



## **STAFF REPORT**

**TO:** Metro Technical Advisory Committee (“**TAC**”)

**MEETING DATE:** March 19, 2025

**FROM:** Adriana Ochoa, General Counsel

**REGARDING:** Presentation of Draft Second Amended and Restated Agreement (“**SARA**”) by and Between the City of San Diego and the Participating Agencies in the Metropolitan Sewerage System

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## **BACKGROUND**

In or around May 2021, the Metro Wastewater Joint Powers Authority Participating Agencies (“**PAs**”) executed the Amended and Restated Agreement Regional Wastewater Disposal Agreement (“**ARA**”) with the City of San Diego.

Section 2.9 of the ARA required the parties to meet and negotiate in good faith one or more amendments to the ARA to address six specific issues (commonly referred to as the “**Parking Lot Items**”):

1. The allocation of specific Pure Water Program costs between City’s water utility and the Metro System for such later phases (2.9.1.1);
2. Alternative billing methodologies for Metro System costs (2.9.1.2);
3. The exclusion of costs related to the industrial discharges inspection and monitoring program within San Diego under ARA Section 5.2.1.2.3 (2.9.1.3);
4. The inclusion of costs for regional, non-Metro System potable reuse projects in calculating the Capital Expense Rate (2.9.1.4);
5. A sample calculation of Repurified Water Revenue (2.9.1.5); and
6. The conveyance and treatment of wastewater generated at United States military bases under the ARA (2.9.1.6)

Accordingly, the City and Metro’s negotiators, on behalf of the PAs, began to meet and negotiate a Second Amended and Restated Agreement in good faith with Paul Brown, the agreed upon negotiator, in a series of negotiation sessions to draft and address the

Parking Lot Items. The Parties ended up negotiating and revising many sections of the ARA in addition to, and separate and apart from, the Parking Lot Items, in an effort to try and address outdated or confusing language, and/or implement new best practices or achieve efficiencies for the Parties.

The current form of SARA takes a form similar to the ARA, but significantly revises many sections of the ARA, which is why the document is being presented in draft final form instead of a redline, which would be extremely difficult to read. Metro and the City's negotiators have finalized their drafting and revision of the SARA and are now prepared to present a proposed final draft to TAC, the Metro Commission, and the Participating Agencies for information, review, discussion, questions, and eventual approval.

The following is a short summary directing you to where the Parking Lot Items were addressed in SARA, as well as a few other key changes/differences between the ARA and the SARA:

Parking Lot Items:

1. **SARA Section 6** is all new and addresses Pure Water Program Cost Allocation and Revenues for Phase 1. **SARA Section 7** addresses Pure Water Program Cost Allocation and Revenues for Phase 2.
  - a. This addresses Parking Lot Item #1, the allocation of specific Pure Water Program costs between City's water utility and the Metro System for such later phases;
2. **SARA Section 5.2** is all new and establishes the new billing methodology for Metro System costs as the Functional Allocated Billing (FAB) methodology.
  - a. This addresses Parking Lot Item #2, alternative billing methodologies for Metro System costs;
3. **SARA Section 2.7** is all new and establishes the Uniform Enforcement of the Pretreatment Program by the City.
  - a. This addresses Parking Lot Item #3, The exclusion of costs related to the industrial discharges inspection and monitoring program within San Diego under ARA Section 5.2.1.2.3;
4. **SARA Section 7** is new and has been added to allow for the incorporation of the results of the Phase 2 configuration into SARA through an Administrative Agreement (see point #9 below on Administrative Agreements). The language outlining the purpose and methodology for developing the Capital Expense rate was established during the ARA process and has not substantially changed in SARA. At that time, it was anticipated that studies on the final configuration of Pure Water Phase 2 might identify additional non-Metro facilities to be included to meet the

consent decree requirements. However, that study has only recently begun and is currently underway, with completion expected within a year.

- a. This addresses Parking Lot Item #4, the inclusion of costs for regional, non-Metro System potable reuse projects in calculating the Capital Expense Rate.
5. **SARA Section 6.7.2** provides the Calculation for Repurified Water Revenue.
  - a. This addresses Parking Lot Item #5, a sample calculation of Repurified Water Revenue;
6. **SARA Section 2.8** is all new and addresses the treatment of wastewater generated at military bases.
  - a. This addresses Parking Lot Item #6, the conveyance and treatment of wastewater generated at United States military bases under the ARA;

#### **Other Important/Key Changes:**

7. **SARA Section 2.5.5** is all new, and revises the Allocation of Liability for Penalties, Fines, or Enforcement Actions from Regulatory Agencies.
  - a. This language was previously found in ARA Section 2.6.7;
8. **SARA Section 16.3** is all new and establishes and delineates the four different approval processes that can modify the SARA: The Joint Administrative Review Process, Two-Party Approval, City Administrative Approval, or a traditional Amendment.
9. **SARA Section 15** is all new and establishes the creation of Administrative Agreements, which are separate agreements that can be created, modified or terminated through the Joint Administrative Review Process, and can address procedural, operational, technical, and/or administrative issues in the SARA in an efficient and effective manner without reopening or renegotiating the terms of the SARA.
10. **SARA Section 16.7** is new language regarding the statute of limitations for resolving billing issues and includes a process for resolving billing issues.

**Please note that this summary of key changes is not meant to be a comprehensive overview of the SARA or its differences to the ARA. We encourage the Participating Agencies to read the entire agreement carefully for evaluation and approval purposes.**

## **PURE WATER AD HOC RECOMMENDED NEXT STEPS**

The Metro Commission Pure Water Ad Hoc, together Metro's Executive Staff, respectfully recommends the Metro TAC representatives discuss, evaluate and provide input or comments to the draft SARA. TAC representatives are encouraged to confer with their Participating Agency staff, legal counsel and Metro Board representatives, so that the Metro Board representatives can be prepared to discuss and ask questions in advance of the next two Metro Board meetings (see below).

## **PURE WATER AD HOC RECOMMENDED APPROVAL TIMELINE**

- March 19, 2025 -** Presentation of SARA to TAC for First Pass Review; circulate draft SARA to TAC.
- April 3, 2025 -** Presentation of SARA to Metro Commission for introduction and discussion (information item only).
- April 16, 2025 -** Stantec Presentation and Discussion to TAC regarding Functional Allocated Billing methodology; revisit SARA discussion, address TAC questions, vote on recommendation to Metro Commission.
- May 1, 2025 -** Metro Commission Meeting – Staff intends to seek a vote from the Metro Commission to approve the recommendation below to the Participating Agencies:

**PURE WATER AD HOC RECOMMENDATION:** A motion for the Metro Commission to recommend to the Participating Agencies approval of the SARA subject to non-substantive revisions and corrections, which non-substantive determinations shall be made by the Participating Agency's Attorney and City/General Manager.

- That way, if changes are made, but the PA's Attorney and City/General Manager believe they are non-substantive, the PA's approval can stand without having to go back to governing body.
- If substantive changes are made, SARA will need to go back to PA governing body for approval of amended version, but then the City Council/Board can only focus on the substantive changes. We hope this will make for a faster review.

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