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JUL 17 2006  
Exec. Office

**JERRY SANDERS**  
MAYOR

June 30, 2006

**RECEIVED**  
JUL 18 2006  
SAN DIEGO  
COUNTY GRAND JURY

Honorable Janis Sammartino  
Presiding Judge  
San Diego County Superior Court  
Main Courthouse, Third Floor  
220 West Broadway  
San Diego, CA 92101

Dear Judge Sammartino:

Subject: 2005-2006 Grand Jury Report entitled "Service Level Agreements Equal Back Door Funding"

Pursuant to California Penal Code Section 933.05(a), (b), and (c), the City of San Diego provides the following responses to the findings and recommendations in the above-entitled Grand Jury Report.

In response to the Grand Jury Report, I have ordered every City department to immediately apply the most stringent accounting controls, oversight and review mechanisms possible for Service Level Agreements (SLAs). First and foremost, I have ordered the termination of many of the internal agreements called into question. I have also ordered new standards and performance measures for every SLA in place or anticipated in the future.

Below I have provided a response to each and every finding and recommendation outlined in your report.

***WD SLA for Purchase of Chollas Lake Water and an Employee Salary***

**Finding:** The WD does not have any future plans to incorporate Chollas Reservoir water into the fresh water or the reclaimed water systems.

**Agree.**

**Finding:** The use of an SLA for a land purchase did not provide a service to WD. The sale and valuation of land comes under the purview of City's READ. No evidence was produced that READ was consulted to substantiate the purchase price.

**Partially Disagree.** A Memorandum of Understanding (MOU) dated July 1, 2004 between WD and Park and Recreation Department (P & R) provided WD with the right to use Chollas Reservoir for storage and distribution of water. This MOU provided for transfer of \$600,000 of water enterprise funds to the general fund as compensation for the reservoir. READ assisted in the development of this MOU. A subsequent SLA provides for the daily operations and maintenance of Chollas Dam and Reservoir by the P & R in support of and funded by WD.

**Finding:** The Grand Jury audit revealed total payments for the worker of \$84,888, thus exceeding the authorized SLA amount by \$34,214. Managers at WD and P & R were unaware of the overcharge. Further investigation found no evidence of maintenance reporting as stipulated between WD and P & R.

**Partially Disagree.** Maintenance levels at Chollas Reservoir increased after WD assumed responsibility for the facility. Prior to the transfer, while the reservoir was under P & R control, the maintenance levels at the facility were minimal, as personnel resources were not available to perform required work. After WD took over the facility, a full-time maintenance worker was assigned to Chollas Reservoir. The grounds maintenance efforts increased, the reservoir's water level stabilized through pumping of potable water into the reservoir, vegetation control adjacent to the dam improved, and overall upkeep of the facility increased.

**Recommendation 06-16:** Require management to clearly define the appraisal methods when establishing a purchase price for water storage.

**Response:** This recommendation has been implemented. I have directed City staff to provide fully documented accounting for any proposed land transactions among City departments. I have also directed READ provide an accurate appraisal of land values before any consideration of land rights transfers by any means. Furthermore, Chollas Reservoir will be transferred back to P & R's control. I will request the City Council's authorization to refund \$600,000 to WD from this year's budget in exchange for returning Chollas Reservoir to P & R. I will also seek City Council authorization to reimburse WD \$188,000 for potable water pumped into the Chollas Reservoir and for the \$147,764 in labor costs expended to maintain the reservoir when it was managed by WD.

**Recommendation 06-17:** Require City Council oversight and approval for land or possessory rights purchases between City departments.

**Response:** This recommendation has been implemented. I will engage and inform the City Council about any substantive transfer of land among City departments. As

mentioned, the return of Chollas Reservoir to P & R will be submitted to City Council for authorization of the \$600,000 refund to WD.

**Recommendation 06-18:** Require the Auditor and Controller Department to notify management when an SLA exceeds the budgeted contract service price.

**Response:** This recommendation will be implemented. On a monthly basis, the Auditor and Controller Department will compare actual SLA costs to the budgeted amount. Should actual costs exceed the budget, the Business Office Manager, along with the departmental management for both the service provider and service receiver, will be notified.

### ***Park & Recreation Department Concessions at Lake Recreation Areas***

**Finding:** Ratepayers are subsidizing P & R functions which provide little or no benefit to the water system or water ratepayers.

**Agree.**

**Recommendation 06-19:** Immediately reduce the multimillion dollar financial losses to the WD and P & R in the operation of concession stands by requiring the WD managers to monitor the financial operations of concession stands, demonstrate their benefit to the ratepayer, and validate their consistency with the San Diego City Charter.

**Response:** This recommendation has been implemented. I have directed WD to cancel the SLA with P & R for concessions services. I have also directed that concessions will no longer be subsidized with WD enterprise funds. WD will establish a short-term, revenue-neutral, sole source vendor contract for the operations of lake concessions for the period June 1 through September 30, 2006. WD will then issue a Request for Proposals for a long-term, revenue-neutral vendor contract for operating the concessions.

### ***Funding the Binational Affairs Coordinator***

**Finding:** This funding is another example of the use of enterprise funds to subsidize a City department whose services has little relevance to WD or MWWD.

**Partially Disagree.** The Binational Affairs Coordinator assisted both WD and MWWD in dealing with complex US-Mexican border issues. However, the WD and MWWD portion of the Binational Affairs Coordinator cost was disproportionate to work or benefits received.

**Recommendation 06-20:** Review WD and MWWD department funding for the Binational Affairs Coordinator and consider terminating the SLA agreement until a value to the departments can be demonstrated and the actual time spent on WD and MWWD projects can be validated.

**Response:** This recommendation has been implemented. I have terminated this SLA, and the costs for the Binational Affairs Coordinator have been incorporated into the Community and Legislative Services Division within the Mayor's office.

**Recommendation 06-21:** Require that services, actual time spent, and product produced are documented and presented to WD and MWWD department management.

**Response:** This recommendation will be implemented. I have directed that all SLAs within the City will now include requirements for complete documentation of actual services, time, equipment and budget impacts.

#### ***WD and MWWD SLA Subsidizes the Planning Department***

**Finding:** The portion of cost paid by WD and MWWD for the General Plan Update is disproportionate to benefits, although the cost is shared by several departments in the city.

**Agree.**

**Finding:** The testimony provided by senior managers in WD and MWWD suggests that they have little interest in this project and no expectation of any value to be received from their investment.

**Agree.**

**Recommendation 06-22:** Review the WD and MWWD SLA agreements with the Planning Department and consider terminating the agreements until it can be demonstrated that the ratepayers benefit from participating in the General Plan Update.

**Response:** This recommendation has been implemented. I have terminated this SLA. Management and budget officers for WD and MWWD will review any future proposals for SLAs with other departments and will make a determination of need or continuing needs on a case-by-case basis.

***WD and MWWD SLAs with the Real Estate Assets Department (READ)***

**Finding:** The cost of the SLA to MWWD is excessive given the small number of properties under management. The Grand Jury was unable to verify the services and products provided by READ.

**Partially Disagree.** READ provides comprehensive real estate services to MWWD, including appraisal, acquisition, lease and sale of real property and asset management. Asset management is provided on a continuous basis for MWWD property, but is not the full scope of real estate service provided by READ. Appraisal, acquisition, lease and sale of real property are provided as requested by MWWD, generally in conjunction with a capital improvement project, and constitute a significant portion of the READ services to MWWD.

**Finding:** The Grand Jury was unable to validate READ's assertion that it provides in-depth services to WD and MWWD as required by the SLA.

**Wholly Disagree.** READ provides both WD and MWWD with comprehensive real estate services including appraisal, acquisition, lease and sale of real property and asset management. All technical and administrative expertise, resources and support that WD and MWWD require in the real estate area are provided by READ.

**Finding:** The WD ratepayers should receive revenue from WD property under Qualcomm Stadium.

**Agree.** In 1966, WD leased approximately 80 of the 160-acre stadium premises to the San Diego Stadium Authority, at an annual rent of \$15,000. The term of the lease agreement was to be 40 years and would not be terminated prior to the retirement of the revenue bonds. In 1998, following the retirement of the Stadium revenue bonds, the City executed the "Assignment and Assumption Agreement By and Between the San Diego Stadium Authority and the City of San Diego," which provided for the City to assume the Stadium Authority's obligations and for the early termination of the WD lease with the Stadium Authority. With this action, the lease payment obligation for use of WD land transferred to the City. Regardless of the termination of the original lease with the Stadium Authority, there remained an obligation to WD for use of WD property by the stadium. Accordingly, in the absence of the original formal agreement between WD and the Stadium Authority, WD has continued to receive lease payments from the City's General Fund at the same level as outlined in the 1966 lease. It has been the City's assumption that the ongoing lease rate (\$15,000 per year) would not extend beyond the term of the original lease, which would have otherwise ended in 2006.

READ has initiated the appraisal of the fair market value of the lease for the WD property. Upon completion of the appraisal, appropriate action will be undertaken to ensure that WD receives fair market rent payments for its property under Qualcomm Stadium.

**Finding:** WD management's failure to involve READ in the purchase of Chollas Reservoir water suggests that READ may be paid in excess of the value of its services.

**Partially Disagree.** READ assisted in the development of the MOU that addressed the purchase of Chollas Reservoir. Nonetheless, I agree that WD cost for the READ services was disproportionate to services or benefits received.

**Recommendation 06-23:** Review what appear to be excessive overhead and labor charges for property management services from READ.

**Response:** This recommendation will be implemented. I have directed that the SLAs between READ and WD and MWWD will be revised to provide greater oversight and auditing for services provided and costs incurred. Overhead and labor charges will be reviewed to ensure that they are correctly applied.

**Recommendation 06-24:** Require READ's involvement in all WD and MWWD land transactions.

**Response:** This recommendation has been implemented. I have directed that READ continue to provide WD and MWWD with auditing and land valuation services for land transactions as described by the READ SLAs.

**Recommendation 06-25:** Require READ to document and justify all charges to WD and MWWD, including actual time spent by various personnel at different billing levels, to protect against what appears to be excessive charges.

**Response:** This recommendation will be implemented. I have directed that SLAs between READ and WD and MWWD be revised to provide greater oversight and auditing for services provided and costs incurred.

#### ***WD and MWWD SLAs with the City Attorney***

**Recommendation 06-26:** Identify the employees assigned to handle specific Water Department and Metropolitan Waste Water Department issues.

**Response:** This issue has been addressed in a separate letter of response prepared by the City Attorney.

**Recommendation 06-27:** Clarify what legal services are provided by the General Fund and what constitutes “enhanced legal services.”

**Response:** This issue has been addressed in a separate letter of response prepared by the City Attorney.

**Recommendation 06-28:** Provide detailed billings to the Water Department and Metropolitan Waste Water Department which identify the name(s) of personnel providing a service and identify specific charges for a specific service or time.

**Response:** This issue has been addressed in a separate letter of response prepared by the City Attorney.

***WD SLA with the Library Department***

**Finding:** During an unannounced visit to the Main Library, the Grand Jury found the library technician was working precisely on the work outlined in the SLA. The equipment in use had a WD property identification label. This is consistent with the SLA.

**Agree.**

**Recommendation 06-29:** Ensure that WD devises and implements an action plan to store, maintain and/or display historic WD documents when the SLA is completed.

**Response:** This recommendation will be implemented. WD is working with the Library Department to conclude the process of cataloging and archiving certain historic documents from its files. WD will make a decision regarding the long-term storage and/or display of these documents once the Library staff has concluded their work.

***MWWD SLA for San Diego Police Department Helicopter Surveillance***

**Finding:** According to management testimony, the flights saved MWWD labor, time, and equipment.

**Agree.**

**Recommendation 06-30:** Continue the use of this SLA between MWWD and the Police Department.

**Response:** The City will continue to utilize this SLA for services as needed.

***Recommendations not specific to an SLA discussed in this report***

**Recommendation 06-31:** Initiate a city management oversight group, separate from WD and MWWD, to prevent abuse of enterprise fund resources. It would enact and enforce policies and procedures governing all uses of SLAs.

**Response:** This recommendation will be implemented. I have directed that oversight and auditing of SLAs be transferred to the new Purchasing & Contracting Department. SLAs will now be treated similar to formal City contracts, with service levels, deliverables and payments formally reviewed by Purchasing & Contracting staff.

**Recommendation 06-32:** Require that each SLA include quantifiable performance methodology and written evaluation to validate the suitability, effectiveness, and efficiency of services provided.

**Response:** This recommendation will be implemented. I have directed all City departments to revise SLAs as needed to include performance standards and specific deliverables, and to specify that a written evaluation be required for each agreement.

**Recommendation 06-33:** Establish an independent management audit group to review the use of SLAs by WD and MWWD. This body should have the authority to recommend immediate changes to, or cancellation of, an SLA upon discovery of Charter violations. It could verify that labor and overhead charges are relevant and reasonable.

**Response:** This recommendation has been implemented. A comprehensive audit of the water and wastewater bond expenditures and rates is currently ongoing. I have directed that the scope of the audit be increased to include a review of SLA practices and procedures. The result of that audit, now expected in June, will guide the development of audit practices for WD and MWWD and for all SLAs utilized by the City. The City will implement any additional corrective measures for SLAs not already ordered as required following the audit.

**Recommendation 06-34:** Verify that costs for overhead and labor are commensurate to the value of the services received, and are consistent among all SLAs.

**Response:** This recommendation will be implemented. I have directed the Purchasing and Contracting Department to verify that all work performed under SLAs be consistent across all agreements and comparable to all other City contracting practices.

**Recommendation 06-35:** Require that equipment purchased with SLA funds be retained or disposed of by the department that paid for it.

**Response:** This recommendation will be implemented. Equipment purchased by departments with enterprise funds will be inventoried and retained as needed. Once that



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June 30, 2006

equipment has been determined to be in excess or no longer appropriate to the department's needs, it will be returned to the department that paid for it. If that department doesn't need the equipment, it may be "sold" at fair market value using general funds to departments that may be able to use the equipment.

Please contact Richard Haas, Deputy Chief of Public Works, at (619) 236-6750 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'JSL', with a stylized flourish at the end.

Jerry Sanders  
Mayor

cc: San Diego County Grand Jury  
City Council  
Chief Operating Officer  
Deputy Chief of Public Works  
Citizens Assistance Manager  
City Clerk  
City Attorney

200  
7/10/06

RESOLUTION NUMBER R- 301621

DATE OF FINAL PASSAGE JUL 12 2006

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO AFFIRMING AND JOINING IN THE MAYOR'S  
RESPONSE TO THE 2005-2006 GRAND JURY REPORT ON  
SERVICE LEVEL AGREEMENTS

WHEREAS, on April 21, 2006, the San Diego County Grand jury issued a report entitled,  
"Service Level Agreements *Equal* Back Door Funding" [Report]; and

WHEREAS, the Report made several Findings and Recommendations regarding the City  
Service Level Agreements; and

WHEREAS, the Mayor's office reviewed each and every recommendation and finding  
and has prepared a Response dated June 30, 2006, for the City Council's review; and

WHEREAS, the Response has been forwarded to the City Council for review and  
consideration; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it accepts and adopts  
each and every recommendation and finding of the Mayor's Response.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Catherine M. Bradley  
Catherine M. Bradley  
Chief Deputy City Attorney

KK:CB:ai:jb  
06/29/2006  
Or.Dept:Mayor  
R-2006-1140