State, and shall be construed and enforced in accordance with the laws of such State.
- c. It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
- d. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties hereto.
- e. This Agreement constitutes the full and complete Agreement of the Parties. This Agreement may be amended at any time by a writing signed by the Parties.
- f. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement for Treasurer Services is executed by Metro JPA and El Cajon on the day and year first written above.

METRO WASTEWATER JPA:

CITY OF EL CAJON:

By: _____
Jerry Jones
Chairperson

By: _____
Graham Mitchell
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Paula C. P. de Sousa
General Counsel

Morgan Foley
City Attorney

ATTACHMENT 6

FY 2022
PROFESSIONAL SVS.
AGMT.
KEZE GROUP, LLC
FINANCIAL MGT.

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

This agreement (“Agreement”) is made and entered into as of July 1, ~~2020~~2021, 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 The Keze Group LLC (hereinafter referred to as “Consultant”). 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: As-needed Technical, Financial, and Administrative Support services for the fiscal year of ~~2020–2021~~–2022 as set forth in more detail herein.

B. Consultant is duly licensed and has the necessary qualifications 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 Metro JPA with the services described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein (“Services”).

2. Compensation.

a. Subject to paragraph 2(b) below, Metro JPA shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit “B,” and incorporated herein.

b. In no event shall the total amount paid for services rendered by Consultant pursuant to Exhibit “A” exceed \$77,600.00 without the written approval of Metro JPA. Periodic payments shall be made within thirty (30) days of receipt of a statement for services rendered. Payments to Consultant for work performed will be made on a monthly billing basis.

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. Substitution of Key Personnel.

Consultant has represented to Metro JPA that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence and experience upon written approval of Metro JPA. In the event that Metro JPA and Consultant cannot agree as to the substitution of key personnel, Metro JPA shall be entitled to terminate this Agreement for cause, pursuant to provisions of Section 15 of this Agreement. The key personnel for performance of this Agreement are as follows: **Karyn Keese**.

5. Maintenance of Records.

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.

6. Time of Performance; Term.

Consultant shall commence and perform the Services in a prompt and timely manner and shall commence performance beginning July 1, ~~2020~~2021. This Agreement shall terminate on June 30, ~~2021~~2022, unless otherwise extended by a written amendment signed by both Parties or otherwise earlier terminated pursuant to Article 15 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 may be withheld for any reason. 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) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Broad Form Property Damage
- (9) 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 owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the Metro JPA.

(ii) Coverage for Automobile Liability Insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(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 insured 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. 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	\$500,000 per occurrence for bodily injury and property damage
Workers’ Compensation	Statutory
Employer’s Liability (if applicable)	\$1,000,000 per occurrence

(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) [Intentionally left blank.]

(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 and automobile 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 Project.

(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. 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.

15. 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 ten (10) calendar days' written notice to Consultant. In such event, Metro JPA shall be immediately given title and possession to all original field notes, drawings and specifications, 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.

16. Documents.

Except as otherwise provided in Section 15, above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of Metro JPA.

17. Organization.

Consultant shall designate an individual from The Keze Group as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of Metro JPA.

18. 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	The Keze Group, LLC 1801 E 51st Street, Suite 365, Unit 522 Austin, TX 78723 Attn: Karyn Keese

and shall be effective upon receipt thereof.

19. 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.

20. Severability.

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

21. 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(S)

IN WITNESS WHEREOF, the Parties have executed this [Professional Services Agreement](#) as of the date first written above.

METRO WASTEWATER JPA:

THE KEZE GROUP, LLC:

By: _____
Jerry Jones
Chair

By: _____
Karyn Keese

APPROVED AS TO FORM:

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

EXHIBIT “A”

Scope of Services

The purpose of the As-Needed Consulting Contract for the Metro Wastewater JPA is to provide technical and financial support to the Participating Agencies (“PAs”) in meeting their objectives of fair rates, equitable cost sharing, and program validation. The intention of the As-Needed Contract is to provide review and oversight of the San Diego Metropolitan Sewer System (Metro System) Fiscal Program with a minimum of duplication by the PAs. By combining the efforts of the PAs into a central focal point, our goal is to assist in increasing the responsiveness of the group to key issues of concern, ensure coverage at key meetings, centralize data collection, minimize duplication of efforts by the PAs, and reduce the costs of both Metro TAC/JPA efforts, as well as the overall costs of the Metro System Program.

I. SCOPE OF SERVICES

The effort by The Keze Group, LLC (TKG) will be divided into five major categories, one for routine services, two for specific financial tasks, one for Pure Water Program support, and one for Metro TAC and JPA staff support.

A. Routine Services

The routine services will include the following tasks:

1. Attendance and preparation of agendas for Metro TAC meetings.
2. Attendance and preparation of agendas for the Metro JPA meetings.
3. Attendance ~~and~~ and preparation of agendas and minutes for the Metro JPA Finance Committee.
4. Attendance at planning/work meetings with Public Utilities Department (PUD) staff.
5. Meetings with Metro TAC Chairman and other JPA officials.

B. Routine Audit Review – Public Utilities Department (PUD), Wastewater Operations Branch Exhibit E Audit Review – ~~FYEs 2017~~ FYs 2020 and ~~2018~~ 2021

1. Review and negotiate the auditors Scope of Work.
2. Attend Entrance and Exit Conferences with the Auditors.
3. Select operating, CIP, and non-operating revenue audit samples.
4. Attend/call in to Interim work meetings with the Auditors (maximum of 5 per audit).
5. Review all audit samples for contract compliance and accounting accuracy.

6. Review the annual general services cost allocation.
 7. Review output for any special projects (In the past years this has included the reconciliation of Pure Water Program task orders and construction project final bid costs to revise their original cost allocation ~~to~~and insure that only appropriate Metro costs have/had been charged to the PAs). ~~This year~~During the FY 2021 audit the 50/50 Phase I Pure Water Program cost allocation will be revised and all associated costs ~~back to~~from FY 2014 (project inception) to June 30, 2021 will be reviewed and adjusted once ~~the~~all construction projects are bid. As of 6/30/19 there were 99 purchase/task orders that fall into this category totaling \$44 million. This will require an extensive set of journal entries during the course of the audit that are not routine in nature and will have to be reviewed. If the cost allocation remains at the newest planning numbers of 39% wastewater/61% water this means a potential savings to the PA's of approximately \$1.7 million at their current budget share of 35%.
 8. Review South Bay recycled water sales and incentives to insure that appropriate revenues are credited to the PAs. Review other income credits to insure that non-operating revenues are credited to the PAs.
 9. Review the draft and final audit numbers and sample test results. Review the administrative protocol calculations to insure proper allocation of revenues and expenses to the PAs. Prepare list of questions and work on resolution of issues regarding samples.
 10. Present the results to the Metro Finance Committee, Metro TAC, and Metro Wastewater JPA.
 11. Monitor closeout process to insure timely payment of refunds (if any) and the accuracy of any additional billings' (if any) to PAs.
- C. Routine Review of MWWDD Budget – ~~FYE 2020 and~~FY 2021 and 2022
1. Line item review of the proposed CIP projects to verify that they are a part of the Wastewater Agreement. Provide a preliminary review of the O&M costs to identify areas of concern for the PAs.
 2. Identify budget items that show major deviation from previous years, and discuss these deviations with the City.
 3. Attend meetings with the City of San Diego Public Utilities staff to identify the nature and magnitude of the budget items.
 4. Provide updates on budget issues to the Metro TAC, the Finance Committee, and the Metro Wastewater JPA meetings.
- D. ~~FYE 2020~~FY 2021 PUD Water and Wastewater Rate Case – PUD has hired a rate consultant to prepare rate cases for both their water and wastewater enterprise funds.

It is anticipated that the rates for San Diego's retail customers will be adopted in early FY ~~2021~~2022. Included in the water rate case will be the review of recycled water rates. As these are PA revenues coordination with PUD staff and their consultant is anticipated.

E. Pure Water Program Support – This task includes 10 hours per month to assist in financial facilitation of Phase I and II of the Pure Water Program. Envisioned subtasks include revisions to the Pure Water Program financial forecast model to update project costs, financing, and timing based on program costs from construction bids anticipated in FY 2021 and FY 2022 and revenue sharing; implementation of the financial “parking lot” items contained in the Amended Restated Agreement; assistance with ~~the update to the Regional Wastewater Disposal~~negotiations for the 2nd Amended Restated Agreement; and continued cost allocation monitoring and updates of all Pure Water purchase/task orders for both O&M and capital projects.

F. Metro TAC and JPA Staff Support – This task includes 12 hours per month for financial analysis and consulting in support of varied Metro TAC Work Plan and JPA projects. TKG will support, as-needed, the items contained in the Metro TAC FY ~~2021~~2022 Work Plan. Some anticipated work tasks include the creation of a billing formula for any PA that diverts their flow from the Metro System for the remaining debt service associated with existing Metro Clean Water facilities and for ongoing capital projects required to maintain them. In addition, the billing Protocol will need to be revised to reflect the cash flow needed for Pure Water Program costs.

II. ADDITIONAL SERVICES AS REQUESTED

- A. Review of ongoing background material not envisioned.
- B. Prepare for and attend additional meetings beyond what is included in Section I.
- C. Provide additional follow-up on the additional items identified.
- D. Provide additional technical support on specific projects as directed by the Metro TAC, Finance Committee, and Metro JPA Chair.
- E. Provide technical support, as requested, to fulfill other Metro JPA objectives.

EXHIBIT “B”

Schedule of Charges

The proposed budget for the described scope of services is not-to-exceed \$77,600 for Fiscal Year Ending ~~2021~~2022, which is the same as FY ~~2020~~2021. The hours and fees per task are summarized in Attachment A to this Schedule of Charges. The hourly billing rate remains unchanged at \$160.

Attachment A to Schedule of Charges

(Modified)
 Summary of Costs by Task
 Metro JPA Draft Contract FYE 2021

Task	Description	Proposed FY 2021	
		Budget Amount	Budget Hours
11	Routine Meetings	\$ 12,000	75
22	Exhibit E Audit Review	\$ 16,000	100
33	Review of PUDBudget	\$ 4,800	30
44	FYE 2019 Water and Wastewater Rate Case	\$ 2,560	16
55	Pure Water Program Cost Allocation	\$ 19,200	120
66	Metro TAC & JPA Staff Support	\$ 23,040	144
	Direct Expense		
	TOTAL	\$77,600	485

EXHIBIT “C”

Insurance Certificates

Insurance documentation is included on the following pages.

Summary report: Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 3/31/2021 1:31:48 PM	
Style name: Nick's Style	
Intelligent Table Comparison: Active	
Original filename: METRO JPA_ Professional Services Agreement with The Keze Group for FY 2020-21-c1.DOC	
Modified DMS: iw://imanage/iManage/33827992/2	
Changes:	
<u>Add</u>	29
Delete	19
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	1
Embedded Excel	0
Format changes	0
Total Changes:	49

ATTACHMENT 7

FY 2022

PROFESSIONAL SERV.

AGMT. WITH NV5 -

ENGINEERING SVS

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN METRO WASTEWATER JOINT POWERS AUTHORITY
AND NV5, INC.**

This agreement ("Agreement") is made and entered into as of July 1, ~~2020~~2021, 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 NV5, Inc., a professional services firm (hereinafter referred to as "Consultant"). 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: Technical As-Needed Engineering Advisory Services (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications 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. ~~1.~~ Services.

Consultant shall provide Metro JPA with the services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein ("Services").

2. ~~2.~~ Compensation.

a. ~~a.~~ Subject to paragraph 2(b) below, Metro JPA shall pay for the Services set forth in Exhibit "A" in accordance with the "Schedule of Charges for Services" set forth in Exhibit "B."

b. ~~b.~~ In no event shall the total amount paid for Services rendered by Consultant pursuant to Exhibit "A-1" exceed **\$30,000.00** without the written approval of Metro JPA. Periodic payments shall be made within thirty (30) days of receipt of a statement for services rendered. Payments to Consultant for work performed will be made on a monthly billing basis.

3. ~~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. ~~4.~~ Substitution of Key Personnel.

Consultant has represented to Metro JPA that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence and experience upon written approval of Metro JPA. In the event that Metro JPA and Consultant cannot agree as to the substitution of key personnel, Metro JPA shall be entitled to terminate this Agreement for cause, pursuant to provisions of Section 16 of this Agreement. The key personnel for performance of the Services under this Agreement are as follows: **Scott Tulloch and Carmen Kasner.**

5. ~~5.~~ Maintenance of Records.

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.

6. ~~6.~~ Time of Performance; Term.

Consultant shall perform its services hereunder in a prompt and timely manner and shall commence performance upon receipt of a written Notice to Proceed from Metro JPA. Consultant shall complete the services required hereunder by June 30, ~~2021~~2022. The Notice to Proceed shall set forth the date of commencement of the work.

7. ~~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. ~~8.~~ Compliance with Law.

a. ~~a.~~ Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.

b. ~~b.~~ Consultant shall assist Metro JPA, as requested, in obtaining and maintaining all permits required of Consultant by Federal, State and local regulatory agencies.

c. ~~c.~~ Consultant is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of Consultant's services or operations performed under this Agreement.

9. ~~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. ~~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 may be withheld for any reason. 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. ~~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. ~~12.~~ Insurance.

a. ~~a.~~ Commercial General Liability.

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

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

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

- | | | |
|------------|----------------|--|
| <u>(1)</u> | (1) | Bodily Injury and Property Damage |
| <u>(2)</u> | (2) | Personal Injury/Advertising Injury |
| <u>(3)</u> | (3) | Premises/Operations Liability |
| <u>(4)</u> | (4) | Products/Completed Operations Liability |
| <u>(5)</u> | (5) | Aggregate Limits that Apply per Project |
| <u>(6)</u> | (6) | Contractual Liability with respect to this Agreement |
| <u>(7)</u> | (7) | Broad Form Property Damage |
| <u>(8)</u> | (8) | Independent Consultants Coverage |

(iv) ~~(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) ~~(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) ~~(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. ~~b.~~ Automobile Liability.

(i) ~~(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 owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the Metro JPA.

(ii) ~~(ii)~~ Coverage for Automobile Liability Insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) ~~(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) ~~(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. ~~c.~~ Workers' Compensation/Employer's Liability.

(i) ~~(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) ~~(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. ~~d.~~ Professional Liability (Errors and Omissions).

At all times during the performance of the work under this Agreement the Consultant shall maintain Professional Liability Insurance or Errors and Omissions Insurance appropriate to its profession, in a form and with insurance companies acceptable to Metro JPA and in an amount indicated herein. 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.

e. ~~e.~~ Minimum Policy Limits Required

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

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

<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	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) ~~(ii)~~ Defense costs shall be payable in addition to the limits, with the exception of the professional liability policy.

(iii) ~~(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. ~~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. ~~g.~~ Policy Provisions Required.

(i) ~~(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) ~~(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) ~~(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) ~~(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) ~~(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~~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. ~~h.~~ Qualifying Insurers.

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

~~(ii)~~ ~~(ii)~~ Each such policy shall be from a company or companies with a current A.M. ~~Best's~~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.~~ ~~i.~~ Additional Insurance Provisions.

~~(i)~~ ~~(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)~~ ~~(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 Metro JPA may cancel this Agreement if Consultant fails to comply with these specifications or cancels required insurance policies and fails to replace them.

~~(iii)~~ ~~(iii)~~ –Metro JPA may require the Consultant to provide complete copies of all relevant certificates of insurance and endorsements for the insurance policies in effect for the duration of the Project.

~~(iv)~~ ~~(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.~~ ~~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. ~~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 the negligent 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 reasonable expert witness fees, reasonable attorneys' fees and other reasonable 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. ~~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 project and require the same of any subconsultants. This Project 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. ~~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. ~~16.~~ Termination or Abandonment.

a. ~~a.~~ Metro JPA has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days’ written notice to Consultant. In such event, Metro JPA shall be immediately given title and possession to all original field notes, drawings and specifications, 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. ~~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. ~~17.~~ Documents.

Except as otherwise provided in Section 16, above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of Metro JPA.

18. ~~18.~~ Organization.

Consultant shall assign Carmen Kasner as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of Metro JPA.

19. ~~19.~~ 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:

Metro Wastewater JPA
c/o National City City Hall
1243 National City Blvd.
National City, CA 91950
Attn: Roberto Yano, City of National City

CONSULTANT:

NV5, Inc.
15092 Avenue of Science, Suite 200
San Diego, CA 92126
Attn: c/o Carmen Kasner, NV5, Inc.

and shall be effective upon receipt thereof.

20. ~~20.~~ 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.

21. ~~21.~~ Severability.

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

22. ~~22.~~ 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 as of the date first written above.

METRO WASTEWATER JPA:

NV5 Inc.:

By:

Jerry Jones
Chair

By:

Carmen Kasner
Regional Managing Director

~~METRO WASTEWATER JPA:~~

~~NV5 Inc.:~~

~~By:~~

~~Jerry Jones~~
~~Chair~~

-

~~By:~~

~~Carmen Kasner~~
~~Regional Managing Director~~

APPROVED AS TO FORM:

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

Approval of Agreement for Professional Services with NV5 as to form.

EXHIBIT “A”

Scope of Services

The purpose of the As-Needed Engineering Consulting Contract for the Metro Wastewater JPA is to provide technical support to the Participating Agencies (“PAs”) in meeting their objectives of Pure Water Program validation. The intention of the As-Needed Contract is to provide review and oversight of the San Diego Metropolitan Sewer System (“Metro System”) Program with a minimum of duplication by the PAs. By combining the efforts of the PAs into a central focal point, NV5’s goal is to assist in increasing the responsiveness of the group to key issues of concern, assure coverage at key meetings, centralize data collection, minimize duplication of efforts by the PAs, and reduce costs of Metro TAC/JPA efforts, as well as the overall costs of the Metro System Program.

The timing of the City’s Pure Water program may affect the level of effort required as additional or less services may be required to review details of the plans and the appropriate cost share.

I. Scope of Services

The effort by NV5 will be divided into two major categories, one for routine services and one for Metro TAC engineering, supported by Scott Tulloch. Mr. Tulloch will support attaining either an administrative fix by EPA or permanent legislation to attain secondary equivalency, and continued efforts working with the City of San Diego Pure Water Program staff on cost allocation, facilities planning, and collaboration with environmental stakeholders.

~~A.~~A. Routine Services

The routine services could include the following tasks:

- ~~1.~~1. Attendance at the Metro TAC meetings
- ~~2.~~2. Attendance at Metro JPA meetings
- ~~3.~~3. Independent cost review of Pure Water Program CIP
- ~~4.~~4. Provide additional technical support on specific projects as directed by the Metro TAC, Finance Committee, and/or Metro JPA Chairman

~~B.~~B. Metro TAC Engineering Support

This task includes:

- ~~1.~~1. Engineering technical support as requested by Metro TAC and the Metro JPA.
- ~~2.~~2. Engineering support for such items as the current Waiver of Secondary Treatment at Point Loma and the “Secondary Equivalency Alternative” as outlined in the Metro TAC white paper.
3. [Representing Metro JPA on the Water Reliability Coalition through the Friends of Infrastructure, Equinox Policy Committee Meetings, Pure Water Program Technical Advisory Committee Meetings, and any meetings directed by the](#)

Metro TAC and/or Metro JPA to facilitate the secondary equivalency alternative, Pure Water Program, etc.

II. Additional Services As Requested

- ~~A.~~ A. Assistance with public outreach and communication.
- ~~B.~~ B. Review of ongoing background material not envisioned.
- ~~C.~~ C. Preparation for and attendance at additional meetings beyond what is included in Section I.
- ~~D.~~ D. Attendance at IROC in support of the Metro JPA representatives.
- ~~E.~~ E. Additional follow-up on identified items.
- ~~F.~~ F. Technical support, as requested, to fulfill other Metro JPA objectives.

EXHIBIT “B”

Schedule of Charges for Services

Services shall be provided on a time and materials basis at the direction and request of the Metro JPA/ Metro TAC appointed representative. The hourly rate for Scott Tulloch will be \$150.00 and the hourly rate for Carmen Kasner is \$200.00. Consultant shall notify the Metro JPA when it has reached 80% of the total compensation under the Agreement to allow adequate time to obtain further approvals if needed.

The following rate sheet sets out Consultant’s standard rates should the need arise for other engineering or technical support, which shall only be provided if requested and approved by Metro JPA.

(Modified graphics)

NIVIS

Engineering Aide/Planning Aide	\$75.00/hour
Project Assistant	\$85.00/hour
Project Administrator	\$95.00/hour
CADD Technician I	\$95.00/hour
CADD Technician II	\$118.00/hour
CADD Technician III	\$130.00/hour
Sr. CADD Technician/Designer	\$145.00/hour
Design Supervisor	\$155.00/hour
Engineering Aide/Planning Aide	\$75.00/hour
GIS Technician I	\$98.00/hour
Project Assistant	\$85.00/hour
Project Administrator	\$95.00/hour
GIS Technician II	\$118.00/hour
GIS Analyst	\$135.00/hour
Senior GIS Analyst	\$165.00/hour
CADD Technician I	\$95.00/hour
CADD Technician II	\$118.00/hour
CADD Technician III	\$130.00/hour
Sr. CADD Technician/Designer	\$145.00/hour
Design Supervisor	\$155.00/hour
GIS Technician I	\$98.00/hour
GIS Technician II	\$118.00/hour
GIS Analyst	\$135.00/hour
Senior GIS Analyst	\$165.00/hour
Professional	
Junior Engineer / Planner / Scientist/Surveyor	\$120.00/hour
Assistant Engineer / Planner / Scientist/Surveyor	\$140.00/hour
Associate Engineer / Planner / Scientist/Surveyor	\$150.00/hour
Senior Engineer / Planner / Scientist/Surveyor	\$175.00/hour
Manager	\$215.00/hour
Associate	\$235.00/hour
Principal	\$250.00/hour
Community Outreach	
Strategic Advisor	\$210.00/hour
Program Supervisor	\$200.00/hour
Facilitator	\$200.00/hour
Bilingual Outreach	\$200.00/hour
Project Manager	\$180.00/hour
Assistant Project Manager	\$170.00/hour
Integrated Marketing Specialist	\$150.00/hour
Media Relations Specialist	\$145.00/hour
Community Relations Specialist	\$145.00/hour
Project Coordinator	\$120.00/hour
Graphic Design	\$120.00/hour
Videographer	\$115.00/hour
Bilingual Translation	\$100.00/hour
Administrative Support	\$95.00/hour
Account Coordinator	\$100.00/hour

(Del)essional

Junior Engineer / Planner / Scientist/Surveyor	\$120.00/hour
Assistant Engineer / Planner / Scientist/Surveyor	\$140.00/hour
Associate Engineer / Planner / Scientist/Surveyor	\$150.00/hour
Senior Engineer / Planner / Scientist/Surveyor	\$165.00/hour
Manager	\$215.00/hour
Associate	\$235.00/hour
Principal	\$250.00/hour

(Deleted) Outreach

Strategic Advisor _____	\$210.00/hour
Program Supervisor _____	\$200.00/hour
Facilitator _____	\$200.00/hour
Bilingual Outreach _____	\$200.00/hour
Project Manager _____	\$180.00/hour
Assistant Project Manager _____	\$170.00/hour
Integrated Marketing Specialist _____	\$150.00/hour
Media Relations Specialist _____	\$145.00/hour
Community Relations Specialist _____	\$145.00/hour
Project Coordinator _____	\$120.00/hour
Graphic Design _____	\$120.00/hour
Videographer _____	\$115.00/hour
Bilingual Translation _____	\$100.00/hour
Administrative Support _____	\$95.00/hour
Account Coordinator _____	\$100.00/hour

EXHIBIT “C”

Insurance Certificates

Insurance documentation is included on the following pages.

Summary report: Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 3/29/2021 9:36:38 AM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://imanager/iManage/33820678/1	
Modified DMS: iw://imanager/iManage/33820678/2	
Changes:	
<u>Add</u>	111
Delete	107
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	2
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	3
Embedded Excel	0
Format changes	0
Total Changes:	223

ATTACHMENT 8

FY 2022

PROFESSIONAL SVS.

AGMT. WITH DEXTER

WILSON

ENGINEERING FOR -

ENGINEERING SVS

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN METRO WASTEWATER JOINT POWERS AUTHORITY
AND DEXTER WILSON ENGINEERING**

This agreement ("Agreement") is made and entered into as of July 1, ~~2020~~2021, 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 Dexter Wilson Engineering, Inc. (hereinafter referred to as "Consultant"). 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: Engineering Services.

B. Consultant is duly licensed and has the necessary qualifications 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 Metro JPA with the services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein ("Services").

2. Compensation.

a. Subject to paragraph 2(b) below, Metro JPA shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B" and incorporated herein.

b. In no event shall the total amount paid for services rendered by Consultant pursuant to Exhibit "A" exceed ~~\$108,000~~116,700 without the written approval of Metro JPA. Periodic payments shall be made within thirty (30) days of receipt of a statement for services rendered. Payments to Consultant for work performed will be made on a monthly billing basis.

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. Substitution of Key Personnel.

Consultant has represented to Metro JPA that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence and experience upon written approval of Metro JPA. In the event that Metro JPA and Consultant cannot agree as to the substitution of key personnel, Metro JPA shall be entitled to terminate this Agreement for cause, pursuant to provisions of Section 16 of this Agreement. The key personnel for performance of this Agreement are as follows: **Dexter S. Wilson**, who will supervise the services described in this Agreement.

5. Maintenance of Records.

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.

6. Time of Performance; Term.

Consultant shall perform the Services in a prompt and timely manner and shall commence performance beginning July 1, ~~2020~~2021. This Agreement shall terminate on June 30, ~~2021~~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 may be withheld for any reason. 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) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Broad Form Property Damage
- (9) 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 owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the Metro JPA.

(ii) Coverage for Automobile Liability Insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(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. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain 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. 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:

Combined Single Limit

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
Professional Liability	\$1,000,000 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 ten (10) calendar days' written notice to Consultant. In such event, Metro JPA shall be immediately given title and possession to all original field notes, drawings and specifications, 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. Documents.

Except as otherwise provided in Section 16, above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed under this Agreement shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of Metro JPA.

18. Organization.

Consultant shall assign Dexter S. Wilson as Project Manager. The Project Manager shall not be removed or reassigned without the prior written consent of Metro JPA.

19. 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	Dexter Wilson Engineering 2234 Faraday Ave. Carlsbad, CA 92008 Attn: Dexter S. Wilson

and shall be effective upon receipt thereof.

20. 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.

21. Severability.

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

22. 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 [Professional Services Agreement](#) as of the date first written above.

~~[SIGNATURES ON FOLLOWING PAGE]~~

METRO WASTEWATER JPA:

DEXTER WILSON ENGINEERING, INC.:

By: _____
Jerry Jones
Chair

By: _____
Dexter Wilson

APPROVED AS TO FORM:

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

Approval of Professional Services Agreement with Dexter Wilson Engineering, Inc., as to form

EXHIBIT A

Scope of Work – FY ~~2020~~2021-2122

Dexter Wilson Engineering, Inc. will perform the following tasks:

1. Attend and prepare for subcommittee meetings as directed by TAC or JPA Chairperson.
2. Attend and prepare for other meetings as directed by TAC or JPA Chairperson.
3. Prepare cost estimates, cost sharing material, scope of works or other material as directed by TAC Chairperson.
4. ~~Attend meetings and review material for Phase 2~~Review Pure Water reports, plans and specifications and provide comments as directed by the TAC Chairperson.
5. Assist with preparation of amendment to Wastewater Disposal Agreement.
6. ~~5.~~ Assist with ~~audits and financial reviews~~Audits.
7. Assist with implementation of Amended and Restated Wastewater Disposal Agreement.

EXHIBIT B
Schedule of Charges – FY ~~2020~~2021-2122

Work completed under this contract will be billed on a monthly basis. Fees will be calculated on an hourly rate basis by multiplying the actual hours worked on the job in each classification by the rates in the schedule below. These rates are subject to change in January of each year. All direct costs will be billed outside the proposed cost ceiling at cost plus 10 percent. Consultant invoices will be billed inside the cost ceiling at cost plus 5 percent.

Summary of Hours by Task:

Task 1— Estimated 10 hours per month. Task 5 — ~~5~~50 hours ~~per month~~total.
Task 2 — Estimated ~~10~~5 hours per month. Task 6 — 50 hours total.
Task 3 — Estimated 5 hours per month. Task 7 — 50 hours total.
Task 4 — Estimated 10 hours per month.

Task	Professional	Technical	Clerical	Total
1	120	0	0	120
2	120 60	0	0	120 60
3	60	0	0 30	60 90
4	120	0	0	120
5	60 50	0	0	60 50
TOTAL <u>6</u>	480 50	0	0	480 50
<u>7</u>	<u>50</u>	<u>0</u>	<u>0</u>	<u>50</u>
<u>TOTAL</u>	<u>510</u>	<u>0</u>	<u>30</u>	<u>540</u>

Summary of Costs by Task

Task	Task Cost
1	\$27,000
2	\$27,000 13,500
3	\$13,500 15,450
4	\$27,000
5	\$13,500 11,250
<u>6</u>	<u>\$11,250</u>
<u>7</u>	<u>\$11,250</u>
TOTAL	\$108,000 116,700

EXHIBIT “B” (cont.)

Schedule of Charges

CLASSIFICATION	HOURLY RATE
Office Personnel:	
Planning/Design	
Principal Engineer (RCE)	\$225.00
Managing Engineer (RCE)	\$215.00
Project Engineer (RCE)	\$195.00
Senior Engineer (RCE)	\$170.00
Design Engineer (RCE)	\$130.00
Associate Engineer II	\$120.00
Associate Engineer I	\$110.00
Engineering Aide II	\$110.00
Engineering Aide I	\$ 95.00
Drafting/Design	
Senior Designer	\$120.00
Senior Drafter	\$105.00
Drafter II	\$ 90.00
Drafter I	\$ 80.00
Clerical	\$ 65.00

EXHIBIT “C”
Insurance Certificates

Insurance documentation is included on the following pages.

Summary report: Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 3/30/2021 7:20:17 PM	
Style name: Nick's Style	
Intelligent Table Comparison: Active	
Original filename: METRO JPA Professional Services Agreement with Dexter Wilson for FY 2020-21-c1.DOC	
Modified DMS: iw:///image/iManage/33827779/2	
Changes:	
<u>Add</u>	38
Delete	28
Move From	1
<u>Move To</u>	1
<u>Table Insert</u>	4
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	72

ATTACHMENT 9

FY 2022

PROFESSIONAL SVS.

AGMT. WITH

GRANICUS FOR

WEBSITE HOSTING

SVS.

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

This agreement ("Agreement") is made and entered into as of July 1, ~~2020~~2021, 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.

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"); its Proposal attached hereto as Exhibit "B" and incorporated herein ("Proposal"); and the Terms and Conditions attached hereto as Exhibit "C" 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 "D" and incorporated herein.

b. In no event shall the total amount paid for Website Hosting services exceed ~~\$2,747.76~~2,885.15 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 "D";

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.

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. 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 professional standards in Consultant's industry 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 July 1, ~~2020~~2021, with no interruption in the Services from the prior contract between Metro JPA and Consultant. This Agreement shall terminate on June 30, ~~2021~~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:

Combined Single Limit

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
General Counsel
METRO WASTEWATER JPA

EXHIBIT “A”

Scope of Services

Consultant shall provide the following services:

- govAccess Website Hosting-

EXHIBIT "B"

Granicus Proposal

(Modified) This is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of San Diego Metro Wastewater Joint Powers Authority - CA to provide applicable exemption to the state(s).
Prepared On: 04/01/2021
Expires On: 06/30/2021

- Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.
- If submitting a Purchase Order, please include the following language: All pricing, terms and conditions of quote Q-97815 dated 3/30/2020 are incorporated into this Purchase Order by reference.
- Granicus certifies that it will not sell, retain, use, or disclose any personal information provided by Client for any purpose other than the specific purpose of performing the services outlined within this Agreement.

(Modified) **Quote Number:** Q-97815
Payment Terms: Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)
Prepared On: 3/30/2020
Current Subscription End Date: 06/30/2021
Valid Through: 6/30/2020
Period of Performance: 07/01/2021 - 06/30/2022

Pricing

Payment Terms: Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)

Currency: USD

Current Subscription End Date: 6/30/2020

Period of Performance: 7/1/2020 - 6/30/2021

Annual Fees for Renewing Subscriptions

Solution	Billing Frequency	Quantity/Unit	Annual Fee
govAccess for Monthly Hosting	Annual	1 Each	\$2,747.76
SUBTOTAL:			\$2,747.76

EXHIBIT “C”

Terms and Conditions

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 “D”

Schedule of Charges

Website Hosting

Service	Period	Annual Fee
govAccess Website Hosting	July 1, 2020 <u>2021</u> – June 30, 2021 <u>2022</u>	\$2,747.76 <u>2,885.15</u>

Payment Terms:

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

EXHIBIT “E”

Insurance Certificates

Insurance documentation is included on the following pages.

Summary report: Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 4/16/2021 9:47:46 AM	
Style name: Nick's Style	
Intelligent Table Comparison: Active	
Original DMS: iw://imanager/iManage/32837845/1	
Modified DMS: iw://imanager/iManage/33868937/1	
Changes:	
<u>Add</u>	10
Delete	9
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	2
Embedded Excel	0
Format changes	0
Total Changes:	21

ATTACHMENT 10

FY2022 METRO WASTEWATER JPA BUDGET



Metro Wastewater Joint Powers Authority

FY '22 Proposed Budget
with Current Year Forecast and Agency Allocations

**METRO WASTEWATER JPA
PROPOSED BUDGET - FY '22**

	FY '21 ACTUAL / FORECAST					
	Actual Through 3/31/21	Estimate remaining Months	Forecast Through 6/30/21	Approved Annual Budget	Forecast over /(under) Budget	
					\$	%
Income						
Membership Dues	\$ 217,013	\$ 108,506	\$ 325,519	\$ 289,350	\$ 36,169	13%
Interest Income	109	55	164	100	(64)	-64%
Total Income	\$ 217,122	\$ 108,561	\$ 325,683	\$ 289,450	\$ 36,105	12%
Expense						
Administrative Assistant-LP	\$ 1,155 ⁽¹⁾	\$ 1,500	\$ 2,655	\$ 8,400	\$ (5,745)	-68%
Bank Charges	-	-	-	200	(200)	
Contingency	-	-	-		-	
Dues & Subscriptions	-	-	-	600	(600)	
Financial Services						
Audit Fees	4,700 ⁽¹⁾	2,000	6,700	12,000	(5,300)	-44%
Financial - The Keze Group	32,283 ⁽³⁾	10,761	43,043	77,600	(34,557)	-45%
Treasurer - Padre Dam/EI Cajon	7,954 ⁽³⁾	2,651	10,606	20,000	(9,394)	-47%
JPA/TAC meeting expenses	-	-	-	5,000	(5,000)	
Miscellaneous	-	-	-	250	(250)	
Per Diem - Board	6,000 ⁽³⁾	3,000	9,000	18,000	(9,000)	-50%
Printing, Postage, Supplies	269	150	419	250	169	68%
Professional Services						
Engineering - Dexter Wilson	69,250 ⁽³⁾	23,083	92,333	108,000	(15,667)	-15%
Engineering - NV5	11,625 ⁽²⁾	5,813	17,438	30,000	(12,563)	-42%
Legal - Procopio	3,322 ⁽²⁾	5,000	8,322	70,000	(61,679)	-88%
Legal - BB&K	22,508 ⁽³⁾	7,503	30,011	60,000	(29,989)	-50%
Strategic Planning	-	-	-	-	-	
Telephone	30 ⁽¹⁾	30	59	1,400	(1,341)	-96%
Website Architecture Update	-	-	-	-	-	
Website Maintenance & Hosting	2,796	-	2,796	2,750	46	2%
Total Expense	\$ 161,891	\$ 61,490	\$ 223,381	\$ 414,450	\$ (191,069)	-46%
Net Income (Loss)	\$ 55,231	\$ 47,071	\$ 102,301	\$ (125,000)	\$ 227,174	-182%

FY '22		
Proposed Annual Budget	Difference from FY '21 Forecast	Difference from FY '21 Budget
\$ 440,940	\$ 115,421	\$ 151,590
150	(14)	50
\$ 441,090	\$ 115,407	\$ 151,640
\$ 8,940	\$ 6,285	\$ 540
200	200	-
-	-	-
600	600	-
12,000	5,300	-
77,600	34,557	-
31,500	20,894	11,500
5,000	5,000	-
250	250	-
18,000	9,000	-
500	81	250
116,700	24,367	8,700
30,000	12,563	-
65,000	56,679	(5,000)
60,000	29,989	-
-	-	-
1,400	1,341	-
10,500	10,500	10,500
2,900	104	150
\$ 441,090	\$ 217,709	\$ 26,640
\$ -	\$ (102,301)	\$ 125,000

(1) Invoices received through 12/31/20

(2) Invoices received through 2/28/21

(3) Invoices received through 3/31/21

FY '22 RESERVE REQUIREMENT	
Fund Balance at 6/30/20	\$ 523,286
Projected Net Income FY '21	102,301
Projected Fund Balance at 6/30/21	\$ 625,587
4 Months Operating Expenses FY '22	(147,030)
Amount over Required Reserve	\$ 478,557

METRO WASTEWATER JPA
INITIAL AGENCY BILLING FY '22 (BEFORE TRUE-UP)

	FY '21				FY '22 INITIAL AGENCY BILLING (BEFORE TRUE-UP)					
	Flow / Strength	Agency Allocation ⁽¹⁾	FY '17 Audit True-up	Revised Agency Billings	Flow / Strength	@ 100% Budget Recovery		@ 50% Budget Recovery		
						Agency Allocation	Difference from Prior Year	Agency Allocation ⁽²⁾	Difference from Prior Year	
Chula Vista	30.63%	\$ 88,624	\$ 2,995	\$ 91,619	31.26%	\$ 137,864	\$ 49,240	\$ 68,931	\$ (19,693)	
Coronado	3.45%	9,974	(6,972)	3,002	2.84%	12,511	2,537	6,256	(3,718)	
County of SD ⁽³⁾	16.44%	47,561	4,630	52,191	16.20%	71,451	23,890	35,726	(11,835)	
Del Mar	0.06%	165	1,829	1,994	0.05%	241	76	120	(45)	
El Cajon	14.87%	43,033	(792)	42,241	15.07%	66,455	23,422	33,228	(9,805)	
Imperial Beach	3.78%	10,931	(460)	10,471	3.66%	16,144	5,213	8,072	(2,859)	
La Mesa	8.39%	24,270	2,125	26,395	8.37%	36,925	12,655	18,463	(5,807)	
Lemon Grove	3.43%	9,932	(3,882)	6,050	3.38%	14,904	4,972	7,452	(2,480)	
National City	7.21%	20,866	1,485	22,351	7.57%	33,388	12,522	16,694	(4,172)	
Otay Water District	0.70%	2,040	375	2,415	0.88%	3,870	1,830	1,935	(105)	
Padre Dam MWD	6.72%	19,432	(657)	18,775	5.76%	25,387	5,955	12,693	(6,739)	
Poway	4.33%	12,522	(676)	11,846	4.98%	21,950	9,428	10,975	(1,547)	
Total	100.00%	<u>\$ 289,350</u> ⁽¹⁾	<u>\$ -</u>	<u>\$ 289,350</u>	100.00%	<u>\$ 441,090</u>	<u>\$ 151,740</u>	<u>\$ 220,545</u> ⁽²⁾	<u>\$ (68,805)</u>	

Projected amount over required reserve at 6/30/21

\$ 478,557

Projected amount over required reserve at 6/30/21; net of reduced billing scenario

\$ 258,012

(1) The projected fund balance at 6/30/20 was \$373,304 over the required reserve of \$138,150. Consequently the Board approved the use of \$125,000 of reserves to offset the JPA budget in FY 2021. The total budget amount for FY 2021 was \$414,350.

(2) The projected fund balance at 6/30/21 is \$625,587 or \$478,557 over the required reserve of \$147,030. This column represents the Agency Allocation if \$220,545 (50% of the budget) were used to reduce the revenue requirement.

(3) County of SD includes East Otay Mesa, Lakeside/Alpine, Spring Valley and Wintergardens.

Construction Package	Projected/Actual Bid Date	Projected/Actual Contractor Notice-To-Proceed	Projected Substantial Completion	Updated Engineer's Estimate	Bid Results	Construction Company
Early Sitework	October 18, 2018	May 22, 2019	May 3, 2021		\$16,500,000	Shimmick
NC Pure Water Facility & NC Pure Water Pump Station	August 7, 2020	April 19, 2021	April 4, 2025	\$455,704,000	\$356,681,930	Shimmick
Morena Northern Alignment & Tunnels	August 17, 2020	May 6, 2021	July 1, 2024	\$98,936,360	\$95,243,645	OHL USA, Inc
Morena Pump Station	October 21, 2020	May 13, 2021	January 30, 2025	\$109,700,000	\$110,386,350	Flat Iron West
NC Pure Water Pipeline and Dechlorination Facility & Subaqueous Pipeline	November 30, 2020	May 7, 2021	April 3, 2025	\$138,010,000	\$123,456,027	W.A. Rasic Construction Company, Inc.
NCWRP Expansion & PWF Influent Conveyance	December 16, 2020	July 15, 2021	January 21, 2025	\$208,660,000	\$255,138,000	Kiewit Infrastructure West Co.
NC MBC Improvements	February 9, 2020	July 15, 2021	January 21, 2025	\$40,384,677		
NCWRP EQ Basins	April 30, 2021	November 18, 2021	October 17, 2023	\$10,540,000		
Morena Southern Segment & Water Main Replacements	June 21, 2021	November 12, 2021	July 1, 2024	N/A (1)		
Morena Middle Alignment	August 10, 2021	January 5, 2022	July 1, 2024	N/A (1)		
Miramar Reservoir Pump Station Improvements	October 28, 2021	April 11, 2022	July 8, 2024	NA (1)		

1. N/A = Not available. Will be updated 1 to 2 months before bid advertisement.