

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: February 7, 2011
ATTENTION: Committee on Rules, Open Government and
Intergovernmental Relations
Agenda of February 16, 2011
ORIGINATING DEPARTMENT: Public Utilities
SUBJECT: FY2010 Amendment to the Wastewater Bid to Goal
Public Contract Operations Agreement
COUNCIL DISTRICT(S): Citywide
STAFF CONTACT: Darlene Morrow-Truver (858) 292-6309

REQUESTED ACTION: Approve the FY2010 Amendment to the Wastewater Bid to Goal Public Contract Operations Agreement.

STAFF RECOMMENDATION: Approve the requested action.

EXECUTIVE SUMMARY:

On November 8, 2007, the City Council ratified the Wastewater Bid to Goal (B2G) Public Contract Operations Agreement for the period of FY2008 – FY2012 (Resolution # 303097).

The Department is proposing a 5 year Water Fund B2G Program for the period of FY2010 – FY2014 along with this amendment to the Wastewater MOU. In February 2010, the City Auditor concluded a performance audit of the B2G Program and issued a report that includes multiple recommendations for improving the B2G Programs. The Public Utilities Department subsequently adopted the Auditor's recommendations, and recommends five significant changes to the Wastewater B2G Agreement.

These changes will bring the Wastewater B2G Program in line with the proposed Water B2G Program. Commencing in FY2010, the five changes are:

1. The Labor Management Partnership (LMP) Bid will be adjusted down by the amount of any audited incentive award payout. This will provide a lower bid target in subsequent years in recognition of permanent efficiencies which have become institutionalized. In addition, by adjusting downward the amount of audited incentive award payout (not the entire savings) the process recognizes the effort required to maintain ongoing savings and provides an incentive to the LMP for continual improvement.
2. Costs for maintaining the B2G Program will be calculated at the close of each program year and will be deducted from savings prior to their transfer into the Employee Efficiency Incentive Reserve (EEIR) balance. If in any given year there are insufficient funds to pay for the administrative cost, this cost will be carried forward to succeeding years until the full obligation is met. This reimbursement must occur prior to any funds being available for employee incentive awards or other recommended use from the EEIR balance.
3. When no savings are generated in any program year, no incentive awards will be authorized from existing EEIR balances for that year, even if there is sufficient prior year carryover savings.

4. If the City does deem the Agreement in default, the City may terminate the contract or specify terms to remediate the unsatisfactory performance. Such terms may include suspension of incentive awards until the default condition is resolved or other specified provisions stated in writing are met.
5. Adjust the FY2008 LMP Bid down from \$213.5M to \$207M based on the AKT audit report for the FY2008 program year.

While the B2G program has in the past been successful in achieving significant savings, this degree of savings is not likely to be repeated in succeeding years due to the increasing difficulty of identifying organizational improvements with the same frequency and impact as in prior years. Department management feels that, on a going-forward basis, additional organizational tools are available to provide for continual improvements outside of a formal B2G program. Therefore, the Mayor will exercise his ability under this amended contract to end the program effective June 30, 2011. This will provide for the recognition of the achievements of the organization and its employees during FY2010 and FY2011. During this time, PUD employees both operated under the terms of the to-be-approved amendments and ratified the terms and conditions of the tentative agreement associated with the amended contract.

FISCAL CONSIDERATIONS:

No costs are associated with the adoption of this Resolution.

PREVIOUS COUNCIL/COMMITTEE ACTION:

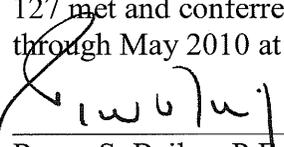
On November 8, 2007, the City Council ratified the Department-Wide Wastewater Bid to Goal Public Contract Operation Agreement for the period of FY2008 – FY2012 (Resolution #303097).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

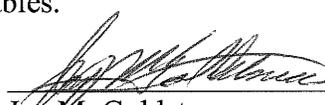
The proposed amendment to the Wastewater Public Contract Operations Agreement was presented to the Independent Rates Oversight Committee (IROC) on April 19, 2010, the METRO JPA Technical Advisory Committee (TAC) on April 21, 2010 and May 19, 2010, and the Metro Commission on June 3, 2010. Both the IROC and Metro TAC committees voted unanimously to support the amendment. The Metro Commission Participating Agencies voted to support the amended MOU, with the City of Poway voting against it.

KEY STAKEHOLDERS:

Public Utilities Management, Labor Relations, and representatives from both MEA and Local 127 met and conferred upon a new Wastewater Fund Bid to Goal Agreement from October 2009 through May 2010 at both separate and combined tables.



Roger S. Bailey, P.E.
Director of Public Utilities



Jay M. Goldstone
Chief Operating Officer

EL/el

Attachments: (1) Proposed Bid to Goal Public Contract Operations Agreement (Amended)
(2) Bid to Goal Public Contract Operations Agreement (Strikeout Version)

Fiscal Year 2010 Amendment
Memorandum of Understanding

Public Utilities Department
Wastewater Fund Employees
Labor/Management Partnership
BID TO GOAL PUBLIC CONTRACT OPERATIONS AGREEMENT

I. PREAMBLE

This Memorandum of Understanding (MOU) —Fiscal Year 2010 Amendment amends that Memorandum of Understanding dated January 17, 2008 regarding the Bid to Goal program and supersedes the terms of that January 17, 2008 Memorandum of Understanding for the period of July 1, 2009 to June 30, 2012. This MOU constitutes the basis of the Wastewater Bid to Goal Public Contract Operations Agreement (Agreement) with Wastewater Fund employees and is effective July 1, 2009 through June 30, 2012. This MOU is between the Mayor, on behalf of the City of San Diego (City), the Public Utilities Department Director (Director) and Wastewater Management Team, and all employees compensated by the Wastewater Fund, hereafter referred to as the “Parties.” The Labor-Management Partnership (LMP) comprises employees represented by the American Federation of State, County and Municipal Employees (AFSCME), Local 127; employees represented by the San Diego Municipal Employees’ Association (MEA); as well as Classified Unrepresented Non-management employees and the Wastewater Management Team. Any employee of the Public Utilities Department (Department) who accomplishes work justifiably compensable from the Wastewater Fund is deemed to be a member of this LMP. The intent of this MOU is to supersede the terms of the January 17, 2008 Memorandum of Understanding for the period of July 1, 2009 to June 30, 2012.

II. RECITALS

WHEREAS, Wastewater Fund employees are responsible for the operation, maintenance and all support functions of the regional sewerage system (collectively the “System”), including the City sewerage collection system; and

WHEREAS, the City desires to have this System operated and maintained in the most efficient and effective manner possible, while complying with all federal, state, and local laws, rules, and regulations, and while protecting the environment and promoting the health, safety and well-being of System employees, ratepayers, and other stakeholders; and

WHEREAS, the efficient and effective operation and maintenance of the System requires unique, specialized skills and certifications together with experience and expertise in established and new technologies; and

WHEREAS, Wastewater Fund employees have acquired, refined, and maintained these same skills, certifications, and expertise; and

WHEREAS, with the assistance of external consultants, and review by citizen and employee groups, the Parties have critically assessed the organization, processes, procedures, practices, budget, and staffing supported by the Wastewater Fund, including process improvements analyzed through extensive business process reengineering, optimization efforts, and associated benchmarking;

NOW THEREFORE, the Parties agree that the organizational arrangement, LMP, and accountability structure described in this MOU, referred to as Wastewater Bid to Goal Public Contract Operations Agreement (which is designed to combine the most beneficial aspects of the private and public sectors), is the current process by which they continue the optimization of the organization, policies, and practices of the Department.

III. SCOPE AND DEFINITIONS

The Agreement expresses a commitment by the Parties to the goals related to meeting budgets (efficiency) and maintaining service levels (effectiveness) in a manner consistent with the findings of the business process reengineering process completed in fiscal year (FY) 2007 to validate and update appropriate service levels and practices. This MOU along with the companion LMP Bid document as defined in Section IV.B and as accepted by the Mayor constitute the entirety of the Agreement.

Commencing on July 1, 2007, the Wastewater LMP shall operate and manage the system on a 24-hour per day, 7-days per week basis, and shall collect, receive, and treat wastewater; discharge the effluent; treat reclaimed water; transport and dispose of residuals and operating wastes; control odors; conduct sampling, monitoring, and reporting; provide appropriate support for the capital improvement program; and otherwise manage the business and operations of the City's wastewater infrastructure in accordance with the terms of the Agreement.

The scope of this Agreement includes the operations, maintenance and support services associated with all facilities and customer requirements recognized as supported by the Wastewater Fund at the conclusion of FY2007. It is the intent of this Agreement that service levels provided shall meet or exceed stated benchmarks, and in any event shall not be less than those service levels provided in FY2007 unless stipulated in this Agreement or specified by City Management for business reasons.

The Bid to Goal Program will be administered by the Department in accordance with Department Instruction 15.24.

Any new facilities and/or activities that have not been accounted for in the MOU or the LMP Bid document, or that were not part of the Wastewater Utility's mission and operating scope in FY2007 (acknowledged as the base year), shall not be within the scope of the Agreement. Changes in facilities or activities considered within the scope of the Agreement must be reflected in amendments agreed to by all Parties.

It is understood that the Goal represents the proposed cost to provide In-Scope services by the LMP and is based on performance service levels optimized at benchmarks determined by a third party industry expert to be within the competitive range for public and private Wastewater service providers nationally.

The LMP Bid is designed to yield economic benefits to ratepayers while maintaining the integrity and soundness of capital investments, infrastructure, and operations; and to ensure public safety and safeguard the environment. In addition, the LMP Bid is designed such that the City can continue to meet its commitments to employees and promote cooperative labor-management relations. In order to remain in compliance with federal/state mandates and bond covenants, operation and maintenance procedures and process modifications planned or executed to attain the goals are subject to review by an independent feasibility engineer or other competent agent, if deemed necessary by the Mayor. Results of such review may impact proposed modifications and future-year adjusted LMP Bid amounts. Key Performance Service Levels are specified in Table 1.

It is noted that the Bid to Goal concept embodies continual improvement through industry benchmarking and process assessment, both on an ongoing basis and periodically (approximately every 5 years) via a very rigorous and thorough review. The periodic major benchmarking and continuous process improvement effort is designed to account for such very significant changes in the operating environment as improved technology, enhanced industry best practices, and changes in the competitive marketplace. This aspect of the Agreement is analogous to the periodic refreshment of private contract operations via re-negotiation of ongoing contracts with updated information.

The Parties agree that the LMP Bid will be submitted after the City Council's ratification of this MOU, and that the Mayor will evaluate the LMP Bid and facilitate reasonable actions to achieve final acceptance assuming the LMP bid is responsive, responsible, and superior to the Private Market Proposal (PMP). The LMP Bid will be a plan offered by the LMP to meet the performance service levels indicated in this MOU, along with implementation and interpretive details. Operating as companion and complementary documents, this MOU plus the associated LMP Bid constitute the contract-like provisions needed to assure mutual accountability in delivering the functions and service levels specified in a clear and transparent manner.

IV. PROGRAM ELEMENTS

A. Key Performance Service Levels

All strategies employed to meet the LMP Bid will be consistent with the premise that primary service levels of core Wastewater Fund functions must be maintained at current standards, or better, unless otherwise noted in light of refreshed benchmarks or analyses of stakeholder requirements. The Parties acknowledge that there may be reasonable differences of interpretation regarding service level components and standards. In this regard, the LMP Bid will provide clarifying information as appropriate. The performance service levels stipulated in Table 1 below are considered key metrics to overall Wastewater Fund service delivery.

Table 1: Key Performance Service Levels

Key Performance Metrics	Performance Goal
Sanitary Sewer Overflows: Number of SSO's per 100 miles of Main	FY 2008 to improve upon FY 2007 total. Goal thereafter to be reset each year.
Point Loma Wastewater Treatment Plant Permit Compliance	80% TSS Removal (annual average), 58% BOD Removal (annual average)
North City Wastewater Reclamation Plant Permit Compliance	30 mg/1 BOD and TSS for 30-day avg., 45 mg/1 BOD and TSS for daily max
South Bay Wastewater Reclamation Plant Permit Compliance	30 mg/1 BOD and TSS for 30-day avg., 45 mg/1 BOD and TSS for daily max
Metro Biosolids Center Performance	Maintain cake solids percent between 28% and 32%
ISO 140001 Certification for Wastewater Collection Division	Retain certification
ISO 140001 Certification for Wastewater Treatment and Disposal Division	Retain certification
ISO 140001 Certification for Environmental Monitoring and Technical Services Division	Retain certification

B. LMP Bid

A PMP (the Goal of the Bid to Goal program) was developed by an industry expert as a representative offering by a private sector firm to accomplish the mission of the Wastewater Fund. For In-Scope services identified in the Statement of Work (SOW), the LMP is committed to continuing performance at the established service levels and the LMP Bid is reflective of an optimized organization.

In response to the PMP for FY2008, the LMP arrived at a Total FY2008 Bid for In-Scope services. Going forward, each fiscal year's LMP Bid will be recalculated with Non-Personnel Expenses (NPE) increasing/decreasing proportionate to the Consumer Price Index (CPI) using the All Urban Consumers index for the San Diego region as of June 30th and Personnel Expenses (PE) adjusted based on negotiated employee salary and compensation changes. In addition, commencing in FY2010, the LMP Bid will be adjusted down by the amount of any audited incentive award payout. This will provide a lower bid target in subsequent years in recognition of permanent efficiencies which have become institutionalized. In addition, by adjusting downward only by the amount of audit incentive award payout (not the entire savings) the process recognizes the effort required to maintain ongoing savings and provides an incentive to the LMP for continual improvement. If the LMP Bid is adjusted down as a result of an incentive award payout, it may also be adjusted up in future years if the actual expenditures exceed the adjusted bid in any future year. The LMP Bid adjustment up shall equal an amount of the prior year actual expenditures, plus approved NPE and PE adjustments, however not to exceed the original LMP Bid amount, plus NPE and PE adjustments.

The LMP Bid excludes Out of Scope costs, which are not part of the SOW and which would not be part of a private contractor bid. These costs include items specified in Table 2 as well as emergent costs that are out of the control of the LMP.

The Parties acknowledge that on-going organizational process improvement necessary for optimized service delivery is a significant undertaking. The necessary changes to processes, work practices, and staffing must be carefully and conscientiously planned and implemented. When required by law, these proposed changes will be subject to the Meet and Confer process with formally recognized employee bargaining representatives.

Table 2: Fiscal Year 2008 Wastewater Fund Financial Summary

<u>CATEGORY</u>	<u>FY2008 Dollars</u>
LMP Bid	\$ 207,157,305
Personnel Expenditures (PE)	\$ 86,544,142
Non-Personnel Expenditures (NPE)	\$ 120,613,163
Out of Scope Costs	\$ 262,822,846
O&M Service Level Agreements	\$ 15,698,605
Debt Service	\$ 100,110,283
Reserves	\$ 46,335,002
Capital Improvement Program (CIP)	\$ 100,678,956
Total	\$ 469,980,151

Fiscal accountability and audit of the LMP Performance will be based on total actual expenditures of all In-Scope costs compared to the LMP Bid. The personnel and non-personnel components are presented for information only and shall not enter into comparisons. This means specifically that it is acceptable for operating trade-offs to be made between personnel and non-personnel expenditures as long as the total LMP Bid is not exceeded. As in previous Bid to Goal Agreements, it is understood that any significant changes in service levels required by the City will prompt the inclusion of an amendment to this Agreement. Other specific adjustments for costs related to unforeseen circumstances may be made only pursuant to the Administration of Agreement provisions in Section V.

C. Accountability: Wastewater Fund Employee Efficiency Incentive Reserve and Resulting Operational Savings

The LMP Bid described in the above Section IV.B. reflects spending levels validated to be within the competitive range in the current marketplace for supporting, operating and maintaining the existing System. Results of this Agreement will be influenced by a number of factors, including achieving and maintaining specified service levels, and the ongoing ability of the City / Department to implement optimization measures, and to manage and accommodate challenges in the dynamic work environment. A key part of the Bid to Goal concept is accountability through the administration of appropriate performance measurement and management systems to provide transparency of results, alignment of common business goals and objectives, and encouragement of desirable outcomes.

To these ends, and to encourage future efficiency gains beyond the Agreement's LMP Bid, a performance management program modeled on private sector gainsharing principles will be administered. To facilitate this performance management program, the Wastewater Employee Efficiency Incentive Reserve (EEIR) is implemented. The major intent of the EEIR is to motivate continual efficiencies beyond those determined in the extensive FY 2007 Business Process Reengineering effort and the proceeding continuous process improvement efforts. In this context, the Parties agree that 50% of any positive variance between final annual validated In-Scope expenditures and the In-Scope LMP Bid shall be identified, deposited, and accounted for in the Wastewater EEIR. This deposit will be contingent upon validation of key performance service levels as identified in Section IV.A. above (including any applicable decrements from unmet key performance goals), and any analysis deemed necessary of all enterprise fund expenditures and legal obligations. Should any of these Key Performance Service Levels not be met, the deposit to the Wastewater Fund EEIR shall be decremented by 10% for each unmet key performance metric goal. This EEIR shall be capped at a \$10,000,000 cumulative balance (new share + existing balance from prior years), with all remaining funds designated as savings for the benefit of Wastewater ratepayers. However, the EEIR may at times exceed the \$10M cap if designation of funds to be expended precedes the execution of the actual debit to the EEIR. In no case shall undesignated funds exceed the \$10M account cap. Undesignated funds – not encumbered officially (unapproved for spending by the Director) – exceeding the \$10M cap on June 30th of each program year will be transferred into the Dedicated Reserve for Efficiency Savings (DRES). Expenditure of funds from the EEIR shall follow normal City rules and authorization processes with the additional requirements that they will be subject to specific authorization by the Director based upon recommendations from the Wastewater Fund Labor-Management Committee (LMC). The potential uses of the EEIR include, but are not limited to:

- Credits toward meeting the LMP Bid in subsequent years if and when single year expenditures exceed the LMP Bid, and/or;
- Purchase of otherwise unfunded new technology, equipment, training, consultant services, and/or to promote the productivity and professionalism of Wastewater Fund employees, and/or,
- Funding of incentive awards to employees. Incentive awards are discussed in greater detail in section IV.D, below.

At the conclusion of the term of this Agreement (after a final determination is made of appropriate funds for the final year and final incentive awards if warranted), residual EEIR funds may be applied toward: a) an EEIR in a successor agreement, if any; or b) enhancing the productivity and/or professionalism of Wastewater Fund employees and the Department, as recommended by the LMC and approved by the Director. All residual funds utilization must be completed within 12 months of the issuance of the final year Audit Report. All unused residual funds will be transferred into the DRES.

Prior to any funds being available for use from the newly established EEIR, an amount equal to the funds appropriated for consultant assistance in the FY2007 Business Process Reengineering/Bid to Goal Optimization Study (\$1.1 million) shall be reimbursed from the validated savings (positive variance as described above). This amount was reimbursed from

FY2008 savings. Commencing in FY2010, costs for maintaining the Agreement which will be calculated at the close of each program year will be deducted from the annually-established EEIR balance. If in any given year there are insufficient funds to pay for the administrative cost, this cost will be carried forward to succeeding years until the full obligation is met. This reimbursement must occur prior to any funds being available for other recommended use from the EEIR balance.

D. Gainsharing

The Gainsharing option for EEIR funds is defined as a team cash performance pay incentive award, and will be in-lieu of all other team incentives governed by the Department, such as the previously-existing Pay-for-Performance Program. Basic Gainsharing program guidelines are as follows:

- 1) This successor Wastewater Bid to Goal Gainsharing program is intended to be a unified performance pay incentive utilizing aspects of previous Bid to Goal Gainsharing and Pay-for-Performance programs. As a result, this redefined Gainsharing program consolidates the previously administered Gainsharing and Pay-for-Performance systems into one unified performance management system designed to appropriately recognize and provide accountability for achievement of organizational goals.
- 2) Subject to funds available in the Wastewater EEIR, actual individual incentive awards shall be recommended annually by the LMC and approved by the Director. Individual incentive awards shall be capped at \$4,000 (net of taxes) per year, and shall be based on goal achievement at department and division/section levels, as well as individual employee eligibility and performance. Department Instruction 15.24 provides details regarding how incentive awards are calculated and specific eligibility requirements.
- 3) Commencing in FY2010, when no savings are generated in any program year, no incentive awards will be authorized from existing EEIR balances for that year.

V. ADMINISTRATION OF AGREEMENT

A. Term of Agreement

This Agreement is effective on July 1, 2009. It is acknowledged that the extensive level of assessment and benchmarking undertaken to effect this Agreement is not cost-effective on a continual basis, but must be renewed periodically to appropriately account for potential changes in technology, industry best practices, and the relevant marketplace. Accordingly, it is the intent of this Agreement that the basic provisions remain in effect until June 30, 2012, subject to the termination provisions described in V. B. and V. C. below. Other benchmarking and goal-setting actions appropriate for assuring quality service delivery shall be conducted within the provisions and intent of this Agreement.

B. Termination for Default

Commencing in FY2010, should In-Scope spending exceed the adjusted LMP Bid by more than 10%, this Agreement may be deemed in default by the Mayor for inefficiency.

Should any three of the key performance service levels specified in Table 1 remain unmet at the end of a fiscal year, this Agreement may be deemed in default by the Mayor for ineffectiveness.

All prior annual LMP Bid expenditures over the original LMP Bid amount, plus any approved PE or NPE adjustments, must be repaid in total before a positive balance can be established in the EEIR and before funds can be expended from the EEIR. In-Scope Wastewater spending (as defined in the LMP Bid) in excess of the original LMP Bid amount is defined as a Bid shortfall.

The Parties agree that if LMP performance results in default, as defined above, the Agreement may be terminated at the sole discretion of the Mayor. In addition, a competitive procurement pursuant to and consistent with applicable laws, regulations, and policies may be initiated at the sole discretion of the Mayor.

If the Mayor does deem the Agreement in default, the Mayor may terminate the contract or specify terms to remediate the unsatisfactory performance. Such terms may include suspension of incentive awards until the default condition is resolved or other specified provisions stated in writing are met.

C. Termination for Convenience

The Mayor shall have the right at any time after the completion of the first fiscal year of service, exercisable at his/her sole discretion, for his/her convenience and without cause, to terminate this MOU upon 60 days written notice to the Wastewater LMP and the two signatory labor organizations.

D. Performance Monitoring

The Parties agree that the methods to be used to monitor performance during the term of the Agreement shall be typical of the methods used by public agencies in assessing the performance and costs of private contract operators of wastewater utilities. To that end, expenditures charged against this Agreement will be limited to those associated with core operations and maintenance functions of the Wastewater Utility and those business support functions which support the Wastewater Fund. As defined more thoroughly in the LMP Bid document, the costs charged shall exclude:

- Unplanned costs directly associated with the Capital Improvement Program
- Employee time or Wastewater Fund resources, beyond current levels, for activities which are mandated by the City but are not associated with core or direct support functions.

Changes in revenues associated with operation will not directly impact system performance with respect to the LMP Bid. However, revenue changes resulting from employee innovation and

initiative may be discussed on a case by case basis with the Mayor, who may, based upon his review, authorize some or all of the surplus revenue to be allocated to the EEIR or other Wastewater Fund uses (including LMP Bid shortfalls) in accordance with the bond covenants.

Annually, no later than November 30, the Director shall submit performance results to the Mayor so that the annual audit may begin based on these performance results. The Performance Report shall include the following:

- Performance standards and actual performance (both financial & operational) - quantitative measures of performance which demonstrate level of services provided;
- Explanations for all instances where efficiency and/or performance standards are not met and an action plan for correcting the situation in the current year;
- A narrative description of issues and events bearing on current and prospective oversight of the Agreement; and
- A summary of performance and claim of savings resulting from efficiency gains to be deposited in the EEIR.

After its submission, the Annual Performance Report shall be reviewed by an independent auditor who shall issue a report to the Mayor and the Director. A copy of the audit report shall be provided to each signatory labor union and may be reviewed by other governing bodies as required. Results of this audit or review will be taken into account with regard to any amounts of claimed savings allocated to the EEIR. Employee Gainsharing may be disbursed only after the external audits are completed.

The form and content of performance monitoring will be further defined in the LMP Bid. It is understood that the LMP Bid as accepted by the Mayor shall remain inviolate for the term of this Agreement, subject to adjustments pursuant to the express language of this MOU.

E. Uncontrollable Events/Change in Law

The LMP Bid is based on reasonable assumptions of projected costs and savings. However, the Parties understand and acknowledge that extraordinary unforeseen events, beyond the reasonable control of Wastewater employees and management, may result in costs and/or savings that could significantly affect their ability to meet the stated objectives.

To protect and promote the objectives of Bid to Goal, the Parties agree that cost impacts associated with extraordinary and unforeseen events may lead to adjustments of the LMP Bid for the purposes of assessing the performance in this program. Such events may include but are not limited to:

- Inflation in major NPE beyond appropriate consumer price indices;
- Mandates for increased and/or decreased service levels;
- Mandates for changes in governmental policy or regulations;
- Significant detrimental changes in influent characteristics;
- Catastrophic breakdowns of major equipment or capital; and
- Force majeure.

Any other events beyond the reasonable control of Wastewater employees and management, including changes in law, that have a material effect upon costs or their ability to perform to the terms of this Agreement and/or corollary service agreements may have the effect of re-opening negotiations between the Mayor and the LMP to make appropriate adjustments to the LMP Bid.

A Change in Law shall generally include any of the following events which occur after the Agreement date:

- a) the promulgation, modification, or written change in interpretation by a controlling authority of any applicable law unless the Department had or should have had notice and sufficient interpretive information of such a change as of the date of this Agreement; or
- b) the order or judgment of any court or other controlling authority as long as it was not the result of a willful or negligent act or lack of reasonable diligence by a Party to this Agreement; or
- c) the inclusion of a new relevant permit condition or the denial of a permit application if such denial is not the result of a willful or negligent action or lack of diligence by a Party to this Agreement.

A Change in Law shall not include a change in any tax law.

The Director or his designee shall be responsible for investigating uncontrollable events/changes in law to determine materiality, as detailed above. Upon such findings, the Director shall issue notice to the Parties of this Agreement stating the cost and consequence of the event. Depending on the nature of the event and findings, the Parties of this Agreement may mutually agree to either remove the costs associated with this event from the total costs charged against the Wastewater Fund for assessing fiscal performance; or reconvene to renegotiate the LMP Bid in light of the event. In the latter case, only that part of the LMP Bid related to the specific event shall be reopened; all other terms and conditions shall remain unchanged.

F. Labor-Management Cooperation

The Parties acknowledge that cooperative labor-management relations as typified by the relationship established in developing and successfully executing the Wastewater Bid to Goal Agreement, are critical to meeting the competitive challenge and objectives detailed in this Agreement. The Parties commit to maintaining the momentum, energy, and good will of this effort.

To that end, the Wastewater Fund employees, AFSCME Local 127, and MEA will participate in the LMC to monitor progress, identify issues and eliminate barriers to success, and to otherwise maintain a mutual commitment to open communications and consensus.

G. Relationship with Labor Contracts

It is the intent of the Parties that this Agreement be interpreted in harmony and compliance with the comprehensive labor contracts and/or provisions between the City of San Diego and authorized employee organizations representing Wastewater Fund employees.

H. Dispute Resolution

Any disputes (except for those concerning audits or reviews) that arise from a charge of a violation or misinterpretation of this Agreement shall be resolved through the applicable use of established processes within labor agreements in effect at the time of the dispute.

I. Severability

In the event that any condition, covenant, or provision of this MOU is held to be invalid or void by any court of competent jurisdiction, or is deemed to be contrary to the law or any covenant or condition or provision of any contract to which the City is a party, the same shall be deemed severable from the remainder of this MOU and in no way shall affect any other covenant, condition, or provision. If any covenant, condition, or provision of this MOU is deemed to be invalid due to scope or breadth, such covenant, condition, or provision shall be deemed valid to the extent the scope or breadth is permitted by law.

J. Impacts on Staff

The Parties agree that a top priority in the Agreement is to optimize the System operations without infringing upon the employment rights of all affected employees as established under current City of San Diego policies and negotiated labor MOUs or implementation procedures.

K. Successor Agreement

The Parties recognize that insofar as it is in the mutual interest of the public and the Parties, and that insofar that the Parties will have met the terms and conditions of this and corollary service agreements, that it will be the option of the Parties to negotiate a new agreement or extension of the existing agreement at the conclusion of the term of this Agreement.

IN WITNESS WHEREOF, the undersigned agree to submit this Memorandum of Understanding to the appropriate bodies for approval and final ratification.

Date: _____

AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, LOCAL 127, AFL-CIO

CITY OF SAN DIEGO

Mayor, City of San Diego

President

Chief Operating Officer, City of San
Diego

SAN DIEGO MUNICIPAL EMPLOYEES'
ASSOCIATION

Director, Public Utilities Department

President

Fiscal Year 2010 Amendment
Memorandum of Understanding
Metropolitan Wastewater Public Utilities Department
Wastewater Fund Employees
Labor/Management Partnership
BID TO GOAL PUBLIC CONTRACT OPERATIONS AGREEMENT

I. PREAMBLE

This Memorandum of Understanding (MOU) – Fiscal Year 2010 Amendment amends that Memorandum of Understanding dated January 17, 2008 regarding the Bid to Goal program and supersedes the terms of that January 17, 2008 Memorandum of Understanding for the period of July 1, 2009 to June 30, 2012. This MOU constitutes the basis of a successor department wide agreement for the two Metropolitan the Wastewater Department (MWWD)-Bid to Goal Public Contract Operations Agreements (Agreement) with Wastewater Fund employees and is effective July 1, 2009 through June 30, 2012. (one covering the Wastewater Treatment and Disposal (previously the Operations and Maintenance Division) and the other the Wastewater Collection Division), which are effective through June 30, 2007. This agreement-MOU is between the Mayor, on behalf of the City of San Diego (City), the MWWD-Public Utilities Department Director (Director) and the MWWD Wastewater Management Team, and the all employees of MWWD compensated by the Wastewater Fund; hereafter referred to as the “Pparties.” The Labor-Management Partnership (LMP) is comprised of employees represented by the American Federation of State, County and Municipal Employees (AFSCME), Local 127; AFL-CIO (Local 127); employees represented by the San Diego Municipal Employees’ Association (MEA); as well as Classified Unrepresented MWWD-Non-management employees and the MWWD-Wastewater Management Team. Any employee of the Public Utilities Department (Department) who accomplishes work justifiably compensable from the Wastewater Fund is deemed to be a member of this LMP. The intent of this MOU is to supersede the terms of the January 17, 2008 Memorandum of Understanding for the period of July 1, 2009 to June 30, 2012.

II. RECITALS

WHEREAS, MWWD-Wastewater Fund employees are responsible for the operation, maintenance and all support functions of the regional sewerage system (collectively the “System”), including the City sewerage collection system; and

WHEREAS, the City desires to have this system-System operated and maintained in the most efficient and effective manner possible; while complying with all federal, state, and local laws, rules, and regulations; and while protecting the environment and promoting the health, safety and well-being of System employees, ratepayers, and other stakeholders; and

WHEREAS, the efficient and effective operation and maintenance of the System requires unique, specialized skills and certifications together with experience and expertise in established and new technologies; and

WHEREAS, Wastewater Fund employees ~~of MWWD~~ have acquired, refined, and maintained these same skills, certifications, and expertise; and

WHEREAS, with the assistance of external consultants, and review by citizen and employee groups, the pParties have critically assessed the organization, processes, procedures, practices, budget, and staffing ~~of MWWD~~ supported by the Wastewater Fund, including process improvements analyzed through extensive business process reengineering, optimization efforts, and associated benchmarking;

NOW THEREFORE, the pParties agree that the organizational arrangement, LMP, and accountability structure described in this ~~document~~ MOU, referred to as MWWD-Wastewater Bid to Goal Public Contract Operations Agreement (which is designed to combine the most beneficial aspects of the private and public sectors), is the ~~mutually preferred and supported- current~~ process by which they to continue the optimization of the organization, policies, and practices of ~~MWWD~~ the Department.

III. SCOPE AND DEFINITIONS

~~MWWD Bid to Goal Public Contract Operations Agreement (The Agreement) expresses is herein defined as~~ a commitment by the pParties to the goals related to meeting budgets (efficiency) and maintaining service levels (effectiveness) in a manner consistent with the findings of the business process reengineering process completed in fiscal year (FY) 2007 to validate and update appropriate service levels and practices. ~~The Agreement in its entirety will be described in t~~ This MOU along with the companion LMP Bid document as defined in Section IV.B and as accepted by the Mayor constitutes the entirety of the Agreement. as ratified by appropriate governance bodies, and in the LMP Bid as accepted by the Mayor of the City of San Diego.

Commencing on July 1, 2007, the MWWD-Wastewater LMP shall operate and manage the System on a 24-hour per day, 7-day per week basis, and shall collect, receive, and treat wastewater; discharge the effluent; treat reclaimed water; transport and dispose of residuals and operating wastes; control odors; conduct sampling, monitoring, and reporting; provide appropriate support for the capital improvement program; and otherwise manage and operate the City's wastewater infrastructure in accordance with the terms of the Agreement. so as to comply with the requirements of this MOU and the LMP Bid.

The scope of this Agreement includes the operations, maintenance and support services associated with all facilities and customer requirements recognized by MWWD as supported by the Wastewater Fund at the conclusion of FY 2007. It is the intent of this Agreement that service levels provided shall meet or exceed stated benchmarks, and in any event shall not be less than those service levels provided in FY 2007 unless stipulated in the Agreement or specified by City management for business reasons.

The Bid to Goal Program will be administered by the Department in accordance with Department Instruction 15.24.

Any new facilities and/or activities that have not been accounted for in the MOU or the ~~accepted~~ LMP Bid document, or that were not part of the MWWD-Wastewater Utility's mission and operating scope in FY 2007 (acknowledged as the base year), shall not be within the scope of the Agreement. Changes in facilities or activities considered within the scope of the Agreement must be reflected in Agreement amendments agreed to by all pParties.

~~It is understood that the Goal represents the proposed cost to provide In-Scope services by the LMP and is based on performance service levels optimized at benchmarks determined by a third party industry expert to be within the competitive range for public and private Wastewater service providers nationally. MEO Budget Objective identified in this document is based on performance service levels optimized at benchmarks determined by a third party industry expert to be within the competitive range for public and private wastewater service providers nationally. In order to remain in compliance with federal/state mandates and bond covenants, operation and maintenance procedures and process modifications planned or executed to attain the goals are subject to review by an independent feasibility engineer or other competent agent, if deemed necessary by the Mayor of San Diego. Results of such review may impact proposed modifications and MEO Budget Objectives. Key performance service levels are specified in Section IV, GOAL.~~

The Goal-LMP Bid is designed to yield economic benefits to ratepayers while maintaining the integrity and soundness of capital investments, infrastructure, and operations; and to ensure public safety and safeguarding the environment. In addition, the Goal-LMP Bid is designed such that the City can continue to meet its commitments to employees and promote cooperative labor-management relations. In order to remain in compliance with federal/state mandates and bond covenants, operation and maintenance procedures and process modifications planned or executed to attain the goals are subject to review by an independent feasibility engineer or other competent agent, if deemed necessary by the Mayor. Results of such review may impact proposed modifications and future-year adjusted LMP Bid amounts. Key Performance Service Levels are specified in Table 1.

It is noted that the Bid to Goal concept embodies continual improvement through industry benchmarking and process assessment, both on an ongoing basis and periodically (approximately every 5 years) ~~in via~~ a very rigorous and thorough review. project. The periodic major benchmarking and ~~process reengineering~~ continuous process improvement effort is designed to account for such very significant changes in the operating environment as improved technology, enhanced industry best practices, and changes in the competitive marketplace. This aspect ~~of Bid to Goal~~ the Agreement is analogous to the periodic refreshment of private contract operations via re-negotiation of ongoing contracts with updated information.

~~, but avoids the potential disruption of a public health and safety related service (documented as experienced by other local governments) attributed to changing service providers when current operations are appropriate, proven, and analyzed to be competitive relative to a viable private provider. A related factor is the mitigation of expenses, time and litigation risks associated with an open~~

~~competition. The initial MWWD Bid to Goal agreements covered wastewater collection, conveyance, treatment, and disposal processes. This Agreement refreshes those benchmarks, plus incorporates all support services conducted by MWWD into a unified department-wide Agreement aimed at articulating and aligning common business goals and objectives for the entire wastewater utility.~~

The ~~p~~Parties agree that ~~an~~the LMP Bid will be submitted after the City Council’s ratification of this MOU, and that the Mayor will evaluate the LMP Bid and facilitate reasonable actions to achieve final acceptance assuming the LMP Bid is responsive, responsible, and superior to the Private Market Proposal (PMP). The LMP Bid will be a plan offered by the LMP to meet the performance service levels ~~and MEO Budget Objectives~~ indicated in this MOU, along with implementation and interpretive details. Operating as companion and complementary documents, this MOU ~~and plus~~ the associated LMP Bid constitute ~~the Public Contract Agreement (Agreement) that provides~~ the contract-like provisions needed to assure mutual accountability in delivering the functions and service levels specified in a clear and transparent manner.

IV. GOAL PROGRAM ELEMENTS

~~This MOU is a commitment to operate and maintain the system effectively, efficiently, and competitively. The Goal reflects a level of competitive performance and cost efficiency determined through Business Process Reengineering managed by the City Business Office and based upon data from benchmarking efforts developed by a third party industry expert. In addition, the Goal has been reviewed and supported by oversight organizations as appropriate.~~

A. Key Performance Service Levels

All strategies employed to meet the LMP Bid ~~MEO Budget Objectives of the MWWD Bid to Goal Agreement~~ will be consistent with the premise that primary service levels of core ~~w~~Wastewater Fund management functions must be maintained at current standards, or better, unless otherwise noted in light of refreshed benchmarks or analyses of stakeholder requirements. The ~~p~~Parties acknowledge that there may be reasonable differences of interpretation regarding service level components and standards. In this regard, the LMP Bid will provide clarifying information as appropriate. The performance service levels stipulated in ~~the~~Table 1 below are considered key metrics to overall ~~w~~Wastewater Fund utility service delivery. ~~In that context, should any of these core measures not be met, the deposit to the Employee Efficiency Incentive Reserve (described in section IV.C. below) shall be decremented by 10% for each unmet key performance metric.~~

Table 1: Key Performance Service Levels

<u>Key Performance Metrics</u>	<u>Performance Goal</u>
Sanitary Sewer Overflows: Number of SSO’s per 100 miles of Main	FY 2008 to improve upon FY 2007 total. Goal thereafter to be reset each year.
Point Loma Wastewater Treatment Plant Permit Compliance:	80% TSS Removal (annual average),

	58% BOD Removal (annual average)
North City Water Reclamation Plant Permit Compliance:	30 mg/1 BOD and TSS for 30-day avg., 45 mg/1 BOD and TSS for daily max
South Bay Water Reclamation Plant Permit Compliance:	30 mg/1 BOD and TSS for 30-day avg., 45 mg/1 BOD and TSS for daily max
Metro Biosolids Center Performance:	Maintain cake solids percent between 28% and 32%
ISO 140001 Certification for Wastewater Collection Division	Retain certification
ISO 140001 Certification for Wastewater Treatment and Disposal Division	Retain certification
ISO 140001 Certification for Environmental Monitoring and Technical Services Division	Retain certification

B. MEO Budget Objective LMP Bid

~~The MEO Budget Objective A PMP (the Goal of the Bid to Goal program) was developed by an industry expert as a representative offering by a private sector firm to accomplish the mission of the Wastewater Fund, MWWD. For in-scope facilities services identified in the Statement of Work (SOW), the LMP is committed to continuing performance at the benchmarked-established service levels and the LMP Bid is reflective of and budget levels validated to reflect an optimized organization.~~

~~In response to the PMP for FY2008, the LMP arrived at a Total FY2008 Bid for In-Scope services. Going forward, each fiscal year's LMP Bid will be recalculated with Non-Personnel Expenses (NPE) increasing/decreasing proportionate to the Consumer Price Index (CPI) using the All Urban Consumers index for the San Diego region as of June 30th and Personnel Expenses (PE) adjusted based on negotiated employee salary and compensation changes. In addition, commencing in FY2010, the LMP Bid will be adjusted down by the amount of any audited incentive award payout. This will provide a lower bid target in subsequent years in recognition of permanent efficiencies which have become institutionalized. In addition, by adjusting downward only by the amount of audit incentive award payout (not the entire savings) the process recognizes the effort required to maintain ongoing savings and provides an incentive to the LMP for continual improvement. If the LMP Bid is adjusted down as a result of an incentive award payout, it may also be adjusted up in future years if the actual expenditures exceed the adjusted bid in any future year. The LMP Bid adjustment up shall equal an amount of the prior year actual expenditures, plus approved NPE and PE adjustments, however not to exceed the original LMP Bid amount, plus NPE and PE adjustments.~~

~~The LMP Bid excludes Out of Scope costs, which are not part of the SOW and which would not be part of a private contractor bid. These costs include items specified in Table 2 as well as emergent costs that are out of the control of the LMP.~~

~~The Parties acknowledge that on-going organizational process improvement necessary for optimized service delivery is a significant undertaking. The necessary changes to processes, work practices, and~~

staffing must be carefully and conscientiously planned and implemented. When required by law, these proposed changes will be subject to the Meet and Confer process with formally recognized employee bargaining representatives.

~~The Projected Baseline Budget below is the current proposed Fiscal Year 2008 MWWD Budget. The MEO Budget Objective for Fiscal Year 2008 will be the Total Fiscal Year 2008 MWWD Budget less Pass-Through items. Going forward, each fiscal year's MEO Budget Objective will be recalculated with Non-Personnel Expenses (NPE) inflated proportionate to the Consumer Price Index (CPI) and Personnel Expenses (PE) inflated with consideration of negotiated employee salary and compensation increases.~~

~~The parties acknowledge that on-going organizational reengineering necessary for optimized service delivery is a significant undertaking. The necessary changes to processes, work practices, and staffing must be carefully and conscientiously planned and implemented. When lawfully required, proposed changes will be subject to the Meet and Confer process with formally recognized employee bargaining representatives.~~

Table 2: Fiscal Year 2008 ~~Projected Baseline Budget & MEO Budget Objective~~ Wastewater Fund Financial Summary

<u>CATEGORY</u>	<u>PROJECTED BASELINE</u> <u>BUDGETFY 2008 Dollars</u>	<u>MEO BUDGET OBJECTIVE</u>
<u>Total Operating Budget</u> <u>LMP Bid</u>	\$ 213,502,095 <u>207,157,305</u>	\$ 213,502,095
Personnel Expenditures (PE)	\$ 86,544,142.	\$ 86,544,142.
Non-Personnel Expenditures (NPE)	\$ 126,957,953 <u>120,613,163</u>	\$ 126,957,953
<u>Total Pass-Through Items</u> <u>Out of Scope Costs</u>	\$ 262,822,846.	
O&M Service Level Agreements	\$ 15,698,605.	
Debt Service	\$ 100,110,283	
Reserves	\$ 46,335,002	
Capital Improvement Program (CIP)	\$ 100,678,956.	
Total MWWD Budget	\$ 476,324,941 <u>469,980,151</u>	

- ~~(1) Fiscal evaluation will be made on total MEO Budget Objective and total In-Scope Expenditures only. MWWD will not be held to PE and NPE components.~~
- ~~(2) As in previous Bid to Goal Agreements, it is understood that any significant changes in service levels required by the City will prompt the inclusion of an amendment to this Agreement.~~
- ~~(3) Other specific adjustments for costs related to unforeseen circumstances may be made only pursuant to the Administration of Agreement provisions in Section V of this document.~~

Fiscal accountability and audit of the LMP Performance will be based on total actual expenditures of all In-Scope costs compared to the LMP Bid. The personnel and non-personnel components are presented for information only and shall not enter into comparisons. This means specifically that it is acceptable for operating trade-offs to be made between personnel and non-personnel expenditures as long as the

total LMP Bid is not exceeded. As in previous Bid to Goal Agreements, it is understood that any significant changes in service levels required by the City will prompt the inclusion of an amendment to this Agreement. Other specific adjustments for costs related to unforeseen circumstances may be made only pursuant to the Administration of Agreement provisions in Section V.

C. Accountability: Wastewater Fund Employee Efficiency Incentive Reserve and Resulting Operational Savings

The ~~MEO Budget Objective~~LMP Bid described in the above Section IV.B. reflects spending levels validated to be within the competitive range in the current marketplace for supporting, operating and maintaining the existing System. Results of this Agreement will be influenced by a number of factors, including achieving and maintaining specified service levels, and the ongoing ability of the City / ~~MWWD organization~~Department to implement optimization measures, and to manage and accommodate challenges in the dynamic work environment. A key part of the Bid to Goal concept is accountability through the administration of appropriate performance measurement and management systems to provide transparency of results, alignment of common business goals and objectives, and encouragement of desirable outcomes.

To these ends, and to encourage future efficiency gains beyond ~~MEO Budget Objectives~~the Agreement's LMP Bid, a performance management program modeled on private sector gainsharing principles will be administered. To facilitate this performance management program, the Wastewater Employee Efficiency Incentive Reserve (EEIR) is implemented. The major intent of the ~~EEIR~~Employee Efficiency Incentive Reserve is to motivate continual efficiencies beyond those determined in the extensive FY 2007 Business Process Reengineering effort and the proceeding continuous improvement efforts. ~~resultant funds available for the benefit of sewer ratepayers~~. In this context, the ~~p~~Parties agree that 50% of any positive variance between final annual validated ~~i~~n-sScope expenditures and the ~~i~~n-sScope ~~MEO Budget Objective~~LMP Bid shall be identified, deposited and accounted for in the ~~Wastewater EEIR~~Employee Efficiency Incentive Reserve. This deposit will be contingent upon validation of key performance service levels as identified in Section IV.A. above (including any applicable decrements from unmet key performance ~~metries~~goals), and any analysis deemed necessary of all ~~Sewer Fund~~enterprise fund expenditures and legal obligations. Should any of these Key Performance Service Levels not be met, the deposit to the Wastewater EEIR shall be decremented by 10% for each unmet key performance metric goal. This Employee Efficiency Incentive Reserve is EEIR shall be capped at a \$10,000,000 cumulative balance (new share + existing balance from prior years), with all ~~remainder~~remaining funds designated as savings for the benefit of ~~sewer~~Wastewater ratepayers. However, the EEIR may at times exceed the \$10M cap if designation of funds to be expended precedes the execution of the actual debit to the EEIR. In no case shall undesignated funds exceed the \$10M account cap. Undesignated funds – not encumbered officially (unapproved for spending by the Director) – exceeding the \$10M cap on June 30th of each program year will be transferred into the Dedicated Reserve for Efficiency Savings (DRES). Expenditure of funds from the ~~Employee Efficiency Incentive Reserve~~EEIR shall follow normal City rules and authorization processes with the additional requirements that they will be subject to specific authorization by the ~~MWWD~~ Director, based upon recommendations from the ~~MWWD Bid to Goal~~Wastewater Fund Labor-

Management Committee (LMC). The potential uses of ~~this the EEIR~~ reserve include, but are not limited to:

- Credits toward ~~MEO Budget Objectives~~ meeting the LMP Bid in subsequent years if and when single year expenditures exceed the LMP Bid, necessary for the LMP to meet annual goals, and/or;
- Purchase of otherwise unfunded new technology, equipment, training, consultant services, and/or to promote the productivity and professionalism of ~~MWWD~~ Wastewater Fund employees, and/or,
- Funding of ~~a Gainsharing payout~~ incentive awards to employees. ~~Gainsharing is~~ Incentive awards are discussed in greater detail in section IV.D, below.

At the conclusion of the term of this Agreement (after a final determination is made of appropriate funds for the final year and ~~a final Gainsharing payout~~ incentive awards if warranted), residual ~~Employee Efficiency Incentive Reserve~~ EEIR funds may be applied toward: a) an ~~Employee Efficiency Incentive Reserve~~ EEIR in a successor agreement, if any; or b) enhancing the productivity and/or professionalism of Wastewater Fund employees and the ~~Department~~ Department, as recommended by the LMC and approved by the ~~Department~~ Department Director. All residual funds utilization must be completed within 12 months of the issuance of the final year Audit Report. All unused residual funds will be transferred into the DRES.

Prior to any funds being available for recommended use from the newly established ~~Employee Efficiency Incentive Reserve~~ EEIR, an amount equal to the funds appropriated for consultant assistance in the FY 2007 Business Process Reengineering / Bid to Goal Optimization Study (\$1.1 million) shall be reimbursed from validated savings (positive variance as described above). This amount was reimbursed from FY2008 savings. Commencing in FY2010, costs for maintaining the Agreement which will be calculated at the close of each program year will be deducted from the annually-established EEIR balance. If in any given year there are insufficient funds to pay for the administrative cost, this cost will be carried forward to succeeding years until the full obligation is met. This reimbursement must occur prior to any funds being available for other recommended use from the EEIR balance.
~~Once this reimbursement is satisfied, the guidelines covered above shall be applied to further savings during the term of this Agreement.~~

D. Gainsharing

The Gainsharing option for ~~Employee Efficiency Incentive Reserve~~ EEIR funds is defined as a team cash performance pay incentive award, and will be in-lieu of all other team incentives governed by the Department, such as the previously-existing Pay-for-Performance Program. Basic Gainsharing program guidelines are as follows:

1) This successor ~~MWWD-Wastewater~~ Bid to Goal Gainsharing program is intended to be a unified performance pay incentive utilizing aspects of previous Bid to Goal Gainsharing and Pay-for-Performance programs. As a result, this redefined Gainsharing program consolidates the previously administered gainsharing and Pay-for-Performance systems into one unified performance management system designed to appropriately recognize and provide accountability for achievement of organizational goals.

2) Subject to funds available in the ~~Employee Efficiency Incentive Reserve~~ Wastewater EEIR, actual individual ~~payouts~~ incentive awards shall be recommended annually by the LMC and approved by the ~~Department~~ Director. Individual ~~full payout shares~~ incentive awards shall be capped at \$4,000 (net of taxes) per year, and shall be based on goal achievement at department and division/section levels, as well as individual employee eligibility and performance. Department Instruction 15.24 provides details regarding how incentive awards are calculated and specific eligibility requirements.

3) Commencing in FY2010, when no savings are generated in any program year, no incentive awards will be authorized from existing EEIR balances for that year.

V. ADMINISTRATION OF AGREEMENT

A. Term of Agreement

~~Service levels and budget objectives for this Agreement have been defined through Business Process Reengineering and Bid to Goal Optimization processes through 5 years (FY 2008 – FY 2012). This Agreement is effective on July 1, 2009.~~ It is acknowledged that ~~this the~~ extensive level of assessment and benchmarking undertaken to effect this Agreement is not cost-effective on a continual basis, but must be renewed periodically to appropriately account for potential changes in technology, industry best practices, and the relevant marketplace. Accordingly, it is the intent of this Agreement that the basic provisions remain in effect until June 30, 2012, for the 5 years specified, subject to the termination provisions described in V. B. and V. C. below. Other benchmarking and goal-setting actions appropriate for assuring quality service delivery shall be conducted within the provisions and intent of this Agreement.

B. Termination for Default

~~In scope spending, less a) an amount of no more than two times the unexpended monies in the Employee Efficiency Incentive Reserve, and b) any Mayoral authorized amount of enhanced Department revenues allocated to budget shortfalls, may not exceed MEO Budget Objective spending as adjusted pursuant to section V.D. Performance Monitoring and V.E. Uncontrollable Events/Changes in Law by more than a cumulative total of \$4 million during the term of this Agreement. Should the cumulative Department spending exceed a MEO Budget Objective, as defined above, by more than \$4 million, this Agreement may be deemed in default for inefficiency.~~

Commencing in FY2010, should In-Scope spending exceed the adjusted LMP Bid by more than 10%, this Agreement may be deemed in default by the Mayor for inefficiency.

Should any three of the key performance service levels specified in ~~Section IV.A. be~~ Table 1 remain unmet at the end of a fiscal year, this Agreement may be deemed in default by the Mayor for ineffectiveness.

~~All annual MEO Budget Objective shortfalls of the Department All prior annual LMP Bid expenditures over the original LMP Bid amount, plus any approved PE or NPE adjustments, must be repaid in total before a positive balance can be established in the Employee Efficiency Incentive Reserve EEIR and before funds can be expended from the Employee Efficiency Incentive Reserve EEIR. In-scope MWWWD Wastewater spending (as defined in the LMP Bid) in excess of MEO Budget Objectives the original LMP Bid amount is defined to be a MEO Budget Objective as a Bid shortfall.~~

The pParties ~~recognize agree~~ that if LMP performance results in default, as defined above, the Agreement may be terminated at the sole discretion of the Mayor ~~of the City of San Diego~~. In addition, a competitive procurement pursuant to and consistent with applicable laws, regulations and policies may be initiated at the sole discretion of the Mayor ~~of the City of San Diego~~.

If the Mayor does deem the Agreement in default, the Mayor may terminate the contract or specify terms to remediate the unsatisfactory performance. Such terms may include suspension of incentive awards until the default condition is resolved or other specified provisions stated in writing are met.

C. Termination for Convenience

The Mayor ~~of the City of San Diego~~ shall have the right at any time after the completion of the first fiscal year of service, exercisable at his/her sole discretion, for his/her convenience and without cause, to terminate this Memorandum of Understanding MOU upon 60 days written notice to the Wastewater LMP other parties (specifically MWWWD and the two signatory labor organizations).

D. Performance Monitoring

The pParties agree that the methods to be used to monitor ~~the Department's~~ performance during the term of the Agreement shall be typical of the methods used by public agencies in assessing the performance and costs of private contract operators of wastewater ~~treatment facilities~~ utilities. To that end, ~~costs properly~~ expenditures charged ~~to MWWWD against this Agreement~~ will be limited to those associated with core operations and maintenance functions of ~~MWWWD the Wastewater Utility and those business support functions which support the Wastewater Fund. direct support functions including administration costs associated with employee transitions (i.e. training, job counseling, and costs of processing employee transfers)~~. As defined more thoroughly in the LMP Bid document, the costs charged to the system would properly shall exclude:

- Unplanned costs directly associated with Capital Improvement Projects
-

- –Employee time or ~~MWWD Wastewater Fund~~ resources, beyond current levels, for activities which are mandated by the City but are not associated with core or direct support functions.

Changes in revenues associated with ~~the System~~ operation will not directly impact System performance with respect to ~~the LMP Bid Goal attainment~~. However, revenue changes resulting from employee innovation and initiative may be discussed on a case by case basis with the Mayor ~~who 's Office~~. ~~The Mayor~~ may, based upon ~~the his~~ review, authorize some or all of the ~~surplus~~ revenue to be allocated to the ~~Employee Efficiency Incentive Reserve EEIR~~ or other ~~Sewer Enterprise Wastewater~~ Fund uses (including ~~LMP Bid budget~~ shortfalls) in accordance with the bond covenants.

~~At least a~~ Annually, not later than November 30, ~~MWWD via~~ the ~~MWWD~~ Director shall submit a ~~a~~ performance ~~results to the Mayor so that the annual audit may begin based on these performance results. Report to the Public Works Deputy Chief Operating Officer.~~ The Performance Report shall include the following:

- Performance standards and actual performance (both financial & operational) - quantitative measures of performance which demonstrate level of services provided;
- Explanations for all instances where ~~efficiency MEO Budget Objectives~~ and/or performance standards are not met and an action plan for correcting the situation in the current year;
- A narrative description of issues and events bearing on current and prospective oversight of the Agreement; and
- A summary of performance and claim of savings resulting from efficiency gains to be deposited in the ~~Employee Efficiency Incentive Reserve EEIR~~.

After it is submitted, the ~~a~~ Annual Performance Report shall be reviewed by an independent auditor who shall issue a report to the Mayor and the ~~Metropolitan Wastewater Department~~ Director. ~~related to the review~~. A copy of the audit report shall be provided to each ~~signatory~~ labor union ~~and may be reviewed by other governing bodies as required~~. Results of this audit or review will be taken into account with regard to any amounts of claimed savings allocated to the ~~EEIR Employee Efficiency Incentive Reserve~~. Employee Gainsharing may ~~only~~ be disbursed ~~only~~ after the ~~external audits are completed. Employee Efficiency Incentive Reserve is validated~~.

The form and content of performance monitoring will be further defined in the LMP Bid. It is understood that the ~~LMP Bid as accepted by the Mayor MEO Budget Objective as stated in this Agreement and as reset each year in line with the MWWD approved budget~~ shall remain inviolate for the term of this Agreement, subject to adjustments ~~only~~ pursuant to the express language of this MOU.

E. Uncontrollable Events/Change in Law

The ~~LMP Bid MWWD Bid to Goal MEO Budget Objective~~ is based on reasonable assumptions of projected costs and savings. However, the ~~p~~ Parties understand and acknowledge that extraordinary unforeseen events, beyond the reasonable control of ~~MWWD Wastewater~~ employees and management,

may result in costs and/or savings that could significantly affect their ability to meet the stated objectives.

To protect and promote the objectives of Bid to Goal, the pParties agree that cost impacts associated with extraordinary and unforeseen events may lead to adjustments of the LMP BidMEO Budget Objective for the purposes of assessing MWWD's the performance in this program. Such events may include but are not limited to:

- Inflation in major NPE beyond appropriate consumer price indices;
- Mandates for increased and/or decreased service levels;
- ~~Increases in wastewater flow volumes significantly in excess of volumes projected in the system financing plans~~ Mandates for changes in governmental policy or regulations;
- Significant detrimental changes in influent characteristics;
- Catastrophic breakdowns of major equipment or capital; and
- ~~Catastrophic Acts of Nature~~ Force majeure.

Any other events beyond the reasonable control of Wastewater employees and management, including changes in law, that have a material effect upon costs or their ability to perform to the terms of this Agreement and/or corollary service agreements may have the effect of re-opening negotiations between the Mayor and the LMP to make appropriate adjustments to the LMP BidMEO Budget Objective.

A Change in Law shall generally include any of the following events which occur after the Agreement date:

- a) the promulgation, modification, or written change in interpretation by a controlling authority of any applicable law unless MWWD the Department had or should have had notice and sufficient interpretive information of such a change as of the date of this Agreement; or
- b) the order or judgment of any court or other controlling authority as long as it was not the result of a willful or negligent act or lack of reasonable diligence by a pParty to this Agreement; or
- c) the inclusion of a new relevant permit condition or the denial of a permit application if such denial is not the result of a willful or negligent action or lack of diligence by a pParty to this Agreement.

A Change in Law shall not include a change in any tax ~~or similar~~ law.

The Director ~~or his designee of MWWD~~ shall be responsible for investigating uncontrollable events/changes in law to determine materiality, as detailed above. Upon such findings, the Director shall issue notice to the pParties of this ~~a~~ Agreement stating the cost and consequence of the event. Depending on the nature of the event and findings, the Parties of this Agreement may mutually agree to either associated costs may either be: a) ~~removed from the costs associated with this event from~~ the total costs charged against MWWD the Wastewater Fund for assessing fiscal performance; or b) ~~the~~

~~parties of this Agreement shall~~ reconvene to renegotiate the ~~LMP Bid~~MEO Budget Objective in light of the event. In the latter case, only that part of the LMP Bid ~~the MEO Budget Objective of this Agreement~~ related to the specific event shall be reopened; all other terms and conditions shall remain unchanged.

F. Labor-Management Cooperation

The ~~p~~Parties acknowledge that cooperative labor-management relations as typified by the relationship established in developing and successfully executing the ~~MWWD Wastewater~~ Bid to Goal Agreement, are critical to meeting the competitive challenge and objectives detailed in this ~~Agreement document~~. The ~~p~~Parties commit to maintaining the momentum, energy, and good will of this effort.

To that end, the Wastewater Fund employees, MWWD, AFSCME Local 127, and MEA will participate in ~~a Department wide~~the LMC to monitor progress, identify issues and eliminate barriers to success, and to otherwise maintain a mutual commitment to open communications and consensus.

G. Relationship with Labor Contracts

It is the intent of the ~~p~~Parties that this Agreement be interpreted in harmony and compliance with the comprehensive labor contracts and/or provisions between the City of San Diego and authorized employee organizations representing MWWD Wastewater Fund employees.

H. Dispute Resolution

Any disputes (except for those concerning audits or reviews) that arise from a charge of a violation or misinterpretation of this Agreement shall be resolved through the applicable use of established processes within labor agreements in effect at the time of the dispute.

I. ~~Applicable Law~~ Severability

In the event that any condition, covenant, or provision of this MOU is held to be invalid or void by any court of competent jurisdiction, or is deemed to be contrary to the law or any covenant or condition or provision of any contract to which the City is a party, the same shall be deemed severable from the remainder of this MOU and in no way shall affect any other covenant, condition, or provision. If any covenant, condition, or provision of this MOU is deemed to be invalid due to scope or breadth, such covenant, condition, or provision shall be deemed valid to the extent the scope or breadth is permitted by law.

J. Impacts on Staff

The ~~p~~Parties agree that a top priority in the ~~MWWD Bid to Goal~~ Agreement is to optimize the System operations without infringing upon and, in the process of doing so, to protect the employment rights of all affected employees as established under current City of San Diego policies and negotiated labor MOUs or implementation procedures.

K. Successor Agreement

The pParties recognize that insofar as it is in the mutual interest of the public and the pParties, and that insofar that the pParties will have met the terms and conditions of this and corollary service agreements, that it will be the option of the pParties to negotiate a new agreement or extension of the existing agreement at the conclusion of the term of this Agreement.

~~This Agreement shall be effective only after the ratification of all parties listed below as evidenced by their respective signatures. This Agreement will have no force or final effect without City Council approval.~~

IN WITNESS WHEREOF, the undersigned agree to submit this Memorandum of Understanding to the appropriate bodies for approval and final ratification.

Date: _____

AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, LOCAL 127, AFL-CIO

CITY OF SAN DIEGO

~~Jerry Sanders~~, Mayor, City of San Diego

~~Joan Raymond~~, President

~~Jay Goldstone~~, Chief Operating Officer,
City of San Diego

SAN DIEGO MUNICIPAL EMPLOYEES'
ASSOCIATION

~~Jim Barrett~~, Director,
~~Metropolitan Wastewater~~Public Utilities
Department

~~Judie Italiano~~, ~~General Manager~~President