

Attachment B to Agenda File No. 2021-0065

(12)

San Diego Unified Port District
 Document No. 68755
 Filed AUG 07 2018
 Office of the District Clerk

**MEMORANDUM OF UNDERSTANDING
 REGARDING THE REGIONAL HARBOR MONITORING PROGRAM**

This Memorandum of Understanding, hereinafter called the "Regional Harbor Monitoring Program MOU" is made and entered into in July 2018, between the County of Orange, City of Oceanside and City of San Diego, all municipal corporations ("County & Cities"), and the San Diego Unified Port District, a public corporation ("Port"). The Port and County & Cities shall be referred to hereinafter individually and/or collectively as "Party/ies."

RECITALS

Whereas, the Port and the County & Cities have negotiated this Regional Harbor Monitoring Program MOU to work jointly to implement the Regional Harbor Monitoring Program. The Regional Harbor Monitoring Plan (RHMP) is required by the July 24, 2003, directive from the San Diego Regional Water Quality Control Board (RWQCB) pursuant to §13225 of the California Water Code. The intent of this program is to develop a coordinated monitoring effort of harbors in the San Diego Region to provide water quality status and trends information, as well as to assess the surface water's abilities to support designated beneficial uses.

Whereas, the Port has agreed to lead the RHMP for the Parties.

Whereas, the Parties recognize that expenditures will be needed to complete the work identified in the RHMP, and that the costs will be shared between the Port and County & Cities.

Whereas, the Parties have reached an agreement on a funding formula as described in Exhibit A, which will be applied to allocate portions of the total RHMP costs to each Party. The funding formula is based upon land (water) area, harbor stratification, and a fixed percentage for data management and reporting.

Whereas, the County & Cities agree to provide funding to the Port for their portion of the costs associated with implementing the RHMP as described in this MOU and for administrative oversight of the RHMP.

Whereas, the Parties intend this MOU to provide for the performance of studies, monitoring and development of programs and funding therefore for a period of five (5) years, through June 30, 2023 after which the Parties recognize that additional agreements may be necessary for further monitoring, studies and load reduction implementation projects over the period covered by the RHMP.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties hereby agree as follows:

1. TERM OF MOU

- a. The term of this MOU shall commence on July 1, 2018 and is effective through June 30, 2023, unless earlier terminated by the Parties as provided below.

2. DIVISION OF PROGRAM COSTS

- a. Exhibit A, attached hereto and incorporated by this reference describes the default cost-share formula agreed upon by the Port and County & Cities. The cost share formula is applicable to any and all consultant costs and work performed under the RHMP. The associated costs shall be divided among participating Parties using the default formula reflected in Exhibit A, and described, in part, below, unless a Special Formula is approved by the Parties to which the cost applies.
 - i. Fifty percent (50%) of the total RHMP costs shall be allocated for water area in each harbor. Water areas shall be divided among the Parties by dividing the total water area for the harbor of each Party by the combined total water areas for the harbors within the geographic area applicable to the RHMP.
 - ii. Thirty-five percent (35%) of the total RHMP costs shall be allocated for harbor stratification. Harbor stratification costs shall be divided among Parties by dividing the number of strata present for each harbor area by the overall number of strata possible for inclusion within each harbor area.
 - iii. Fifteen percent (15%) of the total RHMP costs shall be allocated equally amongst all of the Parties for data analysis, data management and reporting.
 - iv. Modification of the Default Formula requires the unanimous approval of all Parties signatory to this MOU.
- b. The County & Cities shall reimburse the Port for overhead expenses associated with the administrative costs incurred during the role of leading the RHMP in the amount of five percent (5%) of the RHMP costs determined under the default cost-share formula in Exhibit A. This administrative cost shall be divided evenly among the County & Cities.
- c. Exhibit B, attached hereto and incorporated by this reference, reflects each Party's total financial obligation under this MOU, in the form of not-to-exceed costs agreed upon by the Parties and determined according to the cost share formula in Exhibit A and five percent (5%) administrative cost for work performed under this MOU.

- d. The obligation of each Party is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating any Party to expend any funds beyond those lawfully appropriated or as involving any Party in any contract or other obligation for the future payment of money in excess of appropriations authorized by law.
- e. Special cost-share formulas may be needed to fund special studies or other efforts required for RHMP compliance and conducted jointly by the Parties. The special cost-share formula shall be developed as appropriate to satisfy required efforts. Unanimous approval by all Parties participating in the cost-share formula shall be required prior to its adoption.

3. FUNDING AND PROGRAM BUDGET

- a. The Port shall submit a budget for each fiscal year throughout the term of this MOU to the County & Cities by December 1 of each year. The budget shall contain an explanation of any recommended program changes, an estimate of all planned expenditures and an estimate of the payment required from the County & Cities for the following fiscal year. The County & Cities shall be permitted to review and approve the program scope of work and budget for the forthcoming year.
- b. The Port shall prepare a fiscal year end accounting within 90 calendar days of the end of each fiscal year. If at the end of each fiscal year the invoiced funds exceed the total costs of work performed during that fiscal year, the excess funds shall be credited to the next fiscal year's allocated costs.
- c. The Port shall provide reasonable notice to the Parties in writing if it appears that costs may exceed the budget approved by the Parties for any fiscal year. If any fiscal year end accounting results in costs exceeding the sum of the deposits, and the Port has notified the Parties of potential cost overruns, the Port shall seek approval of the excess cost from the Parties in the form of a revised budget and, upon approval, shall invoice each Party for its prorated share of the excess cost up to the amount of the revised approved budget.
- d. Upon termination of this Regional Harbor Monitoring Program MOU, if there are any excess funds, the Port shall reimburse the County & Cities their prorated share within 90 calendar days of the final accounting.

4. PAYMENT

- a. The Port will invoice County & Cities no later than the beginning of each fiscal year with the agreed upon amount for each upcoming fiscal year.
- b. The County & Cities shall pay the Port's invoice within 45 calendar days from the date of the invoice.

5. OBLIGATIONS OF THE PORT

a. Project Administration

- i. The Port will provide overall administrative and other professional services required for design and managing the Regional Harbor Monitoring Program. Responsibilities shall include, but not be limited to the coordination of Parties and consultants, setting up and leading RHMP meetings, preparing annual RHMP budgets, invoices, etc., corresponding with the RWQCB regarding work completed, and reviewing and/or preparing documents and reports.
- ii. The Port will assign qualified personnel to the RHMP project and be responsible for the general administration of the work performed by the selected consultant(s).
- iii. The Port will provide quality assurance services to ensure all required monitoring, submittals, and other contract requirements are met by the consultant(s).
- iv. The Port will provide annual invoices, detailed in the aforementioned Section 4, PAYMENT, by July 1 of each year to the County & Cities detailing the nature of the work to be performed and the amount of funding required during the next fiscal year. These invoices will include all monies needed for consultant(s) services for sampling, monitoring etc., and administration of the contract work.

b. Consultant selection

- i. The Port will be responsible for the preparation of, advertising for, opening, reviewing bids, award and administration of any consultant contract(s).
- c. The Port will develop the terms and conditions that reasonably protect the Parties from liability that may occur as a result of the Port executing the consultant agreement(s) and acting as the contracting agent.
- d. The Port will include language in the consultant agreement(s) to include all Parties as additional insured. Language will also be added to the consultant agreement(s) to ensure that consultant(s) agrees to indemnify the County & Cities as well as the Port to the extent permitted by law.

6. OBLIGATIONS OF THE COUNTY & CITIES

- a. The County & Cities will attend meetings, promptly return telephone calls and correspondence, participate in discussions, provide review and comments on consultant deliverables, and will share information essential for task development and completion.

- b. The County & Cities will coordinate with the Port to review and approve an RHMP budget for each fiscal year that is agreed upon by all Parties.
- c. The County & Cities will provide funding for the costs incurred under this MOU, subject to appropriations, based upon the terms and conditions of this MOU. County & Cities will pay full amount of invoice by 45 calendar days from the date of the invoice.
- d. The County & Cities agree to participate in the selection of one or more consultants to perform the work identified for the RHMP. The participation will include but not be limited to review of submitted proposals, interviews with consultants, and determination of final consultant selection.
- e. The County & Cities will provide services to review and approve consultant submittals. In the event any change in consultant scope of work is required due to unforeseen conditions, the County & Cities shall review any changes and provide appropriate response.
- f. The County & Cities agree to allow the Port and/or its consultants to enter property for work undertaken as a part of the RHMP. Before any such monitoring activities, the County & Cities will be contacted and the appropriate measures will be taken to ensure access.
- g. The County & Cities will provide funding to the Port for an additional five percent (5%) of the total consultants cost for overall project management including general administration ("Administrative Cost"), up to, and in accordance with, each Party's share of the Administrative Costs stated in Exhibit B. This administrative cost shall be shared equally among the County & Cities.

7. GENERAL CONDITIONS

- a. The Parties shall comply with all federal, state, and local laws and ordinances applicable to the work to be performed under the terms of this Regional Harbor Monitoring Program MOU.
- b. The Parties will follow the practice of the environmental professional in rendering findings, opinions, factual presentations, professional advice, and recommendations.
- c. Administration of this MOU and the associated consultant agreement(s) is under the jurisdiction of the Port herein, and any communication of the terms or conditions or any changes thereto.
- d. This MOU shall be effective on and from the date signed by the Parties.
- e. Notices required or permitted pursuant to this Regional Harbor Monitoring Program MOU shall be sufficiently given in writing and either served personally or mailed by certified mail; however, invoices, payments, and other communications according to this MOU may be served by first class U.S. mail to:

Karen Holman
 Director, Environmental Protection Program
 Planning and Green Port
 San Diego Unified Port District
 P.O. Box 120488
 San Diego, CA 92112-0488

Drew Kleis
 Deputy Director, Transportation and Storm Water Department
 City of San Diego
 9370 Chesapeake Dr. Ste. 100
 San Diego, CA 92123

Chris Crompton
 County of Orange
 2301 North Glassell St.
 Orange, CA 92865

Ted Schiafone
 City of Oceanside – Harbors and Beaches
 1540 Harbor Drive North
 Oceanside, CA 92054

or such other person and address as either party shall advise the other, in writing, in conformity with this section.

- f. In the event of litigation with respect to this MOU or the interpretation thereof, and in respect to all disputes or controversies arising hereunder, this MOU shall be construed in accordance with, and governed by, the laws of the State of California. Venue in respect to any suit or proceeding brought under or in connection with this MOU shall be the County of San Diego, State of California.
- g. This MOU and all rights and obligations contained herein shall be in effect whether or not any of the parties to this MOU have been succeeded by another entity, and all rights and obligations of the parties signing this MOU shall be vested and binding on their successor of interest.
- h. No failure of either the Port or the County & Cities to insist on strict performance by the other of any covenant, agreement, term, or condition of this MOU or to exercise any right or remedy consequent of a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this MOU, but each and every covenant, agreement, term and condition of this MOU shall continue in full force and effect without respect to any other existing or subsequent breach.

- i. This MOU represents the entire understanding of the Port and the County & Cities as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This MOU may not be modified or altered except in writing signed by all parties.
- j. The Parties agree to mediate any dispute prior to filing suit or prosecuting suit against the other parties. The cost of mediation shall be borne equally by the Parties. In the event suit is brought upon this MOU to enforce its terms, each party shall be responsible for its own attorneys' fees and costs.
- k. The County & Cities agree to defend, indemnify, protect, and hold the Port and its agents, officers and employees harmless from any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the Port's employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of the County & Cities and its contract agents, officers, or employees resulting from the consultant(s) and all expenses of investigating and defending against same; provided, however, that the County & Cities duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the Port, its agents, officers or employees.
- l. The Port agrees to defend, indemnify, protect, and hold the County & Cities and its agents, officers and employees harmless from any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the County & Cities employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of the Port and its contract agents, officers, or employees resulting from the consultant(s) and all expenses of investigating and defending against same; provided, however, that the Port's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the County & Cities, its agents, officers or employees.

8. TERMINATION

- a. Any Party wishing to terminate its participation in this MOU shall so notify all other Parties in writing by March 1 of any year. Such termination shall be effective the following June 30. The terminating Party shall be responsible for financial obligations hereunder to the extent incurred in accordance with this agreement by the Party prior to the effective date of termination. The balance of the Parties may continue in the performance of the terms and conditions of this MOU on the basis of a revised allocation of cost based on the funding formula in Exhibit A.

- b. If any Party fails to meet or fulfill its obligations under this MOU, the Party must be notified immediately and provided the opportunity to cure such breach. If the Party fails to cure the breach within five business days, any Party may terminate this MOU.
- c. The indemnification provisions set forth in Section 7, subsection k and l shall survive the termination of this MOU.


IN WITNESS WHEREOF, this "Regional Harbor Monitoring Program MOU," is executed as follows:

SAN DIEGO UNIFIED Port DISTRICT

Date: 6/19/18

BY 

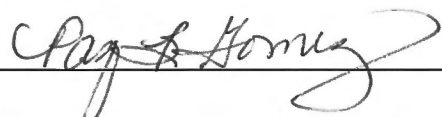
I HEREBY APPROVE the form and legality of the foregoing Regional Harbor Monitoring Program MOU on this 20 day of June, 2018.


Port Attorney Deputy G.C.

IN WITNESS WHEREOF, this Regional Harbor Monitoring Program MOU, is executed as follows:

CITY OF SAN DIEGO

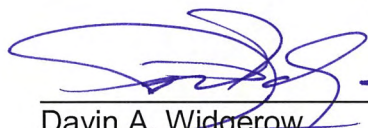
Date: 7/19/18

BY 

Title Deputy Chief Operating Officer, Infrastructure / Public Works

I HEREBY APPROVE the form of the foregoing Regional Harbor Monitoring Program MOU on this 23rd day of JULY, 2018.

MARA W. ELLIOTT, City Attorney



Davin A. Widgerow
Deputy City Attorney

IN WITNESS WHEREOF, this Regional Harbor Monitoring Program MOU, is executed as follows:

CITY OF OCEANSIDE

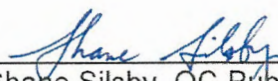
BY *Pete Weiss*
Mayor

Approved as to form.

Antonia Hamilton, A&S
Oceanside City Attorney

IN WITNESS WHEREOF, this Regional Harbor Monitoring Program MOU, is executed as follows:

COUNTY OF ORANGE,
a political subdivision of the State of California

BY 
Shane Silsby, OC Public Works Director

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: 
Deputy

Date: 2/7/18

(3)

68755

RESOLUTION 2018-086

RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE DISTRICT AND THE CITY OF SAN DIEGO, CITY OF OCEANSIDE AND COUNTY OF ORANGE FROM JULY 1, 2018 THROUGH JUNE 30, 2023 TO WORK COLLABORATIVELY ON A REGIONAL HARBOR MONITORING PROGRAM TO EVALUATE THE STATUS AND TRENDS OF WATERS, SEDIMENT, AND AQUATIC LIFE IN THE REGION'S HARBORS AS REQUIRED BY THE SAN DIEGO REGIONAL QUALITY CONTROL BOARD PURSUANT TO §13225 OF THE CALIFORNIA WATER CODE; ALL FUNDS REQUIRED FOR FUTURE FISCAL YEARS WILL BE BUDGETED IN THE APPROPRIATE FISCAL YEAR, SUBJECT TO BOARD APPROVAL UPON ADOPTION OF EACH FISCAL YEAR'S BUDGET

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1 (Port Act); and

WHEREAS, in 2003, the San Diego Regional Water Quality Control Board issued an order pursuant to § 13225 of the California Water Code to the District, Cities of San Diego and Oceanside (Cities), and the County of Orange (County) to coordinate and develop a Regional Harbor Monitoring Program (RHMP) to assess conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor; and

WHEREAS, following the Board of Port Commissioner's (BPC) approval, the District entered into a Memorandum of Understanding (MOU) to work collaboratively with the Cities and County in 2005 for the pilot program and again in 2008 and 2013 which has resulted in a cost effective and consistent monitoring program with the District acting as the lead for this program; and

WHEREAS, the current MOU was made effective on July 1, 2013, and will expire on June 30, 2018; and

WHEREAS, a new MOU is needed to continue implementing the RHMP and assessing conditions and trends in each harbor; and

WHEREAS, the proposed MOU herein will be for a five-year period from July 1, 2018, to June 30, 2023, and will reaffirm the District as the lead to oversee implementation of the RHMP; and

2018-086

WHEREAS, the cost share formula presented in the MOU is based on the same formula used in the previous MOUs, which accounts for the acreage and stratification of each harbor as well as fixed costs per agency; and

WHEREAS, due to the size and stratification of San Diego Bay, under the proposed MOU approximately 56 percent of consultant costs will be attributed to the District with the remaining 44 percent of costs reimbursed to the District from the Cities and County on an annual basis; and

WHEREAS, in addition to the reimbursed costs, the MOU includes a provision requiring the Cities and County to provide the District a five percent fee to administer the RHMP and consultant contract; and

WHEREAS, the total cost consultant contracts to assist with RHMP services will not exceed \$1,525,000 for the five year period; and

WHEREAS, the MOU establishes a schedule for budget and payment for each fiscal year, and provides options for early termination; and

WHEREAS, District staff recommends that the BPC authorize the execution of the MOU.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District as follows:

The Executive Director or her designated representative is hereby authorized to enter into a Memorandum of Understanding between the District and the City of San Diego, City of Oceanside and County of Orange from July 1, 2018, through June 30, 2023.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant Deputy

2018-086

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 8th day of May, 2018, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Valderrama, and Zucchet

NAYS: None.

EXCUSED: Moore

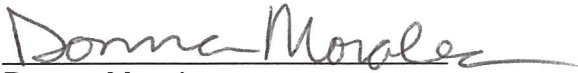
ABSENT: None.

ABSTAIN: None.



Rafael Castellanos, Chairman
Board of Port Commissioners

ATTEST:



Donna Morales
District Clerk



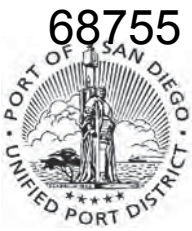
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(152)

San Diego Unified Port District

3165 Pacific Hwy.
San Diego, CA 92101

Item No. 14



Resolution No. 2018-086

File #:2018-0135

DATE: May 8, 2018

SUBJECT:

RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE DISTRICT AND THE CITY OF SAN DIEGO, CITY OF OCEANSIDE AND COUNTY OF ORANGE FROM JULY 1, 2018 THROUGH JUNE 30, 2023 TO WORK COLLABORATIVELY ON A REGIONAL HARBOR MONITORING PROGRAM TO EVALUATE THE STATUS AND TRENDS OF WATERS, SEDIMENT, AND AQUATIC LIFE IN THE REGIONS HARBORS AS REQUIRED BY THE SAN DIEGO REGIONAL QUALITY CONTROL BOARD PURSUANT TO §13225 OF THE CALIFORNIA WATER CODE. ALL FUNDS REQUIRED FOR FUTURE FISCAL YEARS WILL BE BUDGETED IN THE APPROPRIATE FISCAL YEAR, SUBJECT TO BOARD APPROVAL UPON ADOPTION OF EACH FISCAL YEAR'S BUDGET

EXECUTIVE SUMMARY:

In 2003, the San Diego Regional Water Quality Control Board issued an order pursuant to § 13225 of the California Water Code to the District, Cities of San Diego and Oceanside (Cities), and the County of Orange (County) to coordinate and develop a Regional Harbor Monitoring Program (RHMP) to assess conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor. Following the Board of Port Commissioner's (Board) approval, the District entered into a Memorandum of Understanding (MOU) to work collaboratively with the Cities and County in 2005 for the pilot program and again in 2008 and 2013 which has resulted in a cost effective and consistent monitoring program with the District acting as the lead for this program. The current (2013) MOU will expire on June 30, 2018. Staff recommends that the Board authorize a new MOU between the District and the Cities and County to continue to share program responsibilities and reaffirm the District as the lead for a period of five years from July 1, 2018, through June 30, 2023 (Attachment A).

This MOU defines the RHMP Agencies' roles and responsibilities as well as cost sharing formulas for utilizing consultant services to conduct program planning, monitoring, analyses, reporting, and scientific coordination as it relates to the RHMP. Due to the size and stratification of San Diego Bay, under the proposed MOU approximately 56 percent of consultant costs will be attributed to the District with the remaining 44 percent of costs reimbursed to the District on an annual basis. In addition to the reimbursed costs, the MOU includes a provision requiring the Cities and County to provide the District a five percent fee to administer the RHMP and consultant contract. The MOU also includes indemnification provisions and options for early termination. All funds required for future fiscal years will be budgeted in the appropriate fiscal year and subject to Board approval upon the adoption of each fiscal year's budget.

File #:2018-0135

RECOMMENDATION:

Adopt a Resolution authorizing a Memorandum of Understanding between the District and the City of San Diego, City of Oceanside and County of Orange from July 1, 2018 through June 30, 2023 to work collaboratively on a Regional Harbor Monitoring Program to evaluate the status and trends of waters, sediment, and aquatic life in the region's harbors as required by the San Diego Regional Water Quality Control Board pursuant to §13225 of the California Water Code. All funds required for future fiscal years will be budgeted in the appropriate fiscal year, subject to board approval upon adoption of each fiscal year's budget.

FISCAL IMPACT:

The fiscal impact to the District for RHMP implementation was previously analyzed via Board approved Agreement No. 106-2017SN (Document No. 66846, June 26, 2017, Attachment B) with consultant firm Amec Foster Wheeler to implement the upcoming cycle of the RHMP through FY23. All funds required for future fiscal years will be budgeted in the appropriate fiscal years and subject to Board approval upon adoption of each fiscal year's budget.

Under the MOU, District costs account for 56 percent of the total RHMP costs. Per provisions in the MOU, the Cities of San Diego and Oceanside and the County of Orange will reimburse the District for their share of the costs. In addition, a five percent administrative cost will be divided evenly among the Cities and County based on annual expenditures and provided to the Port for overall project management and administration of a consultant contract. The total cost for the RHMP is anticipated to be \$1,525,000.00 over the five year duration of the proposed MOU. Approximately \$1,050,000.00 of this expenditure will occur in FY 18/19, of which the District will be reimbursed \$513,949 (including the RHMP Cost Share and 5% Administrative Costs). Table 1 lists anticipated expenses and reimbursable costs to the District associated with the MOU.

Table 1. Not to Exceed Expenses and Reimbursable Costs¹

5-Year RHMP Budget	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	Total
District Portion of Cost	\$588,551	\$84,079	\$56,053	\$56,053	\$70,066	\$854,802
RHMP Cost Share - Other Agencies ¹	\$461,449	\$65,921	\$43,947	\$43,947	\$54,934	\$670,198
<i>Total Requested for Consultant Services- Professional and Other²</i>	\$1,050,000	\$150,000	\$100,000	\$100,000	\$125,000	\$1,525,000

¹ Per the MOU, the District's portion of shared costs is equivalent to approximately 56% of the total RHMP costs. Other RHMP Agencies' portion is equivalent to approximately 44% of total RHMP costs.

² Per the MOU, the District is the lead for the RHMP. Consultant costs are paid in full by the District with reimbursement from the other RHMP agencies.

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Additional Revenue	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	Total
5% Administration Cost ¹	\$52,500	\$7,500	\$5,000	\$5,000	\$6,250	\$76,250

¹ The 5% Administrative Cost is in addition to the contract amount and is split evenly between the other three agencies and paid to the District.

Revenue Reimbursement From Above Costs to the District	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	Total
RHMP Cost Share - Other Agencies ¹	\$461,449	\$65,921	\$43,947	\$43,947	\$54,934	\$670,198
5% Administration Cost ²	\$52,500	\$7,500	\$5,000	\$5,000	\$6,250	\$76,250
Total Reimbursement to the District	\$513,949	\$73,421	\$48,947	\$48,947	\$61,184	\$746,448

¹ Per the MOU, the District's portion of shared costs is equivalent to approximately 56% of the total RHMP costs. Other RHMP Agencies' portion is equivalent to approximately 44% of total RHMP costs.

² The 5% Administrative Cost is in addition to the contract amount and is split evenly between the other three agencies and paid to the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the District's Strategic Goals of promoting a comprehensive vision of water uses and environmental stewardship integrated with regional plans by partnering with the Cities of San Diego and Oceanside and the County of Orange to form an MOU to implement the RHMP. The MOU allows the District and participating agencies to assess the conditions and trends of the quality of water, sediment, and aquatic life of San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor in a coordinated and cost effective manner.

- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

BACKGROUND

In 2003, the Regional Board issued a California Water Code § 13225 directive to the District, Cities, and the County to coordinate and develop the RHMP as a comprehensive effort to determine ambient conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor (Attachment C). As a result, the District has been working cooperatively with the other parties to effectively and efficiently develop and implement the RHMP.

MOUs to implement the RHMP were entered in 2005², 2008³, and 2013⁴. The current MOU was made effective on July 1, 2013, and will expire on June 30, 2018.

File #:2018-0135

In June 2017, the consultant firm Amec Foster Wheeler was selected to implement the RHMP through Board approved Agreement No. 106-2017SN (Document No. 66846, June 26, 2017, Attachment B).

For the purposes of the RHMP, the harbors have been divided into five strata based on harbor characteristics or major uses. The five strata include areas of marina, industrial, freshwater influence, deep water, and shallow water. To date the RHMP has consisted of a 3-year pilot program conducted between 2005 and 2008⁵ and two core monitoring cycles conducted in 2008⁶ and 2013⁷. In addition to the core monitoring events, special studies were performed separately to answer specific questions that arose from core monitoring data analyses, including identifying dissolved copper sources as part of the 2008 RHMP and assessing bioaccumulation of contaminants in fish and invertebrate tissues as part of the 2013 RHMP.

The RHMP provides a valuable dataset that is used to assess the status and trends in water quality, sediment quality, and biodiversity in the harbors over time. Results of monitoring thus far have indicated that the majority of the areas within the harbors had sediment and water quality conditions that were supportive of biological resources and human uses. Elevated chemicals of concern have been identified to be primarily located in the marina and industrial strata. The 2013 core monitoring program findings have indicated a general improvement in impaired conditions over time. This long-standing dataset can help achievement of the goals of various environmental programs being implemented in the harbors. The next core monitoring effort is scheduled to occur this summer (July through August 2018), pending budget approval.

2018 MOU

The current MOU is set to expire June 30, 2018. A new MOU is needed to continue implementing the RHMP and assessing conditions and trends in each harbor. The proposed MOU herein will be for a five year period from July 1, 2018, to June 30, 2023, and will reaffirm the District as the lead to oversee implementation of the RHMP. As the lead, the District holds meetings, acts as a liaison with the Regional Board, and administers a consultant contract(s) to perform RHMP-related services. The MOU will enable the RHMP agencies to continue to share consultant costs related to conducting project planning, monitoring, data analyses and reporting, as well as scientific counsel. The cost share formula presented in the MOU is based on the same formula used in the previous MOUs, which accounts for the acreage and stratification of each harbor as well as fixed costs per agency.

According to the cost share formula presented in the MOU, the District's share of costs will amount to approximately 56 percent of the total cost as the District represents the largest harbor area and contains the most number of strata analyzed in the program. The remaining 44 percent of costs will be reimbursed annually to the District from the Cities and County. Pursuant to the MOU, the Cities and County will annually provide the District with a five percent fee based on total costs of the consultant contract to account for administrative responsibilities, coordination efforts, and management of the consultant agreement. The total cost consultant contracts to assist with RHMP services will not exceed \$1,525,000 for the five year period. All funds required for future fiscal years will be budgeted in the appropriate fiscal years and subject to Board approval upon adoption of each fiscal year's budget. Dependent upon FY19 Board budget approval, the RHMP will conduct its core monitoring program during fiscal year 2018-2019, which is estimated not to exceed \$1,050,000.

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The MOU further identifies the roles, responsibilities, and obligations of the District, Cities, and County as they pertain to the RHMP, establishes a schedule for budget and payment for each fiscal year, and provides options for early termination. The MOU also includes indemnity and hold harmless provisions.

The City of Oceanside has approved the MOU (Attachment D), while the County of Orange has the MOU slated for their April 24, 2018 Board Meeting agenda. The City of San Diego has submitted a Letter of Intent to sign the MOU, upon upcoming City Council budget approval (Attachment E).

Staff recommends that the Board adopt a resolution authorizing this MOU with the District and City of San Diego, City of Oceanside, and the County of Orange for the Regional Harbor Monitoring Program for a period of five years from July 1, 2018, through June 30, 2023.

General Counsel's Comments:

The Office of the General Counsel reviewed this agenda and approved the proposed MOU as to form and legality.

Environmental Review:

The proposed Board action authorizing an MOU between the District and the City of San Diego, City of Oceanside, and County of Orange to work collaboratively on a regional harbor monitoring program is Categorical Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15306 (Information Collection) and Sections 3.f of the District's Guidelines for Compliance with CEQA because the project in question would involve basic data collection and research that would not result in a serious or major disturbance to an environmental resource. A CEQA Exemption was previously issued for this project on June 20, 2017. The proposed project is not a separate "project" for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the previously issued categorical exemption, the District finds and recommends that the approval of the MOU does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the exemption due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the Project will have one or more significant effects not discussed in the exemption, (b) identifies significant impacts would not be more severe than those analyzed in the exemption, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) no changes to mitigation measures or alternatives have been identified or are required. Because none of these factors have been triggered, the District has the discretion to require no further analysis or environmental documentation (CEQA Guidelines §15162(b)). Pursuant to CEQA Guidelines §15162 (b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA

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has been triggered, and no further environmental review is required.

The proposed Board action complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operations of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed project is consistent with the Public Trust Doctrine.

Finally, the proposed Board action is considered “excluded development” pursuant to Section 8.e (Information Collection) of the District’s Coastal Development Permit Regulations because the project is for basic data collection and research which would not result in a serious or major significant disturbance to an environmental resource. A “Coastal Act Categorical Determination of Exclusion” was previously issued for this project on June 20, 2017; therefore, no additional action under the California Coastal Act is required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

Kelly Tait
Senior Environmental Specialist, Environmental Protection

Attachment(s):

Attachment A: Memorandum of Understanding (MOU) Between the District and the Cities of San Diego and Oceanside and the County of Orange Regarding the Regional Harbor Monitoring Program (RHMP) 2018-2023.

Attachment B: Agreement Between San Diego Unified Port District and Amec Foster Wheeler Environment and Infrastructure, Inc. for Regional Harbor Monitoring Program, Agreement No. 106-2017SN. Document No. 66846.

Attachment C: July 24, 2003 Request for Technical Report Pursuant to California Water Code Section 13225

Attachment D: City of Oceanside RHMP MOU Signature Page.

Attachment E: City of San Diego Letter of Intent to Sign the MOU upon City Council budget approval.

¹ Reimbursements are percentage-based projections assuming 100-percent of the contract expenditures for the FY.

² Resolution 2005-179. Authorization to Execute a Memorandum of Understanding Regarding the Regional Harbor Monitoring Program.

³ Resolution 2008-30. Authorization to Execute a Memorandum of Understanding Regarding the Regional Harbor Monitoring Program.

⁴ Resolution 2013-105. Resolution Authorizing a Memorandum of Understanding Between the District and the City of San Diego, City of Oceanside, and County of Orange to Share Costs and Implement the Regional Harbor Monitoring Program to Evaluate the Status and Trends of Water, Sediments, and Aquatic Life in the Region’s Harbors for a Period of Five Years Pursuant to Section 13225 of the California Water Code

⁵ Regional Harbor Monitoring Program Pilot Project 2005-2008 Summary Final Report. Prepared for the Port of San Diego, City of San Diego, City of Oceanside, and County of Orange. Prepared by Weston Solutions, Inc. 2008.

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http://www.portofsandiego.org/public-documents/doc_view/3208-study-regional-harbor-monitoring-program-pilot-project-2005-2008-summary-final-report.html

⁶ Regional Harbor Monitoring Program 2008 Final Report. Prepared for the Port of San Diego, City of San Diego, City of Oceanside, and County of Orange. Prepared by Weston Solutions, Inc. 2010.

http://www.portofsandiego.org/public-documents/doc_view/3209-study-regional-harbor-monitoring-program-2008-final-report.html

⁷ Regional Harbor Monitoring Program 2013 Final Report. Prepared for the Port of San Diego, City of San Diego, City of Oceanside and County of Orange. Prepared by Amec Foster Wheeler, Inc. 2016.

<https://www.portofsandiego.org/document/environment/regional-harbor-monitoring-program/rhmp-2013/7289-final-2013-rhmp-report/file.html>

**MEMORANDUM OF UNDERSTANDING
REGARDING THE REGIONAL HARBOR MONITORING PROGRAM**

This Memorandum of Understanding, hereinafter called the “Regional Harbor Monitoring Program MOU” is made and entered into in July 2018, between the County of Orange, City of Oceanside and City of San Diego, all municipal corporations (“County & Cities”), and the San Diego Unified Port District, a public corporation (“Port”). The Port and County & Cities shall be referred to hereinafter individually and/or collectively as “Party/ies.”

RECITALS

Whereas, the Port and the County & Cities have negotiated this Regional Harbor Monitoring Program MOU to work jointly to implement the Regional Harbor Monitoring Program. The Regional Harbor Monitoring Plan (RHMP) is required by the July 24, 2003, directive from the San Diego Regional Water Quality Control Board (RWQCB) pursuant to §13225 of the California Water Code. The intent of this program is to develop a coordinated monitoring effort of harbors in the San Diego Region to provide water quality status and trends information, as well as to assess the surface water’s abilities to support designated beneficial uses.

Whereas, the Port has agreed to lead the RHMP for the Parties.

Whereas, the Parties recognize that expenditures will be needed to complete the work identified in the RHMP, and that the costs will be shared between the Port and County & Cities.

Whereas, the Parties have reached an agreement on a funding formula as described in Exhibit A, which will be applied to allocate portions of the total RHMP costs to each Party. The funding formula is based upon land (water) area, harbor stratification, and a fixed percentage for data management and reporting.

Whereas, the County & Cities agree to provide funding to the Port for their portion of the costs associated with implementing the RHMP as described in this MOU and for administrative oversight of the RHMP.

Whereas, the Parties intend this MOU to provide for the performance of studies, monitoring and development of programs and funding therefore for a period of five (5) years, through June 30, 2023 after which the Parties recognize that additional agreements may be necessary for further monitoring, studies and load reduction implementation projects over the period covered by the RHMP.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties hereby agree as follows:

1. TERM OF MOU

- a. The term of this MOU shall commence on July 1, 2018 and is effective through June 30, 2023, unless earlier terminated by the Parties as provided below.

2. DIVISION OF PROGRAM COSTS

- a. Exhibit A, attached hereto and incorporated by this reference describes the default cost-share formula agreed upon by the Port and County & Cities. The cost share formula is applicable to any and all consultant costs and work performed under the RHMP. The associated costs shall be divided among participating Parties using the default formula reflected in Exhibit A, and described, in part, below, unless a Special Formula is approved by the Parties to which the cost applies.
 - i. Fifty percent (50%) of the total RHMP costs shall be allocated for water area in each harbor. Water areas shall be divided among the Parties by dividing the total water area for the harbor of each Party by the combined total water areas for the harbors within the geographic area applicable to the RHMP.
 - ii. Thirty-five percent (35%) of the total RHMP costs shall be allocated for harbor stratification. Harbor stratification costs shall be divided among Parties by dividing the number of strata present for each harbor area by the overall number of strata possible for inclusion within each harbor area.
 - iii. Fifteen percent (15%) of the total RHMP costs shall be allocated equally amongst all of the Parties for data analysis, data management and reporting.
 - iv. Modification of the Default Formula requires the unanimous approval of all Parties signatory to this MOU.
- b. The County & Cities shall reimburse the Port for overhead expenses associated with the administrative costs incurred during the role of leading the RHMP in the amount of five percent (5%) of the RHMP costs determined under the default cost-share formula in Exhibit A. This administrative cost shall be divided evenly among the County & Cities.
- c. Exhibit B, attached hereto and incorporated by this reference, reflects each Party's total financial obligation under this MOU, in the form of not-to-exceed costs agreed upon by the Parties and determined according to the cost share formula in Exhibit A and five percent (5%) administrative cost for work performed under this MOU.

- d. The obligation of each Party is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating any Party to expend any funds beyond those lawfully appropriated or as involving any Party in any contract or other obligation for the future payment of money in excess of appropriations authorized by law.
- e. Special cost-share formulas may be needed to fund special studies or other efforts required for RHMP compliance and conducted jointly by the Parties. The special cost-share formula shall be developed as appropriate to satisfy required efforts. Unanimous approval by all Parties participating in the cost-share formula shall be required prior to its adoption.

3. FUNDING AND PROGRAM BUDGET

- a. The Port shall submit a budget for each fiscal year throughout the term of this MOU to the County & Cities by December 1 of each year. The budget shall contain an explanation of any recommended program changes, an estimate of all planned expenditures and an estimate of the payment required from the County & Cities for the following fiscal year. The County & Cities shall be permitted to review and approve the program scope of work and budget for the forthcoming year.
- b. The Port shall prepare a fiscal year end accounting within 90 calendar days of the end of each fiscal year. If at the end of each fiscal year the invoiced funds exceed the total costs of work performed during that fiscal year, the excess funds shall be credited to the next fiscal year's allocated costs.
- c. The Port shall provide reasonable notice to the Parties in writing if it appears that costs may exceed the budget approved by the Parties for any fiscal year. If any fiscal year end accounting results in costs exceeding the sum of the deposits, and the Port has notified the Parties of potential cost overruns, the Port shall seek approval of the excess cost from the Parties in the form of a revised budget and, upon approval, shall invoice each Party for its prorated share of the excess cost up to the amount of the revised approved budget.
- d. Upon termination of this Regional Harbor Monitoring Program MOU, if there are any excess funds, the Port shall reimburse the County & Cities their prorated share within 90 calendar days of the final accounting.

4. PAYMENT

- a. The Port will invoice County & Cities no later than the beginning of each fiscal year with the agreed upon amount for each upcoming fiscal year.
- b. The County & Cities shall pay the Port's invoice within 45 calendar days from the date of the invoice.

5. OBLIGATIONS OF THE PORT

- a. Project Administration
 - i. The Port will provide overall administrative and other professional services required for design and managing the Regional Harbor Monitoring Program. Responsibilities shall include, but not be limited to the coordination of Parties and consultants, setting up and leading RHMP meetings, preparing annual RHMP budgets, invoices, etc., corresponding with the RWQCB regarding work completed, and reviewing and/or preparing documents and reports.
 - ii. The Port will assign qualified personnel to the RHMP project and be responsible for the general administration of the work performed by the selected consultant(s).
 - iii. The Port will provide quality assurance services to ensure all required monitoring, submittals, and other contract requirements are met by the consultant(s).
 - iv. The Port will provide annual invoices, detailed in the aforementioned Section 4, PAYMENT, by July 1 of each year to the County & Cities detailing the nature of the work to be performed and the amount of funding required during the next fiscal year. These invoices will include all monies needed for consultant(s) services for sampling, monitoring etc., and administration of the contract work.
- b. Consultant selection
 - i. The Port will be responsible for the preparation of, advertising for, opening, reviewing bids, award and administration of any consultant contract(s).
- c. The Port will develop the terms and conditions that reasonably protect the Parties from liability that may occur as a result of the Port executing the consultant agreement(s) and acting as the contracting agent.
- d. The Port will include language in the consultant agreement(s) to include all Parties as additional insured. Language will also be added to the consultant agreement(s) to ensure that consultant(s) agrees to indemnify the County & Cities as well as the Port to the extent permitted by law.

6. OBLIGATIONS OF THE COUNTY & CITIES

- a. The County & Cities will attend meetings, promptly return telephone calls and correspondence, participate in discussions, provide review and comments on consultant deliverables, and will share information essential for task development and completion.

- b. The County & Cities will coordinate with the Port to review and approve an RHMP budget for each fiscal year that is agreed upon by all Parties.
- c. The County & Cities will provide funding for the costs incurred under this MOU, subject to appropriations, based upon the terms and conditions of this MOU. County & Cities will pay full amount of invoice by 45 calendar days from the date of the invoice.
- d. The County & Cities agree to participate in the selection of one or more consultants to perform the work identified for the RHMP. The participation will include but not be limited to review of submitted proposals, interviews with consultants, and determination of final consultant selection.
- e. The County & Cities will provide services to review and approve consultant submittals. In the event any change in consultant scope of work is required due to unforeseen conditions, the County & Cities shall review any changes and provide appropriate response.
- f. The County & Cities agree to allow the Port and/or its consultants to enter property for work undertaken as a part of the RHMP. Before any such monitoring activities, the County & Cities will be contacted and the appropriate measures will be taken to ensure access.
- g. The County & Cities will provide funding to the Port for an additional five percent (5%) of the total consultants cost for overall project management including general administration (“Administrative Cost”), up to, and in accordance with, each Party’s share of the Administrative Costs stated in Exhibit B. This administrative cost shall be shared equally among the County & Cities.

7. GENERAL CONDITIONS

- a. The Parties shall comply with all federal, state, and local laws and ordinances applicable to the work to be performed under the terms of this Regional Harbor Monitoring Program MOU.
- b. The Parties will follow the practice of the environmental professional in rendering findings, opinions, factual presentations, professional advice, and recommendations.
- c. Administration of this MOU and the associated consultant agreement(s) is under the jurisdiction of the Port herein, and any communication of the terms or conditions or any changes thereto.
- d. This MOU shall be effective on and from the date signed by the Parties.
- e. Notices required or permitted pursuant to this Regional Harbor Monitoring Program MOU shall be sufficiently given in writing and either served personally or mailed by certified mail; however, invoices, payments, and other communications according to this MOU may be served by first class U.S. mail to:

Karen Holman
Director, Environmental Protection Program
Planning and Green Port
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488

Drew Kleis
Deputy Director, Transportation and Storm Water Department
City of San Diego
9370 Chesapeake Dr. Ste. 100
San Diego, CA 92123

Chris Crompton
County of Orange
2301 North Glassell St.
Orange, CA 92865

Ted Schiafone
City of Oceanside – Harbors and Beaches
1540 Harbor Drive North
Oceanside, CA 92054

or such other person and address as either party shall advise the other, in writing, in conformity with this section.

- f. In the event of litigation with respect to this MOU or the interpretation thereof, and in respect to all disputes or controversies arising hereunder, this MOU shall be construed in accordance with, and governed by, the laws of the State of California. Venue in respect to any suit or proceeding brought under or in connection with this MOU shall be the County of San Diego, State of California.
- g. This MOU and all rights and obligations contained herein shall be in effect whether or not any of the parties to this MOU have been succeeded by another entity, and all rights and obligations of the parties signing this MOU shall be vested and binding on their successor of interest.
- h. No failure of either the Port or the County & Cities to insist on strict performance by the other of any covenant, agreement, term, or condition of this MOU or to exercise any right or remedy consequent of a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this MOU, but each and every covenant, agreement, term and condition of this MOU shall continue in full force and effect without respect to any other existing or subsequent breach.

- i. This MOU represents the entire understanding of the Port and the County & Cities as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This MOU may not be modified or altered except in writing signed by all parties.
- j. The Parties agree to mediate any dispute prior to filing suit or prosecuting suit against the other parties. The cost of mediation shall be borne equally by the Parties. In the event suit is brought upon this MOU to enforce its terms, each party shall be responsible for its own attorneys' fees and costs.
- k. The County & Cities agree to defend, indemnify, protect, and hold the Port and its agents, officers and employees harmless from any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the Port's employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of the County & Cities and its contract agents, officers, or employees resulting from the consultant(s) and all expenses of investigating and defending against same; provided, however, that the County & Cities duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the Port, its agents, officers or employees.
- l. The Port agrees to defend, indemnify, protect, and hold the County & Cities and its agents, officers and employees harmless from any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the County & Cities employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of the Port and its contract agents, officers, or employees resulting from the consultant(s) and all expenses of investigating and defending against same; provided, however, that the Port's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the County & Cities, its agents, officers or employees.

8. TERMINATION

- a. Any Party wishing to terminate its participation in this MOU shall so notify all other Parties in writing by March 1 of any year. Such termination shall be effective the following June 30. The terminating Party shall be responsible for financial obligations hereunder to the extent incurred in accordance with this agreement by the Party prior to the effective date of termination. The balance of the Parties may continue in the performance of the terms and conditions of this MOU on the basis of a revised allocation of cost based on the funding formula in Exhibit A.

- b. If any Party fails to meet or fulfill its obligations under this MOU, the Party must be notified immediately and provided the opportunity to cure such breach. If the Party fails to cure the breach within five business days, any Party may terminate this MOU.
- c. The indemnification provisions set forth in Section 7, subsection k and l shall survive the termination of this MOU.

IN WITNESS WHEREOF, this “Regional Harbor Monitoring Program MOU,” is executed as follows:

SAN DIEGO UNIFIED Port DISTRICT

Date: _____ BY _____

I HEREBY APPROVE the form and legality of the foregoing Regional Harbor Monitoring Program MOU on this _____ day of _____, 2018.

Port Attorney

IN WITNESS WHEREOF, this Regional Harbor Monitoring Program MOU, is executed as follows:

CITY OF SAN DIEGO

Date: _____ BY _____

Title _____

I HEREBY APPROVE the form of the foregoing Regional Harbor Monitoring Program MOU on this _____ day of _____, 2018.

MARA W. ELLIOTT, City Attorney

Davin A. Widgerow
Deputy City Attorney

IN WITNESS WHEREOF, this Regional Harbor Monitoring Program MOU, is executed as follows:

CITY OF OCEANSIDE

BY _____

I HEREBY APPROVE the form and legality of the foregoing Regional Harbor Monitoring Program MOU on this _____ day of _____, 2018.

Oceanside City Attorney

IN WITNESS WHEREOF, this Regional Harbor Monitoring Program MOU, is executed as follows:

COUNTY OF ORANGE,

BY _____

Chairman, Board of Supervisor
Orange County, California

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: _____

Deputy

Date: _____

Signed and certified that a copy of this document
has been delivered to the Chairman of the Board
per G.C. Sec. 25103, Reso 79-1535

ATTEST:

Clerk of the Board of Supervisors
Orange County, California

IN WITNESS WHEREOF, this Regional Harbor Monitoring Program MOU, is executed as follows:

COUNTY OF ORANGE,
a political subdivision of the State of California

BY _____
Stacy Blackwood, OC Parks Director

APPROVED AS TO FORM:
COUNTY COUNSEL,
ORANGE COUNTY, CALIFORNIA

By: _____
Deputy

Date: _____

EXHIBIT A

Regional Harbor Monitoring Program Proposed Cost Share Formula¹

Agency	Harbor	Acreage			Strata		Fixed Cost		Share of Total
		Total Harbor Acreage (mapped)	% of Total Acreage	Total Strata Present in Harbor ³	% of Total Strata	% Fixed Cost Percentage	% of Total Costs ²	Total	
County of Orange	Dana Point	159	1.21	4	25.00	15	13%		
City of Oceanside	Oceanside	61	0.47	3	18.75	15	11%		
City of San Diego	Mission Bay	2041	15.59	4	25.00	15	20%		
Port	San Diego Bay	10,831	82.73	5	31.25	15	56%		
TOTALS		13,092	100%	16	100%		100%	\$0.00	

¹Agency costs will be divided according to the following cost allocation formula:

- 1) Fifty percent (50%) of the total cost shall be divided based upon total acreage in each agency's respective harbor/bay.
- 2) Thirty-five percent (35%) of the total cost shall be divided based upon number of strata contained in each bay/harbor.
- 3) Fifteen percent (15%) of the total cost will be divided equally among all participating agencies. This cost share formula does not include the five percent (5%) Administrative Cost to the Port identified in the MOU. The Administrative Cost will be shared equally among the Cities and County and will be applied to annual invoices based on work conducted by a selected consultant(s).

²The total cost percentage is based on applying the 50-35-15 cost percentage to estimated funding required for the RHMP which results in the final percentages identified herein.

EXHIBIT B Regional Harbor Monitoring Program Not To Exceed Costs*

Agency	Year 1 Cost-Core Monitoring (Phase 2) (\$1,050,000)			Year 2 Cost Additional Monitoring, Analysis, Reporting (Phase 2) (\$150,000)			Years 3-4 Cost Additional Monitoring, Additional Reporting (\$100,000/year)			Year 5 Cost Project Planning (Phase 1 RHMP 2023)(\$125,000)				Years 1-5 Total Contract Costs	Years 1-5 Total Cost
	Cost Share Amount	5% Administrative Cost	Year 1 Total Cost	Cost Share Amount	5% Administrative Cost	Year 2 Total Cost	Cost Share Amount	5% Administrative Cost	Total Annual Cost	Years 3-4 Total Cost	Cost Share Amount	5% Administrative Cost	Year 5 Total Cost		
County of Orange	\$137,626	\$17,500	\$155,126	\$19,661	\$2,500	\$22,161	\$13,107	\$1,667	\$14,774	\$29,547,73	\$16,384	\$2,083	\$18,467	\$199,885	\$225,301
City of Oceanside	\$110,727	\$17,500	\$128,227	\$15,818	\$2,500	\$18,318	\$10,546	\$1,667	\$12,212	\$24,424,33	\$13,182	\$2,083	\$15,265	\$160,818	\$186,235
City of San Diego	\$213,096	\$17,500	\$230,596	\$30,442	\$2,500	\$32,942	\$20,295	\$1,667	\$21,961	\$43,922,93	\$25,369	\$2,083	\$27,452	\$309,496	\$334,913
Port	\$588,551	\$0	\$588,551	\$84,079	\$0	\$84,079	\$56,053	\$0	\$56,053	\$112,105	\$70,066	\$0	\$70,066	\$854,801	\$854,801
TOTAL	\$1,050,000	\$52,500	\$1,102,500	\$150,000	\$7,500	\$157,500	\$100,000	\$5,000	\$105,000	\$210,000	\$125,000	\$6,250	\$131,250	\$1,525,000	\$1,601,250

*Costs are based on a \$1,525,000.00 contract award, determined according to the cost share formula presented in Exhibit A, and include a 5% Administrative Cost shared equally among the County & Cities.

2018 RHMP MOU

- 15 -

January 2, 2018

Attachment B to File No. 2018-0135

(35)

San Diego Unified Port District
 Document No. 66846
 Filed JUN 26 2017
 Office of the District Clerk

**AGREEMENT BETWEEN
 SAN DIEGO UNIFIED PORT DISTRICT
 and
 AMEC FOSTER WHEELER ENVIRONMENT & INFRASTRUCTURE, INC.
 for
 REGIONAL HARBOR MONITORING PROGRAM
 AGREEMENT NO. 106-2017SN**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and AMEC FOSTER WHEELER ENVIRONMENT & INFRASTRUCTURE, INC., a Nevada Corporation (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall provide services to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or their designated representative informed of the progress of said services at all times.
 - a. **As-Needed Services**
 - (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
 - (2) Service Provider shall furnish all technical and professional labor, and materials to satisfactorily comply with Attachment A: Scope of Services as requested by District by issuance of specific Task Authorization and agreed to by Service Provider.
 - (3) Services rendered under this Agreement shall be undertaken by Service Provider only upon issuance of a Task Authorization (TA) for said services, in the format as shown in the attached Exhibit A,

attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on July 1, 2017 and shall terminate on June 30, 2022, subject to earlier termination as provided below.
3. **COMPENSATION.** For performance of services rendered pursuant to this Agreement and as further described in Attachment B, Compensation and Invoicing, attached hereto and incorporated herein; District shall compensate Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:
 - a. **Maximum Expenditure.** The maximum expenditure under this Agreement shall not exceed \$1,525,000. District shall compensate Service Provider using the terms and conditions in Attachment B, Compensation and Invoicing. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred.
 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

- c. **Progress Documentation.** Service Provider shall provide District progress reports in a format and on a schedule as District directs. Progress reports shall include a description of work completed, cumulative dollar costs incurred, anticipated work for the next reporting period, percentage of work complete, and the expected completion date for remaining work. The report shall identify problem areas and important issues that may affect project cost and/or schedule. The report shall present actual percent completion versus planned percent completion.

4. **RECORDS**

- a. Service Provider shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after the termination of this Agreement.
- b. Such records shall be maintained by Service Provider for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.
- c. Service Provider understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Service Provider shall provide District at Service Provider's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at reasonable times of the Service Provider's office or facilities, which are engaged in the performance of services pursuant to

this Agreement. Service Provider shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Service Provider's failure to provide the records within the time requested shall preclude Service Provider from receiving any compensation due under this Agreement until such documents are provided.

5. **SERVICE PROVIDER'S SUB-CONTRACTORS**

- a. It may be necessary for Service Provider to sub-contract for the performance of certain technical services or other services for Service Provider to perform and complete the required services; provided, however, all Service Provider's sub-contractors shall be subject to prior written approval by District. The Service Provider shall remain responsible to District for any and all services and obligations required under this Agreement, whether performed by Service Provider or Service Provider's sub-contractors. Service Provider shall compensate each Service Provider's sub-contractors in the time periods required by law. Any Service Provider's sub-contractors employed by Service Provider shall be independent Service Providers and not agents of District. Service Provider shall insure that Service Provider's sub-contractors satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.
- b. Listed below are the firms that the District has approved as Service Provider's sub-contractors to provide services under this Agreement:

<u>NAME OF FIRM</u>	<u>TYPE OF SERVICES PROVIDED</u>
Allen Burton, PhD	Third party reviewer
Brock Bernstein, PhD	Third party reviewer, Sampling Design, Focused studies, Regulatory Liaison
Laboratory Data Consultants	Third party reviewer of analytical data
Merkel & Associates, Inc.	Field Support & benthic infaunal analyses
Seaventures, Inc.	Vessel support & fish trawling

- c. Service Provider shall also include a clause in its Agreements with Service Provider's sub-contractors which reserves the right, during the performance of this Agreement and for a period of three (3) years following termination of this Agreement, for a District representative to audit any cost, compensation or settlement resulting from any items set forth in this Agreement. This clause shall also require Service Provider's sub-contractors to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE AND WARRANTY**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.
- c. Service Provider warrants and represents that it shall (i) perform the services with competent and skilled personnel in a good and workmanlike manner consistent with applicable industry standards and practices; (ii) use sound engineering and/or technical principles where applicable; (iii)

perform the services in compliance with specifications provided or approved by District; (iv) use or furnish materials and equipment that are merchantable, fit, and new unless otherwise provided in the TA; and (v) where mutually agreed, use or furnish merchantable and fit used material and equipment. To the extent assignable, all rights and remedies available to Service Provider or its subcontractors shall be passed directly to District. At no cost to District, Service Provider shall remedy nonconforming workmanship or replace nonconforming material and equipment, including removal of facilities as maybe necessary to reveal and repair or replace nonconforming services, and reinstallation of such facilities removed in connection therewith. If Service Provider does not remedy nonconforming service within ten (10) days written notice from company or within a time period otherwise agreed to by District and Service Provider (such an agreement not to be unreasonably withheld because outside factors may impact the time), District may do so at Service Provider's expense. If Service Provider fails to pay this expense, District may deduct all expenses from any proceeds due to Service Provider. At no cost to District, Service Provider shall diligently and promptly remedy nonconforming workmanship, material and equipment appearing within one (1) year from the date of final acceptance, or within such longer period of time warranted by the manufacturer warranty; provided, however, with respect to latent defects in equipment and material installed by Service Provider such period shall be within such time as District discovers or should have discovered such latent defects under normal operating circumstances, but in no event less than four (4) years from installation by Service Provider.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of Executive Director (President/CEO) of District in each instance.
9. **INDEMNIFY, DEFEND, HOLD HARMLESS**
- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.
- b. The Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Service Provider provided for in this Agreement.
- c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any

Claim arising from the services of Service Provider provided for in this Agreement, Service Provider agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS**

a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:

(1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

(a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.

(b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit C, Certificate of Insurance, attached hereto and incorporated herein).

(c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-insurance maintained by the District shall be excess of the Service Provider's insurance and shall not contribute to it.

- (d) The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District ("Waiver of Subrogation").
- (2) Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- (3) Workers' Compensation, statutory limits, is required of the Service Provider and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.
- (4) Umbrella or Excess Liability insurance with limits no less than one million dollars (\$1,000,000) per occurrence and aggregate. This policy must provide excess insurance over the same terms and conditions required above for the General Liability, Automobile Liability and Employer's Liability policies.
- (5) Contractors Pollution Liability insurance with limits no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- (6) For services at or near dock areas or water coverage in an amount of not less than one million dollars (\$1,000,000.00) for liability under

the Jones Act, Death on High Seas Act, and General Maritime Law to the extent not covered by Commercial General Liability.

- b. Service Provider shall furnish District with certificates of insurance coverage for all the policies described above upon execution of this Agreement and upon renewal of any of these policies. A Certificate of Insurance in a form acceptable to the District, an exemplar Certificate of Insurance is attached as Exhibit C and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with the District. Except in the event of cancellation for non-payment of premium, in which case notice shall be 10 days, all such policies must be endorsed so that the insurer(s) must notify the District in writing at least 30 days in advance of policy cancellation. Service Provider shall also provide notice to District prior to cancellation of, or any change in, the stated coverages of insurance.
- c. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of insurance, the addendum shall indicate the insurance carrier or underwriter who is the lead carrier and the applicable policy number for the CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or subcontractors.

12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **CONFLICT OF INTEREST** Service Provider represents and warrants the following:
- a. No current or prior conflict of interest. That Service Provider has no business, professional, personal or other interest, including but not limited to, the representation of clients, that would conflict in any manner or degree with the performance of its obligations under this agreement.
 - b. Notice of Potential Conflict. If any such actual or potential conflict of interest arises under this Agreement, Service Provider shall immediately inform the District in writing of such conflict.
 - c. Termination for Conflict. If the District determines that such conflict poses a material conflict to and with the performance of Service Provider's obligations under this Agreement, then the District, in its sole and absolute discretion, may terminate the Agreement immediately upon written notice to Service Provider. Such termination of the Agreement shall be effective upon the receipt of such notice by Service Provider.
15. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
16. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

17. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.
18. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.
19. **DISPUTE RESOLUTION**
- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other

procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.

- b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, sub-contractor and all parties bound by this arbitration provision agree to join in and become parties to the arbitration proceeding.
- c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

20. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Service Provider at no expense to the District. If such expenses, miscellaneous charges, or other liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Service Provider. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Service Provider.

21. **COMPLIANCE WITH PREVAILING WAGE LAWS**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons

and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.

- b. Certified Payrolls. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls electronically via the software LCPtracker.
- (1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Service Provider will be given a Log-On identification and password to access the San Diego Unified Port District's reporting system upon Service Provider's request.
 - (2) The use of LCPtracker by the Service Provider is mandatory. Access to LCPtracker will be provided at no cost to the Service Provider.
 - (3) In order to utilize LCPtracker, the Service Provider needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to www.lcptracker.com. To Login, go to www.lcptracker.net and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Service Provider's request.
 - (4) Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Service Provider's payroll and accounting software

might be capable of generating a 'comma delimited file' that will interface with the software.

- (5) Service Provider must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will be given a Log-On identification and password from the Service Provider.
- (6) Training options can be provided to the Service Provider upon request.

22. **SERVICE PROVIDER/CONTRACTOR REGISTRATION PROGRAM**

- a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
- b. 2.4.1 No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless

registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

- d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
23. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
24. **EXECUTIVE DIRECTOR'S SIGNATURE.** It is an express condition of this Agreement that said Agreement shall not be complete nor effective until signed by either the Executive Director (President/CEO) or Authorized Designee on behalf of the District and by Authorized Representative of the Service Provider.
- a. Submit all correspondence regarding this Agreement to:

Kelly Tait
 Planning & Green Port
 San Diego Unified Port District
 P.O. Box 120488
 San Diego, CA 92112-0488
 Tel. 619-686-6372
 Email: ktait@portofsandiego.org

- b. The Service Provider's Authorized Representative assigned below has the authority to authorize changes to the scope, terms and conditions of this Agreement:

Barry J. Snyder
 Amec Foster Wheeler
 Environment & Infrastructure, Inc.
 9210 Sky Park Court, Suite 200
 San Diego, CA 92123
 Tel. 858-300-4300
 Email: barry.snyder@amecfw.com

- c. Written notification to the other party shall be provided, in advance, of changes in the name or address of the designated Authorized Representative.

SAN DIEGO UNIFIED PORT DISTRICT

**AMEC FOSTER WHEELER
ENVIRONMENT &
INFRASTRUCTURE, INC.**

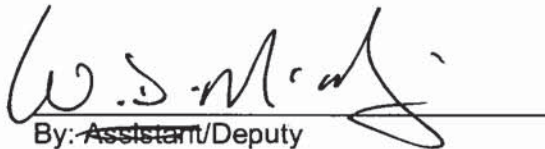


 Jason H. Giffen
 Assistant Vice President
 Planning & Green Port



 Barry J. Snyder, Branch Manager
 Aquatic Sciences

Approved as to form and legality:
GENERAL COUNSEL



 By: ~~Assistant~~/Deputy

A manually signed copy of this Agreement transmitted by email or any other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**ATTACHMENT A
SCOPE OF SERVICES**

San Diego Unified Port District

I. GENERAL PROGRAM BACKGROUND & INFORMATION

- A. Service Provider to provide program design and support, sample collection, analysis of biological, chemical, and toxicological data, reporting, and scientific counsel for the implementation of the Regional Harbor Monitoring Program (RHMP).
- B. The Service Provider will be required to represent the Regional Harbor Monitoring Program (RHMP) Agencies by attending and participating in Bight Program planning meetings, design monitoring programs, conduct monitoring and sample collection, and provide a variety of analytical and reporting services for the RHMP Agencies to include: The District, the Cities of San Diego and Oceanside and the County of Orange. The work should be focused on collecting information pertaining to ambient conditions, evaluating the status of beneficial uses and trends, and identifying and determining the sources and effects of pollutants in the four harbors. A summary of the methods, results, and subsequent analyses is required. A discussion of the results as they pertain to the RHMP questions is also required. Additional focused studies and reporting may be required as well, pending the proposed program design. All work will be incorporated into deliverables including a technical report and a public-friendly document.
- C. Aligning RHMP monitoring framework with current monitoring goals had been discussed in a series of meetings with the SDRWQCB and stakeholders during the fall of 2016 and winter of 2017, and the program may further evolve from what is discussed below as Bight planning begins in summer 2017.

II. SCOPE OF SERVICES

- A. Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.

Phase 1 - Year 1

1. Meeting Support

As directed by the District, attend meetings with the District, Cities, County and necessary stakeholders, which may include District tenants, SDRWQCB, members of the public, or the scientific community. Meetings may be conducted to design monitoring plans and special studies, discuss program progress, present results, and/or provide technical and scientific counsel. In some instances, the Service Provider may be required to attend meetings on behalf of the RHMP Agencies. Furthermore, the Service Provider may be required to prepare presentations and/or provide relevant literature or other forms of documentation during meetings.

2. Work Plan

Prior to monitoring, the Service Provider must develop a work plan that is approved by the District outlining the Core Monitoring Program (discussed below), which shall include, but not be limited to: a schedule of monitoring, analysis, and reporting; sequence of work; and a list of team members and roles (including those of sub-consultants).

3. Sample Design

The foundation of the RHMP is a monitoring program to assess the quality of water, sediments, aquatic life, and trends within the RHMP harbors. As directed by the District, the Service Provider will design a program that can adequately answer the RHMP core monitoring questions and as further set forth herein. The Service Provider must review and become familiar with the sample design, monitoring requirements, data, and methods used to conduct monitoring and analysis associated with the 2008 and 2013 RHMP as well as the Bight Program. In addition, the monitoring program shall generally comply with the 2012 SDRWQCB Staff Report "A Framework for Monitoring and Assessment in the San Diego Region" as well as the 2015 SDRWQCB Strategy for a Healthy San Diego Bay. A review of methodologies in similar monitoring programs shall be conducted to ensure best practices and industry standards are used. If the sample design or methodologies practiced in the 2008 and 2013 RHMP need to be updated or revised, the Service Provider should propose new methodology that will provide a defensible comparison to previous results and trends.

All programs should be designed to integrate with existing or future monitoring programs that are regularly conducted in the region, including National Pollutant Discharge Elimination System (NPDES) monitoring, Total Maximum Daily Load (TMDL) monitoring, Water Quality Improvement Plan (WQIP) monitoring, Unified monitoring and the San Diego Bay Strategy, and other permit compliance monitoring, ongoing special studies, and, most importantly, the Bight Program. Additionally, the RHMP and all accompanying analytical results must be designed to be

comparable with the California's Surface Water Ambient Monitoring Program (SWAMP).

4. Quality Assurance Project Plan

For the core monitoring program and/or each focused study, the Service Provider shall provide a Quality Assurance Project Plan (QAPP) that outlines all quality assurance/quality control procedures for the District's review and acceptance. The QAPP shall have all of the 24 elements consistent with SWAMP requirements. The QAPP shall be prepared prior to monitoring (core monitoring or focused monitoring) and submitted to the RHMP Agencies and/or SWAMP for review and approval. A copy of the approved QAPP shall be present with the Service Provider during monitoring events and shall be strictly followed. The QAPP must be included in the final report(s). If approved methods deviate from the sample design, monitoring program, analytical approach, or QAPP or data is determined to contain errors, the District shall be notified immediately and a remedy shall be implemented to correct the problem or inaccuracy. If the Service Provider choose to sub-contract analytical work or other work to an outside vendor, applicable standard operating procedures (SOPs) should be provided and included as appendices of the QAPP subject to review by the RHMP Agencies.

Phase 2 -Year 2, and as needed Years 3 through 5:

5. Monitoring

It is anticipated that the program may require different types of monitoring efforts to address the RHMP questions. Core monitoring will be used to evaluate ambient conditions and the status of long-term trends. Focused studies may be designed to answer specific questions that do not require long-term assessment. Details on each monitoring program's requirements are defined below which shall be conducted at the direction of the District.

a. Core (Ambient) Monitoring

- (1) Core monitoring will include the collection of data regarding status of physical, chemical, and biological indicators as well as observations of trash and debris. The core monitoring program should provide adequate information to address the core monitoring questions and allow statistically valid statements to be made about the status of conditions and trends (improving or degrading over time) in each harbor as well as the harbors as a whole.

- (2) Samples will be collected during the summer months in each harbor (July through September 2018). The summer months were selected for the monitoring period because these months represent stabilization of the benthic community following winter storms and spring generation of organisms. This timing allows for integration with the Bight Program, which is scheduled for the summer of 2018. The core sampling schedule, procedures, quality assurance requirements, methodologies for all indicators, and data standardization/management must be consistent with the Bight Program as the data collected during the RHMP will be integrated into the Bight dataset. The Bight Program has fully developed protocols that will be adapted to the RHMP. As stated, the core monitoring program shall be designed so that a defensible comparison to the 2008 and 2013 RHMP results can be analyzed and discussed. The design elements detailed here will be used as part of the RHMP core monitoring program.

- (3) Monitoring Indicators:

The general requisite components of monitoring are listed below.

- i. Water: general parameters, chemistry, toxicity
- ii. Sediment: chemistry, grain size, benthic community, and toxicity
- iii. Fish and Macroinvertebrates (trawls): abundance, biomass, community indices, and tissue
- iv. Trash: type, abundance, location

Lists of indicators including units of measurement and reporting limits are presented as an example in Appendix B to this RFP. The final list of indicators will be reviewed prior to monitoring and may be adjusted to compliment the 2018 Bight Program or other needs.

- (4) Previously, in both 2008 and 2013 the harbors have been portioned into five strata for the purposes of the RHMP. These strata may continue to be used to facilitate sample design during the new program, with the possibility of additional strata and the numbers of sampling stations within each changing from previous sampling as Bight 2018 planning begins. The five strata previously used are listed below:

- i. Freshwater inputs
- ii. Shallow water
- iii. Deep water

- iv. Marinas
- v. Port/Industrial

The extent and identification of strata for each harbor during 2008 and 2013 are available in a GIS format.

- (5) Water and sediment sampling stations shall be present within each stratum. All stations, including trawl sampling stations, shall be selected according the 2018 Bight Program protocols and remain similar to the sampling design presented in the 2008 and 2013 RHMP. Sampling station location names and geographic coordinates will be provided to the Service Provider prior to the commencement of monitoring. The number of water and sediment stations shall not exceed 75; trawl stations shall not exceed 18.
- b. Focus Studies Monitoring
- (1) Research that is suitable for focused studies based on the results and analysis of the core monitoring program may be conducted. These studies may be designed and conducted in designated portions of all or some of the harbors.
 - (2) Studies will be developed in conjunction with input from the RHMP Agencies and will address common, emerging, or high priority issues on an as-needed basis.
 - (3) All monitoring programs will be designed with consideration of existing programs, such as unified monitoring, NPDES, TMDL, or other permit required monitoring programs, so that resources are effectively leveraged and efforts are not duplicated.
 - (4) One possible new area of focus may be related to the development of a new program component that will seek to address and characterize trash and debris in the harbors. This potential new focus will address data gaps while not overlapping with trash and debris programs already in place via other monitoring programs (see attached Meeting minutes).

6. Quality Assurance

- a. Internal QA Officer
- A QA Officer within the Service Provider team shall be used to review draft laboratory data to ensure consistency with the project QAPP and determine the quality of all draft, raw data prior to conducting and interpreting statistical analyses, drawing scientifically valid conclusions, and developing a draft report. A report that ensures data accuracy and consistency with the QAPP shall be presented to the RHMP Agencies for review prior to the

development of draft report(s) (including laboratory reports) and shall be included in the final project report(s) appendices.

b. Third Party Review

As required by SWAMP, a third-party QA Officer shall be used to review draft laboratory data to ensure consistency with the project QAPP and determine the quality of all draft, raw data prior to conducting and interpreting statistical analyses, drawing scientifically valid conclusions, and developing a draft report. A third-party QA Officer shall be assigned from a third-party firm or competent professional who is familiar with SWAMP but is not involved in the acquisition processes. A report to ensure data accuracy and consistency with the QAPP shall be presented to the RHMP Agencies for review prior to the development of draft report(s) (including laboratory reports) and shall be included in the final project report(s) appendices.

7. Equipment

The Service Provider will be responsible for furnishing all equipment and materials, including a boat, required to complete all phases of the RHMP. All disposable materials furnished by the Service Provider will be new and unused materials only and must be approved by the District before use. Service Provider will provide sample collection containers, coolers, sample labels, sample preservative supplies, filter media and chain of custody forms, as needed. Sample collection containers will include the appropriate preservative, if required. Service Provider will also be responsible for transporting samples to the analytical laboratories within required holding times.

Waste generated by the Service Provider and/or Sub-Contractors during District activities shall be the Service Provider's responsibility to store, transport, and dispose of in accordance with federal, state, and local laws. The District, Cities, and County shall remain liable as generator of the waste from each jurisdiction according to law. Service Provider shall be responsible for proper storage and ensure that a proper transporter and disposal facility has been approved. All contractors shall comply with California and Federal OSHA regulations, or any other appropriate laws. Service Provider personnel assigned to collect samples for the District must be 40-hour OSHA trained per 29 CFR 1910.120. The laboratory or laboratories providing analysis of samples must be certified by the California Department of Public Health or applicable agency.

8. Analysis and Reporting

a. Analysis

The Service Provider shall become familiar with the analytical methods used in the previous RHMP studies and apply similar or consistent methods to assess the quality of water, sediments, aquatic life, and trends within the RHMP harbors. The analysis shall be conducted with regard to the RHMP questions and to determine if beneficial uses are being protected and attained. As necessary, analysis shall provide statistically valid statements to be made about the status of conditions and trends. New analyses will likely be required and will be addressed as planning progresses for the 2018 RHMP Monitoring event. Analytical methods shall remain consistent with the 2013 Bight Program and should follow current industry standard guidelines for marine analysis (ie, Sediment Quality Objectives, Benthic Response Index, etc.).

If the analytical methods need to be revised or updated, the new analytical methods shall provide for a comparable analysis to previous methods and results. Revisions and/or updates shall be presented to and discussed with the RHMP Agencies, as applicable.

b. Reporting

For all RHMP deliverables associated with this contract, the Service Provider shall prepare and submit a draft report(s) summarizing the background and purpose of the project, methods pertaining to field sample collection, reporting limits, and analysis, limitations of the methodology (as necessary), results, a discussion regarding the RHMP questions and relevant information, and final conclusions for the District's review and approval. An executive summary and list of references, as needed, shall also be included. Specific recommendations for the reporting format and/or inclusion of additional information shall be decided upon by the RHMP Agencies.

In addition to technical, scientific reports associated with the Core Monitoring Program and/or Focused Studies, a final synthesis report summarizing the findings of the entire RHMP program shall be prepared prior to the conclusion of the contract for the District's review and approval. The synthesis report shall be used to convey the goals and results of the RHMP and developed and formatted in a public-friendly manner similar to work products such as the "Pulse of the Estuary" reports produced by the San Francisco Estuary Institute .

The RHMP Agencies shall review and comment on the draft report(s). Based on comments, the Service Provider will revise the draft report and submit final copies – 1 Word version, 5 hard copies, and 8 CD-ROMs to the District. Final reports shall also

include but not be limited to field sampling logs, station GPS coordinates, QAPP, chains-of-custody, raw chemical and biological data, complete mortality and water quality tables, bioaccumulation data, sediment chemistry, and reports associated with independent third party review. Appendices containing all of the chemical and biological analyses QA/QC data shall also be provided. Electronic versions of data should be formatted according to an agreed upon standard (ie, SWAMP and/or Bight formatting) for input into the District's data management structure.

9. Electronic Data Submittal Standards

The District's Planning and Green Port Department is implementing environmental Electronic Data Deliverable (EDD) Specifications to standardize and streamline the process by which environmental data are collected, organized, compiled, stored, processed, reported, transmitted, and archived. EDD Specifications will allow the District to access summary and detailed information on a data management and geographic information systems (GIS) platform.

EDD Specifications shall be used under this contract including the collection of project and field environmental data and measurements, laboratory analysis, and reports. EDD Specification-compliant deliverables are required for all field investigations and field sampling activities for all media. EDD Specification-compliant electronic deliverables will generally include, but will not be limited to:

- site location information,
- project information,
- locational and sample data,
- field measurements,
- physical, chemical, and biological measurements assessed,
- electronic submission of laboratory reports, and
- electronic submission of all paper document submittals.

All electronic submittals shall conform to EDD Specifications and shall be submitted in a format that is consistent with software used by the District. The EDD Specification-compliant electronic submittals, including but not limited to, reports, figures, appendices, data tables, spreadsheets, and database files pertaining to the program shall be submitted to the District for all tests performed unless other arrangements have been approved by the District. The District may specify additional electronic submittals.

All laboratory reports will be typewritten, well presented, easily understood, and consistent in format. QA/QC results will also be included with the analytical results. Laboratory report pages shall be numbered and contain the name of the laboratory responsible for analysis.

All laboratory reports will contain the name of the laboratory, sample identification number, name of the analytical test, analytical results, date the samples were analyzed, the time analysis was initiated, percent standard deviation, description of and results of control runs and method blank analysis, and the name of the person responsible for analysis.

10. Quality of Work

All work shall be conducted in accordance with current criteria and regulations established by District and regulatory agencies. All plans and laboratory reports shall be typewritten, neat, and legible. All elements of submittal from Service Provider shall be completely and thoroughly checked by the Service Provider before submittal to the District.

Service Provider shall ensure all QAPP procedures are strictly followed by its project staff as well as by its sub-contractors. The QAPP must meet SWAMP requirements. The QAPP shall include but not be limited to documentation of analytical reproducibility, analytical detection limits, reference materials, instrument calibration, and record keeping for various tests, which are consistent with applicable standard protocols. The appropriate analysis of blanks, reagent blanks, and standard reference materials shall be performed.

11. Liaison with District

Service Provider shall designate one person as the Project Manager who shall be cognizant of the District's requirements and ensure these requirements are met during the course of these services. The Service Provider shall provide project updates, discuss problem areas, and obtain additional direction from the District as required. All liaisons with the District shall be through the Planning and Green Port Department

**ATTACHMENT B
COMPENSATION & INVOICING
San Diego Unified Port District**

1. COMPENSATION

a. For the satisfactory performance and completion of the services under this Agreement, District shall pay Service Provider compensation as set forth hereunder.

- (1) Service Provider shall be compensated and reimbursed by District on the basis of invoices submitted each month for services performed during the preceding month. Task Authorizations shall be Time and Materials and each invoice for work performed shall include:

Date work performed;
Description of the work performed;
Hours worked by personnel classification;
Rate per personnel classification;
Total personnel cost by classification; and
Direct Costs.

- (2) Professional services shall be invoiced in accordance with the following Rate Schedules:

Labor Classification	Fully Burdened Hourly Billing Rate
Principal	\$195.37
Associate 2	\$152.04
Associate 1	\$141.58
Senior 1	\$99.90
Eng/Sci Professional 3	\$90.52
Eng/Sci Professional 1	\$73.38
Senior 2	\$122.04
Administrative Staff 6	\$103.99
Functional/Professional 3	\$92.14
Eng/Sci Professional 2	\$80.40
Administrative Staff 4	\$72.88

- (a) The following shall be considered part of the fully burdened hourly rates stated in this Agreement: vehicle expenses, parking, tolls, film, postage, facsimiles, computer usage, printing, normal copying and document reproduction, blue print services, travel, lodging, telecommunications, photography, and all other costs and expenses incurred in completing such services. No Escalation (0%) in rates will be permitted over the term of the agreement.

- (b) Additional classifications and fully burdened hourly rates not listed in the Rate Schedule above may be authorized via Task Authorization with the approval of the District's Project Manager.

b. **Reimbursable Expenses**

Sub-Contractor Costs	0% mark-up
Direct Costs	At Cost (zero mark-up)

Note: Reimbursement for other costs in excess of \$50.00 shall require the advance written approval by District's Project Manager. All other project related direct costs shall require appropriate documentation for reimbursement.

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.
- b. Service Provider shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section 1, above:
- 1) Agreement No. **106-2017SN**
 - 2) Task Authorization(s) (TA) number being charged.
 - 3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. **66846**, and that payment has not been received."
 - 4) Dates of service provided
 - 5) Date of invoice
 - 6) A unique invoice number
- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Kelly Tait, Planning & Green Port, San Diego Unified Port District, P.O. Box 120488, San Diego, CA 92112-0488.

- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

**EXHIBIT A
TASK AUTHORIZATION
San Diego Unified Port District**



Planning & Green Port
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-6254
Fax (619) 686-6467

TASK AUTHORIZATION NO. _

Date

(Name)
(Title)
(Name of Company)
(Address)
(City, State, Zip)
Email:

Subject: Task Authorization for Agreement No. __ - 20__

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$_____. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #_ on invoice(s) for this Task.**

TASK DESCRIPTION

1.	Requestor:		4.	WBS# or IO# CC# GL# Budget Sub-item Name	
2.	Date of Request:		5.	Task Start Date:	
3.	Task Budget:	\$	6.	Task End Date:	
7.	Task Title:				

Agreement No. 106-2017SN / RFP No. 17-09SN; Exhibit A
Service Provider: Amec Foster Wheeler Environment & Infrastructure, Inc.
Requesting Department: Planning & Green Port

Page 1 of 2

8. Scope of Services:

9. Contractor Staffing (If applicable)

Name	Classification	Hours
	Staff as needed per Agreement rates	

10. List of Sub-Contractors (If applicable)

N/A

11. Please acknowledge acceptance of this Task Authorization by signing below and returning via email to _____, Contracts Administrator for Planning & Green Port.

APPROVALS

Service Provider:

Project Manager:

Signature: _____
 Name: _____
 Title: _____
 Firm: _____
 Date: _____

Signature: _____
 Name: _____
 Title: _____
 Date: _____

Assistant Vice President:

Signature: _____
 Name: Jason H. Giffen
 Title: Assistant Vice President, Planning & Green Port
 Date: _____

**EXHIBIT B
CERTIFICATE OF INSURANCE
San Diego Unified Port District**

By signing this form, the authorized agent or broker **certifies** the following:

- (1) The Policy or Policies described below have been issued by the noted Insurer(s) [Insurance Company(ies)] to the Insured and is (are) in force at this time.
- (2) As required in the Insured's agreement(s) with the District, the policies include, or have been endorsed to include, the coverages or conditions of coverage **noted on page 2 of this certificate.**
- (3) Signed copies of **all** endorsements issued to effect require coverages or conditions of coverage are attached to this certificate.

Return this form to: San Diego Unified Port District
 c/o Ebix BPO
 P.O. Box 100085 - 185
 Duluth, GA 30096 - OR -
 Email: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	SDUPD Agreement Number: _____ This certificate applies to all operations of named Insureds on District property in connection with all agreements between the District and Insured.
--	--

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability <input type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-made Form Retro Date _____ <input type="checkbox"/> Liquor Liability Deductible/SIR: \$ _____		Commencement Date: _____ Expiration Date: _____	Each Occurrence: _____ \$ _____ General Aggregate: _____ \$ _____
	Commercial Automobile Liability <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date: _____ Expiration Date: _____	Each Occurrence: _____ \$ _____
	Workers Compensation - Statutory Employer's Liability		Commencement Date: _____ Expiration Date: _____	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	Professional Liability <input type="checkbox"/> Claims Made Retro-Active Date _____		Commencement Date: _____ Expiration Date: _____	Each Claim _____ \$ _____
	Excess/Umbrella Liability		Commencement Date: _____ Expiration Date: _____	Each Occurrence: \$ _____ General Aggregate: \$ _____

CO LTR	COMPANIES AFFORDING COVERAGE	A. M. BEST RATING
A		
B		
C		
D		

A. M. Best Financial Ratings of Insurance Companies Affording Coverage Must be A-VII or better unless approved in writing by the District.

Name and Address of Authorized Agent(s) or Broker(s)	E-mail Address: _____
	Phone: _____ Fax Number: _____
	Signature of Authorized Agent(s) or Broker(s) _____
	Date: _____

SAN DIEGO UNIFIED PORT DISTRICT
REQUIRED INSURANCE ENDORSEMENT

<u>ENDORSEMENT NO.</u>	<u>EFFECTIVE DATE</u>	<u>POLICY NO.</u>
NAMED INSURED:		
GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES): All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises		

Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or in any endorsement now or hereafter attached thereto, it is agreed as follows:

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.
2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.
3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").
4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

Except as stated above, and not in conflict with this endorsement, nothing contained herein shall be held to waive, alter or extend any of the limits, agreements or exclusions of the policy(ies) to which this endorsement applies.

 (NAME OF INSURANCE COMPANY)

 (SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
 c/o Eblx BPO
 P.O. Box 100085 - 185
 Duluth, GA 30096 - OR -
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

RESOLUTION 2017-084**RESOLUTION SELECTING AND AUTHORIZING AN AGREEMENT WITH AMEC FOSTER WHEELER ENVIRONMENT AND INFRASTRUCTURE, INC. FOR AN AMOUNT NOT TO EXCEED \$1,525,000 FOR A PERIOD OF FIVE (5) YEARS, FROM JULY 1, 2017 THROUGH JUNE 30, 2022, TO IMPLEMENT THE REGIONAL HARBOR MONITORING PROGRAM AND EVALUATE THE STATUS AND TRENDS OF WATER, SEDIMENTS, AND AQUATIC LIFE IN THE REGION'S HARBORS PURSUANT TO § 13225 OF THE CALIFORNIA WATER CODE**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 to establish a policy governing the processing and administration of public projects, consulting and service agreements, the purchasing of supplies, materials and equipment, and grants; and

WHEREAS, in 2003, under § 13225 of the California Water Code, the San Diego Regional Water Quality Control Board issued a requirement to the District, Cities of San Diego and Oceanside (Cities), and the County of Orange (County) to coordinate and develop a Regional Harbor Monitoring Program (RHMP) to assess conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor; and

WHEREAS, in 2005, upon the BPC's approval, the District entered into a Memorandum of Understanding (MOU) with the Cities and County to perform a pilot project, and again in both 2008 and 2013 to create and continue a cost effective and consistent monitoring program with the District acting as the lead agency, the current MOU is valid through June 30, 2018; and

WHEREAS, to date, the RHMP has provided valuable data to evaluate the status and trends in water and sediments in each harbor via measurements in chemistry, toxicity, benthic community analyses and biodiversity; and

WHEREAS, technical services are needed to effectively plan and implement the RHMP moving forward; and

WHEREAS, the District, Cities and County are seeking a consultant to conduct monitoring, analyses, reporting and provide scientific counsel, year one (1) of the five (5) year consultant agreement will be focused on planning the

2017-084

study design and the subsequent years will include implementation, reporting, and additional special studies, for a maximum amount of \$1,525,000; and

WHEREAS, approximately \$125,000 of this expenditure will occur in FY 17/18 (Phase 1), which will include planning meetings, developing the study design, and producing planning documents, funds for the first year of this expenditure are budgeted for in the proposed FY 17/18 Planning and Green Port Professional Services Account (#620100) and years two (2) – five (5) (Phase 2) will be under a new MOU that will be brought back to the Board before June 30, 2018, and that no additional work will commence until approved and funds required for future fiscal year(s) will be budgeted for in the appropriate fiscal year and cost account subject to Board approval upon adoption of each fiscal year's budget; and

WHEREAS, 44 percent of the cost of \$1,525,000 will be reimbursed to the District by the Cities and the County, with the District portion not exceeding \$854,802; and

WHEREAS, the District shall be paid an additional 5% administrative cost by the Cities and the County in the amount of \$76,250, over the term of five (5) years; and

WHEREAS, pursuant to BPC Policy 110, in March 2017, District staff issued a Request for Proposals (RFP) seeking qualified firms to provide RHMP services; and

WHEREAS, two firms submitted proposals: Amec Foster Wheeler Environment & Infrastructure, Inc. (Amec Foster Wheeler) and Weston Solutions, Inc.; and

WHEREAS, a decision analysis conducted by a selection panel comprised of District staff and representatives from each of the Cities and County reviewed the proposals and interviews were conducted on May 2, 2017; and

WHEREAS, the decision was based on the information gathered through interviews and written proposals using the criteria stated in the RFP, staff evaluated and ranked each firm's experience of proposed staff, approach to the project, capability to perform, cost/pricing, and firm's relevant experience, as well as their information related to the Equal Opportunity Program Requirements section of the RFP; and

WHEREAS, staff is recommending the Board select Amec Foster Wheeler; and

WHEREAS, upon Board approval, Agreement #106-2017SN between the District and Amec Foster Wheeler would be executed for a period of five (5)

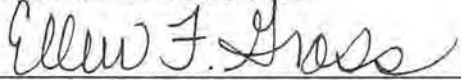
2017-084

years, from July 1, 2017 through June 30, 2022, in an amount not to exceed \$1,525,000.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

The Executive Director or her designated representative is hereby authorized and directed on behalf of the San Diego Unified Port District to enter into Agreement No. 106-2017SN with Amec Foster Wheeler Environment and Infrastructure, Inc., in an amount not to exceed \$1,525,000, for a period of five (5) years, from July 1, 2017 through June 30, 2022, to implement the Regional Harbor Monitoring Program and evaluate the status and trends of water, sediments, and aquatic life in the region's harbors pursuant to § 13225 of the California Water Code.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL



By: Assistant ~~Deputy~~

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 20th day of June 2017, by the following vote:

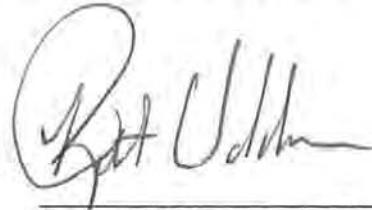
AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, and Valderrama

NAYS: None.

EXCUSED: Zucchet

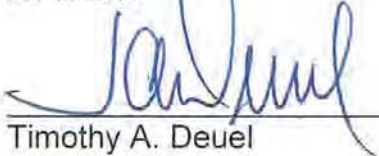
ABSENT: None.

ABSTAIN: None.



Robert Valderrama, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)



San Diego Unified Port District

File #:2017-0171

DATE: June 20, 2017

SUBJECT:

REGIONAL HARBOR MONITORING PROGRAM

RESOLUTION SELECTING AND AUTHORIZING AN AGREEMENT WITH AMEC FOSTER WHEELER ENVIRONMENT AND INFRASTRUCTURE, INC. FOR AN AMOUNT NOT TO EXCEED \$1,525,000 FOR A PERIOD OF FIVE YEARS, FROM JULY 1, 2017 THROUGH JUNE 30, 2022, TO IMPLEMENT THE REGIONAL HARBOR MONITORING PROGRAM AND EVALUATE THE STATUS AND TRENDS OF WATER, SEDIMENTS, AND AQUATIC LIFE IN THE REGION'S HARBORS PURSUANT TO § 13225 OF THE CALIFORNIA WATER CODE

EXECUTIVE SUMMARY:

In 2003, under § 13225 of the California Water Code, the San Diego Regional Water Quality Control Board issued a requirement to the District, Cities of San Diego and Oceanside (Cities), and the County of Orange (County) to coordinate and develop a Regional Harbor Monitoring Program (RHMP) to assess conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor. Upon the Board of Port Commissioner's approval, the District entered into a Memorandum of Understanding (MOU) with the Cities and County in 2005 to perform a pilot project, and again in both 2008 and 2013 to create and continue a cost effective and consistent monitoring program with the District acting as the lead agency. The current MOU is valid through June 30, 2018.

Technical services are needed to effectively plan and implement the RHMP moving forward. To date, the RHMP has provided valuable data to evaluate the status and trends in water and sediments in each harbor via measurements in chemistry, toxicity, benthic community analyses, and biodiversity. The District, Cities, and County are seeking a consultant to conduct monitoring, analyses, reporting, and provide scientific counsel. Year 1 of the consultant agreement will be focused on planning the study design. The following years will include implementation, reporting, and additional special studies.

Pursuant to BPC Policy No. 110, in March 2017, District staff issued a Request for Proposals (RFP) seeking qualified firms to provide RHMP services. Two firms submitted proposals, of which both proposals were reviewed and both teams were interviewed by staff. Based on interviews, written proposals, and a decision analysis process using the criteria stated in the RFP, staff is recommending the Board select Amec Foster Wheeler Environment and Infrastructure, Inc. (Amec Foster Wheeler). Upon Board approval, Agreement #106-2017SN between the District and Amec Foster Wheeler would be executed for a period of five years, from July 1, 2017, through June 30,

File #:2017-0171

2022, for a total amount not to exceed \$1,525,000.

RECOMMENDATION:

Adopt a Resolution authorizing an agreement with Amec Foster Wheeler Environment and Infrastructure, Inc. for an amount not to exceed \$1,525,000 for a period of five years, from July 1, 2017, through June 30, 2022, to implement the Regional Harbor Monitoring Program and evaluate the status and trends of water, sediments, and aquatic life in the region's harbors pursuant to § 13225 of the California Water Code.

FISCAL IMPACT:

The cost for the RHMP is anticipated to be \$1,525,000 over the five year duration of this agreement. Approximately \$125,000 of this expenditure will occur in FY 17/18 (Phase 1), which will include planning meetings, developing the study design, and producing planning documents. Funds for the first year of this expenditure are budgeted for in the proposed FY 17/18 Planning and Green Port Professional Services Account (#620100). Funds required for future fiscal year(s) (Phase 2) will be budgeted for in the appropriate fiscal year and cost account subject to Board approval upon adoption of each fiscal year's budget.

The MOU represents the legal authority for all RHMP agencies to participate in cost sharing for RHMP implementation. Funding will be required for the consultant services to implement the RHMP. Based on the cost share split agreed upon in the MOU, District costs account for approximately 56-percent of the total RHMP costs (Table 1). Per provisions in the MOU, the Cities and County will reimburse the District for their share of costs. In addition, a five-percent administrative cost will be divided evenly among the Cities and County based on annual expenditures, and provided to the District for overall project management and the administration of the consultant contract (Table 2). The 2013 MOU was made effective on July 1, 2013 and is due to expire on June 30, 2018. Year 1 (Phase 1; FY 17/18) of the proposed consultant services agreement will be covered under this 2013 MOU. The future fiscal year(s) funds will be covered under a revised MOU that is currently in negotiation with the Cities and County, and will be brought before the Board prior to June 30, 2018. The District estimates that an approximate 44-percent reimbursement will be billed for and received over the next five fiscal years (FY 18-22). No work for future fiscal years will commence without an authorized MOU in place.

Table 1. Projected Funding Requirements for Consultant Agreement:

Funds Expenditures	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	Total
District Portion of RHMP Cost Share	\$70,066	\$588,551	\$84,079	\$56,053	\$56,053	\$854,802
RHMP Cost Share - Other Agencies ¹	\$54,934	\$461,449	\$65,921	\$43,947	\$43,947	\$670,198
Total Cash Flow Requirement for Consultant Agreement²	\$125,000	\$1,050,000	\$150,000	\$100,000	\$100,000	\$1,525,000

¹ Per the MOU, the District's portion of shared costs is equivalent to approximately 56% of the total RHMP costs. Other RHMP Agencies' portion is equivalent to approximately 44% of total RHMP costs.

² Per the MOU, the District is the lead for the RHMP. Consultant costs are paid in full by the District with reimbursement from the other RHMP agencies.

File #:2017-0171

Table 2. Projected Program Reimbursement to District

Funds Reimbursements	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	Total
Cost Share Reimbursement From Other Agencies ¹	\$54,934	\$461,449	\$65,921	\$43,947	\$43,947	\$670,198
5% Administrative Support Reimbursement ²	\$6,250	\$52,500	\$7,500	\$5,000	\$5,000	\$76,250
Total Reimbursement to the District	\$61,184	\$513,949	\$73,421	\$48,947	\$48,947	\$746,448

¹ Per the MOU, the District's portion of shared costs is equivalent to approximately 56% of the total RHMP costs. Other RHMP Agencies' portion is equivalent to approximately 44% of total RHMP costs.

² The 5% Administration Cost is in addition to the contract amount and is split evenly between the other three agencies and paid to the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

This agenda item supports the District's mission of promoting a comprehensive vision of water uses and environmental stewardship integrated with regional plans by partnering with the Cities of San Diego and Oceanside and the County of Orange in forming and continuing an MOU to implement the RHMP. The MOU allows the District and participating agencies to assess the conditions and trends of the quality of water, sediment, and aquatic life of San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor in a coordinated and cost effective manner.

- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

BACKGROUND

In 2003, the San Diego Regional Water Quality Control Board (RWQCB), under §13225 of the California Water Code, issued a request for the District, Cities of San Diego and Oceanside (Cities), and the County of Orange (County) to coordinate and develop a Regional Harbor Monitoring Program (RHMP) (Attachment A). The RHMP is a comprehensive effort to determine ambient conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor. Following receipt of the RWQCB's 2003 directive, the District, Cities, and County began the development of the RHMP framework. A technical report outlining the monitoring objectives, approach, and sample design was completed and submitted to the RWQCB in February 2004¹. The monitoring program described in the technical report consists of a core monitoring program supplemented by focused studies. Monitoring questions to guide the program were included as follows:

1. What are the contributions and spatial distributions of inputs of pollutants to the harbors in the San Diego region and do these inputs vary over time?
2. Are the waters in harbors safe for body contact activities?
3. Are fish in harbors safe to eat?

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4. Do the waters and sediments in the harbors sustain healthy biota?
5. What are the long-term trends in water quality for each harbor?

The RHMP provides a valuable dataset that is used to assess the status and trends in water quality, sediment quality, and biodiversity in the harbors over time. The dataset can also help inform the RHMP agencies of progress towards goals in various environmental programs being managed in the harbors. The most recent dataset was collected in 2013 (Attachment B).

To effectively implement the RHMP, the District, Cities, and County entered into an MOU in July of 2005 and again for subsequent 5-year cycles in June 2008 and June 2013 (Attachment C). The MOUs have remained consistent, and outline the responsibilities of all parties as well as provide a mechanism to share the costs between the parties. The District serves as lead agency, with responsibilities that include leading meetings, acting as a liaison with the RWQCB, and administering the consultant contract to perform RHMP-related services. According to the cost share formula, the District's share of costs amount to approximately 56-percent of the total cost, because the District represents the largest harbor area. Approximately 44-percent of costs are designated to be reimbursed annually to the District from the Cities and County. Pursuant to the MOUs, the Cities and County also are required to provide the District with a 5-percent fee based on annual total costs of the service provider contract to account for administrative responsibilities, coordination efforts, and management of the service provider agreement.

The 2013 MOU covers Phase 1 of the new 5-year RHMP effort; it went into effect on July 1, 2013, and expires on June 30, 2018. Phase 2 will operate under an MOU currently being revised to reflect cost sharing requirements for FY 18/19 through FY 22/23. Once negotiations are complete, the revised MOU will be brought to the Board for authorization prior to the start of Phase 2 (FY 18/19). No work for Phase 2 will be initiated prior to Board approval of the MOU covering cost sharing for FY 18/19 through FY 22/23.

Consultant Services for 2017-2022

To perform the RHMP, the District, Cities, and County are seeking consultant services to attend planning meetings and prepare study design documents, perform monitoring, conduct analyses and reporting, and provide scientific counsel for the five year period from July 1, 2017 to June 30, 2022. RHMP core monitoring effort is planned to correspond with the 2018 Bight Program, a large multi-agency regional monitoring effort extending from Ventura to the California/Mexico border. The core monitoring will also provide a comparison to the historical record of the four RHMP harbors to continue an evaluation of trends. Subsequent focused studies may be conducted on an as-needed basis.

The Scope of Services for the new consultant agreement is broken into two phases: (1) planning and (2) monitoring, data analysis, and reporting. Year 1 (Phase 1) of the new consultant agreement is designated as a planning year for the future RHMP monitoring event planned for 2018. This effort is included in the final year of the current MOU. Phase 2 will include the core monitoring event (August-September 2018), special studies, additional monitoring, data analyses and reporting, as well as future program planning. The Phase 2 efforts will be initiated once the revised MOU is approved.

Pursuant to BPC Policy No. 110, in March 2017, District staff issued an RFP seeking qualified firms

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to perform RHMP-related services for a not-to-exceed cost of \$1,525,000 over a five-year period. An information exchange meeting was held on March 14, 2017, which five firms attended, along with one representative from the San Diego Coastkeeper organization. On April 4, 2017, the closing date of the RFP, two proposals were received. Table 3 identifies the firms that submitted proposals and their average hourly rates.

Table 3. Firms Submitting Proposals for RFP 17-09SN.

Firm	Local Office	Corporate Office	Project Manager Fully Burdened Rate* Per Hour
Amec Foster Wheeler Environment & Infrastructure, Inc.	9210 Sky Park Ct. Ste. 200 San Diego, CA 92123	128 Queen Victoria St. London, UK	\$152
Weston Solutions, Inc.	5817 Dryden Pl. Ste. 101 Carlsbad, CA 92008	1400 Weston Way PO Box 2653 West Chester, PA 19380	\$155

*Based on Project Manager labor classification. Amec Foster Wheeler estimated 600-800 hours of Project Manager time and Weston Solutions, Inc. estimated 1500 hours of Project Manager's time.

A selection panel comprised of District staff and representatives from each of the RHMP Cities and County reviewed the proposals and selected both firms for interviews. Interviews were conducted on May 2, 2017 by the selection panel and the District's Procurement staff. A decision analysis was completed based on the information gathered through interviews and written proposals using the criteria stated in the RFP. Staff evaluated and ranked each firm's experience of proposed staff, approach to the project, capability to perform, cost/pricing, and firm's relevant experience, as well as their information related to the Equal Opportunity Program Requirements section of the RFP.

Additional details about the firms interviewed are provided below.

Amec Foster Wheeler Environment and Infrastructure, Inc.

Amec Foster Wheeler Environment and Infrastructure (Amec Foster Wheeler) has been providing local consulting expertise related to aquatic services in Southern California since the early 1980s. Amec Foster Wheeler's local office is located in San Diego, California. Amec Foster Wheeler's experience related to this scope of work includes development of regional and long-term monitoring programs, water and sediment quality monitoring, marine resources monitoring including benthic infaunal analysis, conformance with state quality assurance protocols, Bight Program development and monitoring, and liaison with regulatory agencies. Amec Foster Wheeler also has experience working with other ports, such as the Port of Long Beach and the Port of Los Angeles. Amec Foster Wheeler has worked with the District for over 20 years and is currently under contract with the District to perform the following projects: 2013-2018 Regional Harbor Monitoring Program, As-Needed Environmental Analytical Services (Education and Outreach, Annual TMDL Monitoring at Shelter Island Yacht Basin) and Long Term Sediment Cap Monitoring for the Campbell Cap. Similar clients located in Southern California include the City of San Diego, the Ports of Los Angeles and Long Beach, the US Navy, the University of California at San Diego, and the San Diego Port Tenants

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Association.

Amec Foster Wheeler's proposed team is led by Barry Snyder, as Principal-in-Charge and the Program QA/QC Officer, and Chris Stransky, as Project Manager. Together, they bring 54 years of experience related to aquatic sciences and management of environmental projects for a diversity of clients. Both have experience working with the District performing water and sediment monitoring and providing scientific counsel. Both also served in the same roles for the successful completion of the 2013-2018 RHMP. Included on the core team will be John Rudolph as the Quality Assurance Officer for Sample Collection and Rolf Schottle for Chemistry QA/QC, as well as Dr. Brock Bernstein as a Third Party Reviewer and as-needed scientific counsel. Dr. Bernstein is an independent environmental scientist with a range of experience related to monitoring program design for clients such as the State Water Resources Control Board, RWQCB, the Southern California Coastal Water Research Group (SCCWRP), and the San Francisco Estuary Institute.

Amec Foster Wheeler included subconsultants to their proposal. Amec Foster Wheeler addressed that laboratories have yet to be selected due to the fact that SCCWRP has yet to select Bight-accredited laboratories (accreditations and selections are scheduled for late Summer and Fall of 2017). Once the labs have obtained Bight-accreditation they will be added to the subcontractor list. The firms and their specialty related to the proposal are described below:

- Dr. Allen Burton: Third Party Review for program design, analysis, reporting, and regulatory support
- Dr. Brock Bernstein: Third party review for sample design, and regulatory support
- Laboratory Data Consultants: Third party review of Laboratory Data
- Merkel & Associates Inc.: field support and benthic analyses
- Sea Ventures, Inc.: Vessel support and fish trawling

Overall, Amec Foster Wheeler demonstrated the best value to the District and to the other RHMP agencies. Their proposal and interview included an extremely well defined approach to the project and a well-constructed team. Amec Foster Wheeler reflected on lessons learned from the 2013 RHMP and explained how they intend to use their gained experience to successfully plan and prepare for the 2018 RHMP. This demonstrates their ability to strive for improvement to adequately meet District needs. Due to the large data sets and types of monitoring performed, Quality Assurance and Quality Control (QA/QC) are crucial to the success of this program. Amec Foster Wheeler presented a well-defined, comprehensive QA/QC program which included detailed checklists for each portion of the project, a dedicated QA/QC technician on boats for all sampling and collections, as well as documenting field sampling with pictures and entering data into a tablet in addition to hard copy field sheets. Amec Foster Wheeler discussed their database management capabilities and had one team member with a computer science background who understands the data needs of this project present for the interview and available to answer any questions. Lastly, the team has well-established relationships with regulatory agencies such as the RWQCB, which will aid in the development of the program over the next five years.

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Weston Solutions, Inc.

Weston has corporate headquarters based in Pennsylvania and has been providing local consulting services regarding marine science and water quality services in Southern California for 40 years. Weston's local office is located in Carlsbad, California. Weston's experience related to this scope of work includes water quality monitoring, fish surveys, sediment chemistry characterization, benthic community analysis, and monitoring program design. Weston has experiences working with other ports, such as the Ports of Long Beach and Los Angeles. Weston has worked with the District for over 15 years on a variety of projects, including the development and implementation of the RHMP for both the Pilot Project in 2005, and again for the 2008 RHMP. Similar clients located in Southern California include the City of San Diego, the County of Orange, the City of Oceanside, SCCWRP, the County of San Diego, the City of Newport Beach, the Orange County Sanitation District, and the Ports of Los Angeles and Long Beach.

The proposed team for Weston is led by Andrea Crumpacker, as the Principal-in-Charge, and Sheila Holt as the Project Manager. Together, they offer 39 years of relevant experience involving monitoring program design, regulatory interpretation, statistical analysis, and water and sediment sampling and analysis. Also included on the team is Daniel McCoy as Assistant Project Manager with 18 years of relevant experience and Sheri Dister is proposed to serve as the Quality Assurance Manager and has over 23 years of relevant experience. Dr. Geoff Compeau will serve as Technical Advisor; he has over 25 years of experience in planning, implementation and reporting on environmental analytical services.

Weston included subconsultants to their proposal. The firms and their specialty related to the proposal are described below:

- Laboratory Data Consultants, Inc.: Third party review and Quality Assurance
- MBC Applied Environmental Sciences: Field support for field sampling
- Dancing Coyote Environmental (DCE): Benthic analyses
- Six Scientific: Field Sampling support
- Sea Ventures: Vessel support
- Eurofins: Chemistry Laboratory
- EnviroMatrix: Chemistry Laboratory
- Nautilus: Toxicity Testing
- EcoAnalysts: Toxicity Testing

Weston also addressed that laboratories must receive Bight accreditation, but listed laboratories that had been vetted for previous Bight programs. Weston's interview and proposal demonstrated past experience developing and implementing the RHMP. Weston also showcased significant experience with the Bight Program and other large scale monitoring efforts. However, Weston did not demonstrate an integrated and thorough QA/QC process and did not go into much detail regarding approach to the project. The interview panel was also concerned that the role of subcontractors were not clearly defined and given a large portion of the project will potentially be subcontracted, Weston did not detail their experience with managing subcontractors.

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Recommendation

Amec Foster Wheeler demonstrated the best value to the District and other RHMP agencies for the proposed scope of services. Furthermore, Amec Foster Wheeler's proposal and interview indicated a clear understanding of the needs, challenges, and strategic goals of the District. Therefore, Staff recommends that the Board authorize an agreement with AMEC to provide Regional Harbor Monitoring Program Services for an amount not to exceed \$1,525,000 for a period of five years, from July 1, 2017, through June 30, 2022. (Attachment D).

General Counsel's Comments:

The Office of the General Counsel has reviewed the agenda sheet and attached agreement as presented to it and approves both for form and legality.

Environmental Review:

The proposed Board action to select and authorize an agreement to implement the Regional Harbor Monitoring Program is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15306 (Information Collection) because the project proposes to assess conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay and would not result in a serious or major disturbance to an environmental resource. No further action under CEQA is required.

In addition, the selection and authorization of an agreement to implement the Regional Harbor Monitoring Program pursuant to § 13225 of the California Water Code allows for the District to administrate its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed presentation is consistent with the Public Trust Doctrine.

Finally, the proposed Board action is considered an "excluded development" pursuant to Section 8.f. (Information Collection) of the District's Coastal Development Permit (CDP) Regulations; therefore, issuance of a CDP is not required.

Equal Opportunity Program:

A 5% Small Business Enterprise (SBE) goal was established for this agreement. Amec Foster Wheeler listed three subcontractors for a total of 9% SBE participation.

PREPARED BY:

Kelly Tait
Senior Environmental Specialist
Planning & Green Port

File #:2017-0171

Attachment(s):

Attachment A: San Diego Regional Water Quality Control Board 2003 Directive

Attachment B: May 10, 2016 Agenda Sheet presenting 2013 RHMP Results

Attachment C: 2013-2018 RHMP MOU

Attachment D: 2018 RHMP Program Agreement between the San Diego Unified Port District and Amec Foster Wheeler, Environment and Infrastructure, Inc.

¹DM# 579716 Technical Report: Harbor Monitoring Program for San Diego Region-San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor. Prepared by MEC Analytical Systems, Inc. February 2004.



Attachment A to Agenda File No. 2017-0171
California Regional Water Quality Control Board
San Diego Region



Gray Davis
 Governor

Winston H. Hickox
 Secretary for
 Environmental
 Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb9>
 9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
 Phone (858) 467-2952 • FAX (858) 571-6972

July 24, 2003

Mr. Bruce Hollingsworth
 Chief Executive Officer
 San Diego Unified Port District
 P.O. Box 120488
 San Diego, CA 92112-048

Mr. Michael Uberuaga
 City Manager
 202 "C" Street, MS 9A
 San Diego, CA 92101

Mr. Steven R. Jepsen
 City Manager
 City of Oceanside
 300 North Coast Highway
 Oceanside, CA 92054

Mr. Lupe Armas
 Assistant Chief of Staff
 Environmental Security
 Marine Corps Base (Building 22165)
 Camp Pendleton, CA 92055-5008

Ms. Vickie L. Wilson
 Director
 Public Facilities and Resources Department
 County of Orange
 P.O. Box 4048, Santa Ana, CA 92702-4048

**SUBJECT: REQUEST FOR TECHNICAL REPORT PURSUANT TO CALIFORNIA
 WATER CODE SECTION 13225**

Water quality in the harbors of the San Diego Region is a matter of continuing concern. Most of the existing monitoring is associated with either discharge permits or special purpose studies. These efforts do not provide information on overall water quality status and trends in the individual harbors or the ability to compare water quality conditions between harbors or portions of harbors. A single coordinated regional harbor monitoring program, covering all of the harbors in the Region, is necessary to achieve these goals. Implementation of a coordinated regional harbor monitoring program can best be achieved by insuring participation of all those discharging wastes to the water bodies involved.

This is a request for submission of a technical report consisting of a proposed coordinated and comprehensive harbor water quality monitoring program for San Diego Bay, Mission Bay, Oceanside Harbor, Del Mar Boat Basin and Dana Point Harbor. The content and areas to be addressed in this report are described in the Attachments to this request. I am requesting submission of this report by January 1, 2004.

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

This request is being made pursuant to California Water Code Section 13225. Section 13225(c) provides that the Regional Board may "Require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain and submit analyses of water; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom." The addressees have been identified to participate in this effort for the following reasons.

Agency	Reasons for Responsibility
San Diego Unified Port District	<p>Agency responsible for administration of land and water use programs for San Diego Bay and adjoining tidelands.</p> <p>Discharges wastes from municipal storm water conveyance systems to San Diego Bay.</p>
City of San Diego	<p>Agency responsible for administration of land and water use programs for Mission Bay and adjoining tidelands.</p> <p>Discharges wastes from municipal storm water conveyance systems to Mission Bay.</p>
City of Oceanside	<p>Agency responsible for administration of land and water use programs for Oceanside Harbor and adjoining tidelands.</p> <p>Discharges wastes from municipal storm water conveyance systems to Oceanside Harbor.</p>
U.S. Marine Corps Base Camp Pendleton	<p>Agency responsible for administration of land and water use programs for Del Mar Boat Basin and adjoining tidelands.</p> <p>Discharges wastes from municipal storm water conveyance systems to Del Mar Boat Basin.</p>
County of Orange	<p>Agency responsible for administration of land and water use programs for Dana Point Harbor and adjoining tidelands.</p> <p>Discharges wastes from municipal storm water conveyance systems to Dana Point Harbor.</p>

Harbor Monitoring Proposal

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July 24, 2003

I recognize that the U.S. Marine Corps, Camp Pendleton is a federal entity and therefore not subject to the provisions of California Water Code Section 13225. However, I believe that active participation in the development of this monitoring program by the U.S. Marine Corps will be a significant asset to this project and also insure that the needs of Camp Pendleton are addressed in the final product. Therefore, I urge the U.S. Marine Corps to participate.

Attachment 1 describes a coordinated monitoring program that is consistent from harbor to harbor. The Southern California Coastal Water Research Project (SCCWRP) has considerable experience in developing regional coastal monitoring programs of this type. Accordingly, I encourage the addressees to work together to produce a joint product and, to the extent possible, seek assistance from SCCWRP. It is my intent to require all parties identified as significant contributors of wastes to the harbors in the San Diego Region to participate in a regional harbor monitoring program. The technical report submitted pursuant to this request will be the basis for the design and implementation of this monitoring program.

Please contact Mr. Peter Michael of my staff at (858) 467-2990 if you have any questions concerning this request.

Respectfully,



John H. Robertus
Executive Officer

Attachments

cc: See attached list

Harbor Monitoring Proposal

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July 24, 2003

cc:

Mr. David Merk
Director
Recreation and Environmental Services
San Diego Unified Port District
PO Box 488
San Diego, CA 92112

Mr. Ted Medina
Deputy Director
Parks and Recreation Department
City of San Diego
2125 Park Boulevard
San Diego, CA 92101

Ms. Karen Henry
Deputy Director
Storm Water Prevention Program
General Services Department
City of San Diego
1970 B Street
San Diego, CA 92102

Mr. Guss Pennell
Environmental Coordinator
Water Utilities Department
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054

Mr. Donald Hadley
Director
Department of Harbors and Beaches
City of Oceanside
1540 Harbor Drive North
Oceanside CA 92054

Mr. Ben Keasler
Storm Water Branch Head
Marine Corps Base (Building 22165)
Camp Pendleton, CA 92055-5008

Mr. Paul Lawrence
Manager
Dana Point Harbor
County of Orange
34551 Puerto Place
Dana Point, CA 92629

Mr. Larry McKenney
Manager
Watershed & Coastal Resources Division
300 North Flower St., 7th Floor
County of Orange
Santa Ana, CA 92702

ATTACHMENT 1**Coordinated Regional Water Quality Monitoring
In San Diego Region Harbors****Purpose**

The purpose of a coordinated regional monitoring program for San Diego Region harbors is to identify the water quality status and trends and the ability of surface waters to support beneficial uses over the long term. As a minimum the following questions are to be addressed in the program:

1. What are the contributions and spatial distributions of inputs of pollutants to harbors in the San Diego Region and how do these inputs vary over the long term?
2. Are the waters in harbors safe for body contact activities?
3. Are fish in the harbors safe to eat?
4. Do the waters and sediments in the harbors sustain healthy biota?
5. What are the long-term trends in water quality for each harbor?

Locations/Density

Monitoring is to be proposed for Dana Point Harbor, Del Mar Boat Basin at the Marine Corps Base Camp Pendleton, Oceanside Harbor, Mission Bay, and San Diego Bay. The proposed program will identify areas for ambient and focused monitoring in each harbor, the methodology for location of sampling stations, and the number of water column and sediment samples proposed for each harbor and each area identified for focused monitoring.

Scope

The proposed program is to include the following:

- Identification of significant contributors of waste loading to each harbor. In the case of marinas, docks, moorings, and anchorages, the loading from passive leaching from boat hulls is to be determined.
- Development of an ambient sampling approach for water and sediment with the capability of identifying water quality status and trends. Sampling stations for ambient monitoring are to be established using stratified random placement techniques. Random placement of stations has been used by organizations such as the Southern California Coastal Water Research Project (SCCWRP) and National Oceanic and Atmospheric Administration (NOAA) Status and Trends Program. The cost of the ambient monitoring effort would bear a reasonable

relationship to the need for monitoring and reporting and to the benefits of understanding the state of water quality¹.

- Development of focused monitoring approaches, as appropriate, in designated portions of the water bodies. At a minimum, focused monitoring is to occur in areas subject to significant waste loading; in areas influenced by significant land or water use patterns such as industrial, marina, port and other areas; and in areas identified as impaired pursuant to federal Clean Water Act Section 303(d). Focused monitoring stations are to be determined by directed point or stratified random placement techniques, or both, as appropriate. The cost of the focused monitoring effort would bear a reasonable relationship to the need for monitoring and reporting and to the benefits of understanding the state of water quality.
- Coordination and integration with the periodic Southern California Bight regional monitoring efforts administered by the Southern California Coastal Water Research Project. Currently these efforts occur at five-year intervals.
- Consideration of existing discharge permit compliance monitoring programs and ways to minimize duplication of effort.
- Provision for electronic data storage and retrieval.
- Development of reports including introduction, methods, quality assurance, quality control, results, discussion, conclusion, and summary. The reports will be made available to the public.

Constituents

Harbor authorities will recommend constituents for sediment and water sample analyses. Categories to be considered include physical observations such as temperature and water clarity; nutrients; dissolved oxygen; microbiology; toxicity; benthic community analysis; and chemistry, including fossil fuels, persistent synthetic organics, and metals, including copper. The proposed ambient monitoring effort is to take into account the need to assure the data is statistically significant. Detection limits for constituents selected for focused monitoring are to be sufficient to detect concentrations to below water quality standards²

Consistency and Data Availability

To the extent feasible, proposed monitoring and reporting will be compatible with local, state, federal, and international standards to assure the information gathered will be of future benefit within and outside of the San Diego Region. An integrated regional monitoring approach is to be followed in which data collected in all harbors would be consistent, standardized, and comparable according to accepted protocols; for example, those developed for the Southern

¹ For example, Oceanside Harbor would have fewer sampling sites than San Diego Bay.

² For example, in a water body impaired for dissolved copper listed on the CWA Section 303(d) list, to below the level of the California Toxics Rule objective.

California Coastal Water Research Project regional monitoring programs carried out in 1994, 1998, and 2003³. The numbers of stations proposed for ambient monitoring are to be adequate to provide appropriate statistical power⁴.

Quality Assurance and Quality Control

Each proposed harbor sampling and analytical effort will include quality assurance and quality control components compatible with those in other San Diego Region harbor or coastal water monitoring programs. Examples of field and laboratory quality assurance manuals are available on the SCCWRP web site, www.sccwrp.org, under the Bight'98 and Bight'03 regional monitoring programs.

Data and Reports

The proposed program will include a data element that will insure that data from the project will be presented in digital format suitable for use in a geographical information system (GIS). Repositories of data, metadata, and monitoring reports will be maintained by the lead organization for each water body, by a central repository for all harbor data in the San Diego Region, or by a combination of shared and individual repositories, as appropriate. Reports of the results of the harbor monitoring programs and data will be made available to the public. In addition to the data, methods, results, discussions, conclusions, and summaries will be included to address the degree to which water quality trends can be measured to determine to what extent water quality supports Basin Plan beneficial uses⁵. Reports are to be submitted to the Regional Board annually; or if intervals between sampling efforts exceed one year, annually for the year in which the samples were taken.

Metadata

The proposed program will insure that metadata, or data about data, will be logged and reported describing the content, quality, condition, and other characteristics of the data and using a standard format and a common set of terms. Metadata will be presented in a compatible format for use in harbor monitoring programs throughout the San Diego Region, California, and/or internationally, as appropriate (see Attachment 2).

Regional Board Contact

The San Diego Regional Board contact for this effort will be Mr. Pete Michael at (858) 467-2990.

³ See Southern California Bight regional monitoring at www.sccwrp.org.

⁴ Currently, to the 0.90 confidence interval for Bight'03.

⁵ Water Quality Control Plan for the San Diego Basin (9) available at www.swrcb.ca.gov/rwqcb9.

Harbor Monitoring Proposal

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ATTACHMENT 2**Metadata Format**

Planning for metadata formats will take into consideration, as appropriate: federal Executive Order 12906 for coordination between the federal government and the private sector [April 13, 1994 *Federal Register*, 59 (71) pp. 17671-17674], the National Spatial Data Infrastructure, and National Biological Information Infrastructure of the U.S. Geological Service. Appropriate criteria may include those of the International Organization for Standardization (ISO) Technical Committee 211 Geographic Information Working Group 3.

Biological metadata, at a minimum, will comply with appropriate minimal guidelines for metadata; for example, minimal National Biological Information Infrastructure biological compliant metadata format containing appropriate Identification Information, Metadata Reference, Citation Information Template, Time Period Information Template, and Contact Information Template information.



San Diego Unified Port District

File #:2016-0219

DATE: May 10, 2016

SUBJECT:

PRESENTATION ON THE REGIONAL HARBOR MONITORING PROGRAM AND THE ASSESSMENT OF THE QUALITY OF WATER, SEDIMENT, AND BIOLOGY OF SAN DIEGO BAY

EXECUTIVE SUMMARY:

In 2003, the San Diego Regional Water Quality Control Board (SDRWQCB), under §13225 of the California Water Code, requested that the District, Cities of San Diego and Oceanside (Cities), and the County of Orange (County) coordinate and develop a Regional Harbor Monitoring Program (RHMP) to assess conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor. The District, Cities, and County developed a monitoring approach whereby ambient monitoring occurs in the harbors every five years. Following the first core monitoring effort in 2008, the RHMP agencies conducted the second regional monitoring effort in 2013.

The results of the 2013 RHMP were summarized in a final report and submitted to the SDRWQCB in February 2016. Most of the sampling results indicate sediment and water quality conditions that are supportive of healthy biological resources. Areas of the harbors most closely associated with anthropogenic influences (for example, marinas and industrial/port water-side areas) tended to have higher chemical concentrations and certain exceedances of chemical thresholds in surface waters and sediments. When compared to the program's thresholds established to evaluate trends, the 2013 RHMP indicates continuing improvement from historical conditions. These results will help evaluate the District's programs aimed at reducing pollution in the Bay. In addition, during 2016-2017 the data will be used by the SDRWQCB as part of their comprehensive assessment of San Diego Bay.

RECOMMENDATION:

Receive a presentation from staff regarding the results of the Regional Harbor Monitoring Program and the assessment of the quality of water, sediment, and biology of San Diego Bay.

FISCAL IMPACT:

This presentation has no fiscal impact. Funds for the FY 16/17 Budget will be considered by the Board, and funds required for future fiscal years will be budgeted in the appropriate fiscal year and cost accounts and will be subject to Board approval.

File #:2016-0219

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

Background

In 2003, the San Diego Regional Water Quality Control Board (SDRWQCB), under §13225 of the California Water Code, requested that the District, Cities of San Diego and Oceanside (Cities), and the County of Orange (County) coordinate and develop a Regional Harbor Monitoring Program (RHMP). (Attachment A) The RHMP is a comprehensive effort to determine ambient conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor. Following receipt of the SDRWQCB's §13225 request, the District, Cities, and County began the development of the RHMP framework. A technical report outlining the monitoring objectives, approach, and sample design was completed and submitted to the SDRWQCB in February 2004.

The RHMP consists of a core monitoring effort that is incorporated into a larger Southern California Bight Regional Monitoring Program (Bight Program) that is conducted every five years. Consistent with the Bight Program, the harbors were classified into five strata according to function, surrounding land uses, and environmental factors. The strata can be compared based on the results of monitoring to better understand the spatial distribution of pollutants. The five strata include:

- Marinas: Areas in close proximity to permanent docks for recreational or commercial (i.e.: fishing or excursion) vessels.
- Industrial/Port: Areas surrounded and influenced by heavy industrial or maritime port activities. This stratum is only located in San Diego Bay.
- Freshwater Influence: Areas located at the mouth of major streams or major storm drain outfalls (greater than 50 inches in diameter) which may be influenced by the input of fresh water or storm water runoff.
- Shallow: Areas less than 12 feet in depth not otherwise categorized above.
- Deep: Areas greater than 12 feet in depth not otherwise categorized above.

San Diego Bay contains all five of these strata.

The sampling design consists of a question-driven approach where a predetermined number of sampling stations are allocated and randomly placed within each stratum across the harbors to address the program's core questions. Constituents sampled in the program include general chemistry, metals, microbiology, pesticides, and organics. In addition, the benthic community and demersal fish populations are assessed to measure biologic health. Utilizing historical data from

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previous monitoring programs, thresholds were developed for a set of primary and secondary constituents that could be used to compare trends over time.

RHMP 2005 Pilot Program and 2008-2013 Core Monitoring Effort

To effectively implement the RHMP, the District, Cities, and County entered into their first Memorandum of Understanding (MOU) in July of 2005 and a second in July 2008. The MOU outlined the responsibilities of all parties and provided a mechanism to share the costs between the parties. The District was identified as the lead agency with responsibilities to act as a liaison with the RWQCB; administer the program budget; and oversee the consultant contract. According to the cost share formula, the District's share of costs was approximately 56 percent of the total cost because the District represents the largest harbor area. Roughly 44 percent of costs were designated to be reimbursed annually to the District from the Cities and County. Pursuant to the MOU, the Cities and County were also required to provide the District with a five percent fee based on annual total costs of the consultant contract to account for administrative responsibilities, coordination efforts, and management of the consultant agreement.

A pilot program took place in 2005 to determine the level of sampling effort to assess trends and refine the design as needed. Following the pilot, the RHMP conducted its first core monitoring effort in July 2008 in coordination with the Bight Program. Seventy-five sampling locations were randomly placed among the four harbors and 18 fish trawling stations were assigned to evaluate the condition of demersal fish and invertebrate communities. Results of the 2008 monitoring effort indicated that the majority of the areas within the harbors had sediment and water quality conditions supportive of biological resources and human uses.

Between 2008 and 2013, the RHMP expended over \$1,379,000. The Cities and County reimbursed the District over \$650,000, which included a five percent administrative fee.

RHMP 2013-2018

The District, Cities, and County entered into a new MOU for the five-year period from July 1, 2013 to June 30, 2018 to continue the RHMP's trend assessments (Attachment B). The MOU remained consistent with previous versions; however, a budget of \$1,525,000 was established for the five-year period. Since the 2013 MOU, the RHMP has expended \$1,274,245. The Cities and County have reimbursed the District approximately \$560,000. The District has also received administrative fees of approximately \$63,712.

The 2013 core monitoring effort followed the same question-driven monitoring approach, with 75 sampling stations randomly allocated among the four harbors; 15 stations were assigned to each stratum. During 2013, four stations were located in Dana Point Harbor; three were located in Oceanside Harbor, nine in Mission Bay, and 59 in San Diego Bay. Sampling occurred in the four harbors during August and September of 2013.

The results of monitoring were summarized in a final report and submitted to the RWQCB in February of 2016. (Attachment C) The results are discussed in relation to the three core monitoring questions:

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What are the contributions and spatial distributions of inputs of pollutants?

Fifty-two analytes were evaluated in the water column and compared to regulatory water quality objectives. The only constituents in the water column which demonstrated exceedances were total and dissolved copper. These exceedances occurred primarily in the marina stratum of San Diego Bay and the other harbors.

Sediment chemistry indicators were compared to two common thresholds used in sediment analysis¹. The greatest number of exceedances observed in the sediment samples occurred primarily in marina and industrial/port strata and to a lesser extent in the freshwater-influenced stratum. Constituents exceeding the sediment thresholds in San Diego Bay and in other harbors included metals, arsenic, chromium, copper, lead, mercury, nickel, and zinc; organics, PAHs and PCBs; and pesticides, chlordane and DDTs.

Do the waters and sediments in the harbors sustain healthy biota?

The RHMP utilized state standards known as Sediment Quality Objectives (SQOs)² to evaluate the biological community conditions and the potential for chemical effects to impact benthic organisms. The SQOs consist of three lines of evidence including sediment chemistry, sediment toxicity, and the condition of the benthic community. Combined, the three lines of evidence provide an integrated ranking (ranging from “unimpacted” to “clearly impacted”) to determine the potential impacts of sediment quality.

Data indicated that the benthic infauna at a majority of stations occurred in most areas at an abundance and diversity indicative of healthy communities. Overall, 72 percent of stations were classified as “unimpacted” or “likely unimpacted” based on the SQO analysis. Additionally, 100-percent of the stations throughout all harbors were considered non-toxic or having low toxicity. A total of 60-percent of stations had benthic infaunal communities consistent with reference or low disturbance conditions.

The evaluation of the demersal fish and invertebrate community also revealed healthy individuals, with a diversity and abundance of species that were consistent with those of prior regional monitoring assessments. Of note, the proportion of top predators caught during fish trawls represented 30-percent in Oceanside Harbor, 40 percent in both Mission Bay and San Diego Bay, and 70 percent in Dana Point Harbor of all individuals caught. Various studies indicate that presences of top predators are an important indicator of ecological health.

What are the long-term trends in water and sediment quality?

In order to evaluate trends over time, the RHMP established thresholds for a suite of primary and secondary indicators. Of the 22 indicators assessed for trends, the results of 16 indicators showed improvement during 2013. The remaining six indicators did not indicate a trend. There was no sign of degradation from historical conditions.

Comparing the results of sampling conducted during 2013 to the previous 2008 sampling, the harbors appear to have reached a steady state with some improvements. The percentage of stations with integrated SQO scores considered to be “unimpacted” and having a “low impact” increased from

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64 percent to 72 percent between 2008 and 2013. In addition, stations indicating nontoxic or low toxicity conditions improved from 92 percent during 2008 to 100 percent in 2013.

Conclusion

The District currently has a number of programs directed at improving the quality of water and sediment in San Diego Bay. Under the Municipal Storm Water Permit, Order No. R9-2013-0001³, staff members regularly inspect District and tenant operations for compliance with required best management practices to reduce pollutants from entering the storm drain network and the Bay. A Total Maximum Daily Load (TMDL) for dissolved copper exists in the Shelter Island Yacht Basin and requires a reduction of dissolved copper in the water column. In addition, a variety of sediment remediation efforts have taken place to cap or dredge Bay sediments impacted by historical contamination. Through habitat restoration efforts such as at the Chula Vista Wildlife Reserve and the salt ponds in the south Bay, the District is actively engaged in improving the biological resources in the Bay. Lastly, the SDRWQCB intends to utilize the 2013 RHMP results to conduct a comprehensive assessment of the ecological health of San Diego Bay.

The results of the 2013 RHMP demonstrate that most of the areas sampled within San Diego Bay and the other harbors have sediment and water quality conditions that are supportive of healthy biological resources. Management efforts such as those described above should continue to improve the health of the bay, while ongoing implementation of the RHMP's long-term monitoring will enable the District to track trends over time.

General Counsel's Comments:

The General Counsel's office reviewed this agenda sheet as presented to it and approved it as to form and legality.

Environmental Review:

This presentation to the Board does not constitute an "approval" or a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur, including without limitation, physical changes within the District's jurisdiction. CEQA requires that the District adequately assess the environmental impacts of its projects. This presentation to staff will not bind the District to a definite course of action prior to CEQA review. Full CEQA analysis will be completed prior to the approval of any projects that may be contemplated as part of the Regional Harbor Monitoring Program. Moreover, the Board/District in its sole and absolute discretion, reserves its discretion to adopt any and all feasible mitigation measures, alternatives to the project, including a no project alternative, a statement of overriding consideration, if applicable, as well as approve or disapprove the project and any necessary permits or entitlements. Based on the totality of the circumstances and the entire record, the Board's direction does not commit the District to a definite course of action prior to CEQA review being conducted. No further action under CEQA is required at this time.

In addition, this presentation allows for the District to administrate its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the

File #:2016-0219

Public Trust Doctrine. Consequently, this presentation is consistent with the Public Trust Doctrine.

Finally, this presentation to the Board does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a CDP or exclusion is not required. However, the District’s projects require processing under the District’s CDP Regulations. The Board will consider approval of future development projects formulated as a result of the Regional Harbor Monitoring Program after the appropriate documentation under District’s CDP Regulations has been completed and authorized by the Board, if necessary. The Board’s direction in no way limits the exercise of the District’s discretion under the District’s CDP Regulations.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

Philip Gibbons
Senior Environmental Specialist, Planning & Green Port

Attachment(s):

- Attachment A: California Water Code §13225 Letter from the San Diego Regional Water Quality Control Board
- Attachment B: Memorandum of Understanding Regarding the Regional Harbor Monitoring Program 2013-2018
- Attachment C: Executive Summary of the Regional Harbor Monitoring Program 2013 Final Report

¹Common thresholds for sediment analysis include effects concentrations where toxic impacts to biota in the sediment may be observed or predicted due to chemical concentration. Effects range low (ER-L) is a measurement where effects are rarely observed or predicted due to chemical concentrations. Effects range median (ER-M) is a measurement where effects are frequently or always observed or predicted among species of biota.

²California State Water Resources Control Board. Sediment Quality Objectives.
<http://www.waterboards.ca.gov/water_issues/programs/bptcp/sediment.shtml>

³San Diego Regional Water Quality Control Board. Order R9-2013-0001 San Diego Regional Municipal Separate Storm Sewer System Permit. http://www.swrcb.ca.gov/rwqcb9/water_issues/programs/stormwater/index.shtml

(14)

**MEMORANDUM OF UNDERSTANDING
REGARDING THE REGIONAL HARBOR MONITORING PROGRAM**

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This Memorandum of Understanding, hereinafter called the "Regional Harbor Monitoring Program MOU" is made and entered into in July 2013, between the County of Orange, City of Oceanside and City of San Diego, all municipal corporations ("County & Cities"), and the San Diego Unified Port District, a public corporation ("Port"). The Port and County & Cities shall be referred to hereinafter individually and/or collectively as "Party/ies."

RECITALS

Whereas, the Port and the County & Cities have negotiated this Regional Harbor Monitoring Program MOU to work jointly to implement the Regional Harbor Monitoring Program. The Regional Harbor Monitoring Plan (RHMP) is required by the July 24, 2003, directive from the San Diego Regional Water Quality Control Board (RWQCB) pursuant to §13225 of the California Water Code. The intent of this coordinated program is to develop a coordinated monitoring effort of harbors in the San Diego Region to provide water quality status and trends information, as well as to assess the surface water's abilities to support designated beneficial uses.

Whereas, the Port has agreed to lead the RHMP for the Parties.

Whereas, the Parties recognize that expenditures will be needed to complete the work identified in the RHMP, and that the costs will be shared between the Port and County & Cities.

Whereas, the Parties have reached an agreement on a funding formula as described in Exhibit A, which will be applied to allocate portions of the total RHMP costs to each Party. The funding formula is based upon land (water) area, harbor stratification, and a fixed percentage for data management and reporting.

Whereas, the County & Cities agree to provide funding to the Port for their portion of the costs associated with implementing the RHMP as described in this MOU and for administrative oversight of the RHMP.

Whereas, the Parties intend this MOU to provide for the performance of studies, monitoring and development of programs and funding therefore for a period of five (5) years, through June 30, 2018 after which the Parties recognize that additional agreements may be necessary for further monitoring, studies and load reduction implementation projects over the period covered by the RHMP.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties hereby agree as follows:

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1. TERM OF MOU

- a. The term of this MOU shall commence on July 1, 2013 and is effective through June 30, 2018, unless earlier terminated by the Parties as provided below.

2. DIVISION OF PROGRAM COSTS

- a. Exhibit A, attached hereto and incorporated by this reference describes the default cost-share formula agreed upon by the Port and County & Cities. The cost share formula is applicable to any and all consultant costs and work performed under the RHMP. The associated costs shall be divided among participating Parties using the default formula described below, unless a Special Formula is approved by the Parties to which the cost applies.
 - i. Fifty percent (50%) of the total RHMP costs shall be allocated for water area in each harbor. Water areas shall be divided among the Parties by dividing the total water area for the harbor of each Party by the combined total water areas for the harbors within the geographic area applicable to the RHMP.
 - ii. Thirty-five percent (35%) of the total RHMP costs shall be allocated for harbor stratification. Harbor stratification costs shall be divided among Parties by dividing the number of strata present for each harbor area by the overall number of strata possible for inclusion within each harbor area.
 - iii. Fifteen percent (15%) of the total RHMP costs shall be allocated equally amongst all of the Parties for data analysis, data management and reporting.
 - iv. Modification of the Default Formula requires the unanimous approval of all Parties signatory to this MOU.
- b. The County & Cities shall reimburse the Port for overhead expenses associated with the administrative costs incurred during the role of leading the RHMP in the amount of five percent (5%) of the total RHMP cost. This administrative cost shall be divided evenly among the County & Cities.
- c. Exhibit B, attached hereto and incorporated by this reference, indicates the not to exceed costs agreed upon by the Parties and determined according to the cost share formula and five percent (5%) administrative cost for work performed under the RHMP.
- d. The obligation of each Party is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as

obligating any Party to expend any funds beyond those lawfully appropriated or as involving any Party in any contract or other obligation for the future payment of money in excess of appropriations authorized by law.

- e. Special cost-share formulas may be needed to fund special studies or other efforts required for RHMP compliance and conducted jointly by the Parties. The special cost-share formula shall be developed as appropriate to satisfy required efforts. Unanimous approval by all Parties participating in the cost-share formula shall be required prior to its adoption.

3. FUNDING AND PROGRAM BUDGET

- a. The Port shall submit a budget for each fiscal year throughout the term of this MOU to the County & Cities by December 1 of each year. The budget shall contain an explanation of any recommended program changes, an estimate of all planned expenditures and an estimate of the payment required from the County & Cities for the following fiscal year. The County & Cities shall be permitted to review and approve the program scope of work and budget for the forthcoming year.
- b. The Port shall prepare a fiscal year end accounting within 60 calendar days of the end of each fiscal year. If at the end of each fiscal year the invoiced funds exceed the total costs of work performed during that fiscal year, the excess funds shall be credited to the next fiscal year's allocated costs.
- c. The Port shall notify the Parties if it appears that costs may exceed the budget approved by the Parties for any fiscal year. If any fiscal year end accounting results in costs exceeding the sum of the deposits, and the Port has notified the Parties of potential cost overruns, the Port shall seek approval of the excess cost from the Parties in the form of a revised budget and, upon approval, shall invoice each Party for its prorated share of the excess cost up to the amount of the revised approved budget.
- d. Upon termination of this Regional Harbor Monitoring Program MOU, if there are any excess funds, the Port shall reimburse the County & Cities their prorated share within 60 calendar days of the final accounting.

4. PAYMENT

- a. The Port will invoice County & Cities no later than the beginning of each fiscal year with the agreed upon amount for each upcoming fiscal year.
- b. The County & Cities shall pay the Port's invoice within 45 calendar days from the date of the invoice.

5. OBLIGATIONS OF THE PORT

- a. Project Administration

- i. The Port will provide overall administrative and other professional services required for design and managing the Regional Harbor Monitoring Program. Responsibilities shall include, but not be limited to the coordination of Parties and consultants, setting up and leading RHMP meetings, preparing annual RHMP budgets, invoices, etc., corresponding with the RWQCB regarding work completed, and reviewing and/or preparing documents and reports.
 - ii. The Port will assign qualified personnel to the RHMP project and be responsible for the general administration of the work performed by the selected consultant(s).
 - iii. The Port will provide quality assurance services to ensure all required monitoring, submittals, and other contract requirements are met by the consultant(s).
 - iv. The Port will provide annual invoices, detailed in the aforementioned Section 4, PAYMENT, by July 1 of each year to the County & Cities detailing the nature of the work to be performed and the amount of funding required during the next fiscal year. These invoices will include all monies needed for consultant(s) services for sampling, monitoring etc., and administration of the contract work.
- b. Consultant selection
 - i. The Port will be responsible for the preparation of, advertising for, opening, reviewing bids, award and administration of any consultant contract(s).
- c. The Port will develop the terms and conditions that reasonably protect the Parties from liability that may occur as a result of the Port executing the consultant agreement(s) and acting as the contracting agent.
- d. The Port will include language in the consultant agreement(s) to include all Parties as additional insured. Language will also be added to the consultant agreement(s) to ensure that consultant(s) agrees to indemnify the County & Cities as well as the Port to the extent permitted by law.

6. OBLIGATIONS OF THE COUNTY & CITIES

- a. The County & Cities will attend meetings, promptly return telephone calls and correspondence, participate in discussions, provide review and comments on consultant deliverables, and will share information essential for task development and completion.
- b. The County & Cities will coordinate with the Port to review and approve an RHMP budget for each fiscal year that is agreed upon by all Parties.
- c. The County & Cities will provide funding for the costs incurred under this MOU, subject to appropriations, based upon the terms and conditions of

this MOU. County & Cities will pay full amount of invoice by 45 calendar days from the date of the invoice.

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- d. The County & Cities agree to participate in the selection of one or more consultants to perform the work identified for the RHMP. The participation will include but not be limited to review of submitted proposals, interviews with consultants, and determination of final consultant selection.
- e. The County & Cities will provide services to review and approve consultant submittals. In the event any change in consultant scope of work is required due to unforeseen conditions, the County & Cities shall review any changes and provide appropriate response.
- f. The County & Cities agree to allow the Port and/or its consultants to enter property for work undertaken as a part of the RHMP. Before any such monitoring activities, the County & Cities will be contacted and the appropriate measures will be taken to ensure access.
- g. The County & Cities will provide funding to the Port for an additional five percent (5%) of the total consultants cost for overall project management including general administration ("Administrative Cost"). This administrative cost shall be shared equally among the County & Cities.

7. GENERAL CONDITIONS

- a. The Parties shall comply with all federal, state, and local laws and ordinances applicable to the work to be performed under the terms of this Regional Harbor Monitoring Program MOU.
- b. The Parties will follow the practice of the environmental professional in rendering findings, opinions, factual presentations, professional advice, and recommendations.
- c. Administration of this MOU and the associated consultant agreement(s) is under the jurisdiction of the Port herein, and any communication of the terms or conditions or any changes thereto.
- d. This MOU shall be effective on and from the date signed by the Parties.
- e. Notices required or permitted pursuant to this Regional Harbor Monitoring Program MOU shall be sufficiently given in writing and either served personally or mailed by certified mail; however, invoices, payments, and other communications according to this MOU may be served by first class U.S. mail to:

Karen Holman
 Manager, Environmental Program
 Environmental and Land Use Management
 San Diego Unified Port District
 P.O. Box 120488
 San Diego, CA 92112-0488

Kris McFadden
 Deputy Director, Transportation and Stormwater Department
 City of San Diego
 9370 Chesapeake Dr. Ste. 100
 San Diego, CA 92123

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Chris Crompton
 County of Orange
 2301 North Glassell St.
 Orange, CA 92865

Frank Quan
 City of Oceanside – Harbors and Beaches
 1540 Harbor Drive North
 Oceanside, CA 92054

or such other person and address as either party shall advise the other, in writing, in conformity with this section.

- f. In the event of litigation with respect to this MOU or the interpretation thereof, and in respect to all disputes or controversies arising hereunder, this MOU shall be construed in accordance with, and governed by, the laws of the State of California. Venue in respect to any suit or proceeding brought under or in connection with this MOU shall be the County of San Diego, State of California.
- g. This MOU and all rights and obligations contained herein shall be in effect whether or not any of the parties to this MOU have been succeeded by another entity, and all rights and obligations of the parties signing this MOU shall be vested and binding on their successor of interest.
- h. No failure of either the Port or the County & Cities to insist on strict performance by the other of any covenant, agreement, term, or condition of this MOU or to exercise any right or remedy consequent of a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this MOU, but each and every covenant, agreement, term and condition of this MOU shall continue in full force and effect without respect to any other existing or subsequent breach.
- i. This MOU represents the entire understanding of the Port and the County & Cities as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This MOU may not be modified or altered except in writing signed by all parties.
- j. The Parties agree to mediate any dispute prior to filing suit or prosecuting suit against the other parties. The cost of mediation shall be borne equally by the Parties. In the event suit is brought upon this MOU to enforce its

terms, each party shall be responsible for its own attorneys' fees and costs.

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- k. The County & Cities agree to defend, indemnify, protect, and hold the Port and its agents, officers and employees harmless from any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the Port's employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of the County & Cities and its contract agents, officers, or employees resulting from the consultant(s) and all expenses of investigating and defending against same; provided, however, that the County & Cities duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the Port, its agents, officers or employees.
- l. The Port agrees to defend, indemnify, protect, and hold the County & Cities and its agents, officers and employees harmless from any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the County & Cities employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of the Port and its contract agents, officers, or employees resulting from the consultant(s) and all expenses of investigating and defending against same; provided, however, that the Port's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the County & Cities, its agents, officers or employees.

8. TERMINATION

- a. Any Party wishing to terminate its participation in this MOU shall so notify all other Parties in writing by March 1 of any year. Such termination shall be effective the following June 30. The terminating Party shall be responsible for financial obligations hereunder to the extent incurred in accordance with this agreement by the Party prior to the effective date of termination. The balance of the Parties may continue in the performance of the terms and conditions of this MOU on the basis of a revised allocation of cost based on the funding formula in Exhibit A.
- b. If any Party fails to meet or fulfill its obligations under this MOU, the Party must be notified immediately and provided the opportunity to cure such breach. If the Party fails to cure the breach within five business days, any Party may terminate this MOU.
- c. The indemnification provisions set forth in Section 7, subsection k and l shall survive the termination of this MOU.

IN WITNESS WHEREOF, this "Regional Harbor Monitoring Program MOU," is executed as follows:

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SAN DIEGO UNIFIED Port DISTRICT

Date: JUNE 28, 2013 BY Jason H. [Signature]

I HEREBY APPROVE the form and legality of the foregoing Regional Harbor Monitoring Program MOU on this 28th day of June, 2013.

Allen F. Gross
Port Attorney

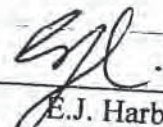
IN WITNESS WHEREOF, this Regional Harbor Monitoring Program MOU, is executed as follows:

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CITY OF SAN DIEGO

Date: 9/24/13

By: 
E.J. Harbin
Acting Director
Purchasing & Contracting

I HEREBY APPROVE the form and legality of the foregoing Regional Harbor Monitoring Program MOU on this 9th day of October, 2013.


for San Diego City Attorney

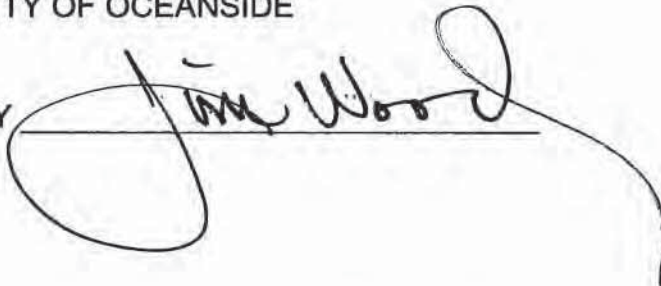
IN WITNESS WHEREOF, this Regional Harbor Monitoring Program MOU, is executed as follows:

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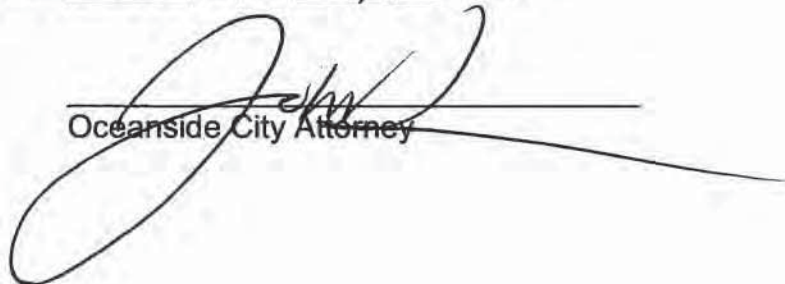
CITY OF OCEANSIDE

BY

A large, stylized handwritten signature in black ink, appearing to read "Jim Wood". The signature is written over a horizontal line.

I HEREBY APPROVE the form and legality of the foregoing Regional Harbor Monitoring Program MOU on this 5th day of March, 2013.

Oceanside City Attorney

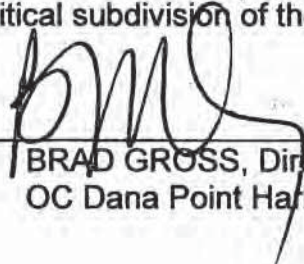
A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is partially obscured by the text "Oceanside City Attorney" printed below it.

IN WITNESS WHEREOF, this Regional Harbor Monitoring Program MOU, is executed as follows:

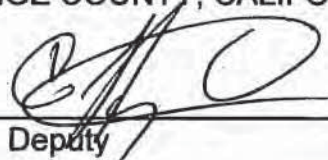
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COUNTY OF ORANGE,
a political subdivision of the State of California

BY 
BRAD GROSS, Director
OC Dana Point Harbor

APPROVED AS TO FORM:
COUNTY COUNSEL,
ORANGE COUNTY, CALIFORNIA

By: 
Deputy

Date: 3/22/13

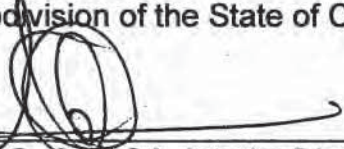
IN WITNESS WHEREOF, this Regional Harbor Monitoring Program MOU, is executed as follows:

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COUNTY OF ORANGE,
a political subdivision of the State of California

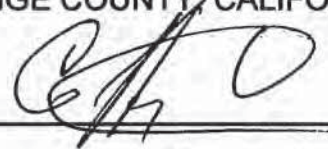
BY



IGNACIO G. OCHOA, Interim Director
OC Public Works

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: _____



Deputy

Date: _____

3/22/13

EXHIBIT A

Regional Harbor Monitoring Program Proposed Cost Share Formula*

Agency	Harbor	Acreage		Strata		Fixed Cost		Total	
		Total Harbor Acreage (mapped)	% of Total Acreage	Total Strata Present in Harbor	% of Total Strata	15.00%	% Fixed Cost Percentage	% of Total Costs**	Share of Total
County of Orange	Dana Point	159	1.21	4	25.00	15	13%		
City of Oceanside	Oceanside	61	0.47	3	18.75	15	11%		
City of San Diego	Mission Bay	2041	15.59	4	25.00	15	20%		
Port	San Diego Bay	10,831	82.73	5	31.25	15	56%		
TOTALS		13,092	100%	16	100%		100%		\$0.00

*Agency costs will be divided according to the following cost allocation formula:

- 1) Fifty percent (50%) of the total cost shall be divided based upon total acreage in each agency's respective harbor/bay.
- 2) Thirty-five percent (35%) of the total cost shall be divided based upon number of strata contained in each bay/harbor.
- 3) Fifteen percent (15%) of the total cost will be divided equally among all participating agencies. This cost share formula does not include the five percent (5%) Administrative Cost to the Port identified in the MOU. The Administrative Cost will be shared equally among the Cities and County and will be applied to annual invoices based on work conducted by a selected consultant(s).

**The total cost percentage is based on applying the 50-35-15 cost percentage to estimated funding required for the RHMP which results in the final percentages identified herein.

EXHIBIT B

Regional Harbor Monitoring Program Not To Exceed Costs*

Agency	Year 1 Cost Core Monitoring (\$1,000,000)			Year 2 Cost (\$150,000)			Years 3-5 Annual Cost (\$125,000 per year)				Years 1-5 Contract Costs	Years 1-5 Total Costs
	Cost Share Amount	5% Administrative Cost	Year 1 Total Cost	Cost Share Amount	5% Administrative Cost	Year 2 Total Cost	Cost Share Amount	5% Administrative Cost	Total Annual Cost	Years 3-5 Total Cost		
County of Orange	\$131,072	\$16,667	\$147,739	\$19,661	\$2,500	\$22,161	\$16,384	\$2,083	\$18,467	\$55,402	\$199,885	\$225,302
City of Oceanside	\$105,455	\$16,667	\$122,121	\$15,818	\$2,500	\$18,318	\$13,182	\$2,083	\$15,265	\$45,795	\$160,818	\$186,235
City of San Diego	\$202,948	\$16,667	\$219,615	\$30,442	\$2,500	\$32,942	\$25,369	\$2,083	\$27,452	\$82,356	\$309,496	\$334,913
Port	\$560,525	\$0	\$560,525	\$84,079	\$0	\$84,079	\$70,066	\$0	\$70,066	\$210,197	\$854,800	\$854,800
TOTAL	\$1,000,000	\$50,000	\$1,050,000	\$150,000	\$7,500	\$157,500	\$125,000	\$6,250	\$131,250	\$393,750	\$1,525,000	\$1,601,250

*Costs are based on a \$1,525,000.00 contract award, determined according to the cost share formula presented in Exhibit A, and include a 5% Administrative Cost shared equally among the County & Cities.

60903

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REFERENCE COPY

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RESOLUTION 2013-105

RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE DISTRICT AND THE CITY OF SAN DIEGO, CITY OF OCEANSIDE, AND COUNTY OF ORANGE TO SHARE COSTS AND IMPLEMENT THE REGIONAL HARBOR MONITORING PROGRAM TO EVALUATE THE STATUS AND TRENDS OF WATER, SEDIMENTS, AND AQUATIC LIFE IN THE REGION'S HARBORS FOR A PERIOD OF FIVE YEARS PURSUANT TO SECTION 13225 OF THE CALIFORNIA WATER CODE

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, in 2003, the San Diego Regional Water Quality Control Board (RWQCB), under §13225 of the California Water Code, issued a requirement to the District, Cities of San Diego and Oceanside (Cities), and the County of Orange (County) to coordinate and develop a Regional Harbor Monitoring Program (RHMP) to assess conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor; and

WHEREAS, since 2005, the District has been a party to a Memorandum of Understanding (MOU) with the Cities and County to implement a cost effective and consistent monitoring program with the District acting as the lead agency, and the current MOU will expire June 30, 2013; and

WHEREAS, Staff recommends a new MOU be authorized between the District and the Cities and County to re-establish shared program responsibilities and reaffirm the District as the lead for the period of July 1, 2013 to June 30, 2018, to define and implement cost sharing services for a consultant to implement the RHMP, for which approximately 56-percent of consultant costs will be attributed to the District with the remaining 44-percent of costs reimbursed to the District on an annual basis, and the Cities and County providing the District with a five-percent fee to administer the RHMP and consultant contract.

2013-105

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

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That the Executive Director or his designated representative is hereby authorized to enter into a five-year Memorandum of Understanding between the District, Cities of San Diego and Oceanside, and the County of Orange to coordinate and develop a Regional Harbor Monitoring Program to assess conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor.

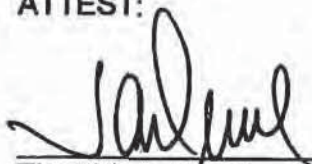
PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 11th day of June, 2013, by the following vote:

AYES: Castellanos, Malcolm, Merrifield, Moore, Nelson, Smith, Valderrama
NAYS: None.
EXCUSED: None.
ABSENT: None.
ABSTAIN: None.



Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)

AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
 and
AMEC FOSTER WHEELER ENVIRONMENT & INFRASTRUCTURE, INC.
 for
REGIONAL HARBOR MONITORING PROGRAM
AGREEMENT NO. 106-2017SN

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and AMEC FOSTER WHEELER ENVIRONMENT & INFRASTRUCTURE, INC., a Nevada Corporation (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall provide services to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or their designated representative informed of the progress of said services at all times.
 - a. **As-Needed Services**
 - (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
 - (2) Service Provider shall furnish all technical and professional labor, and materials to satisfactorily comply with Attachment A: Scope of Services as requested by District by issuance of specific Task Authorization and agreed to by Service Provider.
 - (3) Services rendered under this Agreement shall be undertaken by Service Provider only upon issuance of a Task Authorization (TA) for said services, in the format as shown in the attached Exhibit A,

attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on July 1, 2017 and shall terminate on June 30, 2022, subject to earlier termination as provided below.

3. **COMPENSATION.** For performance of services rendered pursuant to this Agreement and as further described in Attachment B, Compensation and Invoicing, attached hereto and incorporated herein; District shall compensate Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:
 - a. **Maximum Expenditure.** The maximum expenditure under this Agreement shall not exceed \$1,525,000. District shall compensate Service Provider using the terms and conditions in Attachment B, Compensation and Invoicing. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred.

 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

- c. **Progress Documentation.** Service Provider shall provide District progress reports in a format and on a schedule as District directs. Progress reports shall include a description of work completed, cumulative dollar costs incurred, anticipated work for the next reporting period, percentage of work complete, and the expected completion date for remaining work. The report shall identify problem areas and important issues that may affect project cost and/or schedule. The report shall present actual percent completion versus planned percent completion.

4. **RECORDS**

- a. Service Provider shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after the termination of this Agreement.
- b. Such records shall be maintained by Service Provider for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.
- c. Service Provider understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Service Provider shall provide District at Service Provider's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at reasonable times of the Service Provider's office or facilities, which are engaged in the performance of services pursuant to

this Agreement. Service Provider shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Service Provider's failure to provide the records within the time requested shall preclude Service Provider from receiving any compensation due under this Agreement until such documents are provided.

5. SERVICE PROVIDER'S SUB-CONTRACTORS

- a. It may be necessary for Service Provider to sub-contract for the performance of certain technical services or other services for Service Provider to perform and complete the required services; provided, however, all Service Provider's sub-contractors shall be subject to prior written approval by District. The Service Provider shall remain responsible to District for any and all services and obligations required under this Agreement, whether performed by Service Provider or Service Provider's sub-contractors. Service Provider shall compensate each Service Provider's sub-contractors in the time periods required by law. Any Service Provider's sub-contractors employed by Service Provider shall be independent Service Providers and not agents of District. Service Provider shall insure that Service Provider's sub-contractors satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.
- b. Listed below are the firms that the District has approved as Service Provider's sub-contractors to provide services under this Agreement:

<u>NAME OF FIRM</u>	<u>TYPE OF SERVICES PROVIDED</u>
Allen Burton, PhD	Third party reviewer
Brock Bernstein, PhD	Third party reviewer, Sampling Design, Focused studies, Regulatory Liaison
Laboratory Data Consultants	Third party reviewer of analytical data
Merkel & Associates, Inc.	Field Support & benthic infaunal analyses
Seaventures, Inc.	Vessel support & fish trawling

- c. Service Provider shall also include a clause in its Agreements with Service Provider's sub-contractors which reserves the right, during the performance of this Agreement and for a period of three (3) years following termination of this Agreement, for a District representative to audit any cost, compensation or settlement resulting from any items set forth in this Agreement. This clause shall also require Service Provider's sub-contractors to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. COMPLIANCE AND WARRANTY

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.
- c. Service Provider warrants and represents that it shall (i) perform the services with competent and skilled personnel in a good and workmanlike manner consistent with applicable industry standards and practices; (ii) use sound engineering and/or technical principles where applicable; (iii)

perform the services in compliance with specifications provided or approved by District; (iv) use or furnish materials and equipment that are merchantable, fit, and new unless otherwise provided in the TA; and (v) where mutually agreed, use or furnish merchantable and fit used material and equipment. To the extent assignable, all rights and remedies available to Service Provider or its subcontractors shall be passed directly to District. At no cost to District, Service Provider shall remedy nonconforming workmanship or replace nonconforming material and equipment, including removal of facilities as maybe necessary to reveal and repair or replace nonconforming services, and reinstallation of such facilities removed in connection therewith. If Service Provider does not remedy nonconforming service within ten (10) days written notice from company or within a time period otherwise agreed to by District and Service Provider (such an agreement not to be unreasonably withheld because outside factors may impact the time), District may do so at Service Provider's expense. If Service Provider fails to pay this expense, District may deduct all expenses from any proceeds due to Service Provider. At no cost to District, Service Provider shall diligently and promptly remedy nonconforming workmanship, material and equipment appearing within one (1) year from the date of final acceptance, or within such longer period of time warranted by the manufacturer warranty; provided, however, with respect to latent defects in equipment and material installed by Service Provider such period shall be within such time as District discovers or should have discovered such latent defects under normal operating circumstances, but in no event less than four (4) years from installation by Service Provider.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of Executive Director (President/CEO) of District in each instance.
9. **INDEMNIFY, DEFEND, HOLD HARMLESS**
- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.
- b. The Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Service Provider provided for in this Agreement.
- c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any

Claim arising from the services of Service Provider provided for in this Agreement, Service Provider agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. INSURANCE REQUIREMENTS

a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:

(1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

(a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.

(b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit C, Certificate of Insurance, attached hereto and incorporated herein).

(c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-insurance maintained by the District shall be excess of the Service Provider's insurance and shall not contribute to it.

- (d) The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District (“Waiver of Subrogation”).
- (2) Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- (3) Workers’ Compensation, statutory limits, is required of the Service Provider and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with “Workers’ Compensation and Insurance Act”, Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer’s Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.
- (4) Umbrella or Excess Liability insurance with limits no less than one million dollars (\$1,000,000) per occurrence and aggregate. This policy must provide excess insurance over the same terms and conditions required above for the General Liability, Automobile Liability and Employer’s Liability policies.
- (5) Contractors Pollution Liability insurance with limits no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- (6) For services at or near dock areas or water coverage in an amount of not less than one million dollars (\$1,000,000.00) for liability under

the Jones Act, Death on High Seas Act, and General Maritime Law to the extent not covered by Commercial General Liability.

- b. Service Provider shall furnish District with certificates of insurance coverage for all the policies described above upon execution of this Agreement and upon renewal of any of these policies. A Certificate of Insurance in a form acceptable to the District, an exemplar Certificate of Insurance is attached as Exhibit C and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with the District. Except in the event of cancellation for non-payment of premium, in which case notice shall be 10 days, all such policies must be endorsed so that the insurer(s) must notify the District in writing at least 30 days in advance of policy cancellation. Service Provider shall also provide notice to District prior to cancellation of, or any change in, the stated coverages of insurance.
- c. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of insurance, the addendum shall indicate the insurance carrier or underwriter who is the lead carrier and the applicable policy number for the CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or subcontractors.

12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **CONFLICT OF INTEREST** Service Provider represents and warrants the following:
- a. No current or prior conflict of interest. That Service Provider has no business, professional, personal or other interest, including but not limited to, the representation of clients, that would conflict in any manner or degree with the performance of its obligations under this agreement.
 - b. Notice of Potential Conflict. If any such actual or potential conflict of interest arises under this Agreement, Service Provider shall immediately inform the District in writing of such conflict.
 - c. Termination for Conflict. If the District determines that such conflict poses a material conflict to and with the performance of Service Provider's obligations under this Agreement, then the District, in its sole and absolute discretion, may terminate the Agreement immediately upon written notice to Service Provider. Such termination of the Agreement shall be effective upon the receipt of such notice by Service Provider.
15. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
16. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

17. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.
18. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.
19. **DISPUTE RESOLUTION**
- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other

procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.

- b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, sub-contractor and all parties bound by this arbitration provision agree to join in and become parties to the arbitration proceeding.
- c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

20. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Service Provider at no expense to the District. If such expenses, miscellaneous charges, or other liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Service Provider. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Service Provider.

21. **COMPLIANCE WITH PREVAILING WAGE LAWS**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons

and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.

b. Certified Payrolls. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls electronically via the software LCPtracker.

(1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Service Provider will be given a Log-On identification and password to access the San Diego Unified Port District's reporting system upon Service Provider's request.

(2) The use of LCPtracker by the Service Provider is mandatory. Access to LCPtracker will be provided at no cost to the Service Provider.

(3) In order to utilize LCPtracker, the Service Provider needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to www.lcptracker.com. To Login, go to www.lcptracker.net and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Service Provider's request.

(4) Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Service Provider's payroll and accounting software

might be capable of generating a 'comma delimited file' that will interface with the software.

- (5) Service Provider must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will be given a Log-On identification and password from the Service Provider.
- (6) Training options can be provided to the Service Provider upon request.

22. **SERVICE PROVIDER/CONTRACTOR REGISTRATION PROGRAM**

- a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
- b. 2.4.1 No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless

registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

- d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
23. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
24. **EXECUTIVE DIRECTOR'S SIGNATURE.** It is an express condition of this Agreement that said Agreement shall not be complete nor effective until signed by either the Executive Director (President/CEO) or Authorized Designee on behalf of the District and by Authorized Representative of the Service Provider.
- a. Submit all correspondence regarding this Agreement to:

Kelly Tait
 Planning & Green Port
 San Diego Unified Port District
 P.O. Box 120488
 San Diego, CA 92112-0488
 Tel. 619-686-6372
 Email: ktait@portofsandiego.org

- b. The Service Provider's Authorized Representative assigned below has the authority to authorize changes to the scope, terms and conditions of this Agreement:

Barry J. Snyder
 Amec Foster Wheeler
 Environment & Infrastructure, Inc.
 9210 Sky Park Court, Suite 200
 San Diego, CA 92123
 Tel. 858-300-4300
 Email: barry.snyder@amecfw.com

- c. Written notification to the other party shall be provided, in advance, of changes in the name or address of the designated Authorized Representative.

SAN DIEGO UNIFIED PORT DISTRICT

**AMEC FOSTER WHEELER
ENVIRONMENT &
INFRASTRUCTURE, INC.**

Jason H. Giffen
Assistant Vice President
Planning & Green Port

Barry J. Snyder, Branch Manager
Aquatic Sciences

Approved as to form and legality:
GENERAL COUNSEL

By: Assistant/Deputy

A manually signed copy of this Agreement transmitted by email or any other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

I. GENERAL PROGRAM BACKGROUND & INFORMATION

- A. Service Provider to provide program design and support, sample collection, analysis of biological, chemical, and toxicological data, reporting, and scientific counsel for the implementation of the Regional Harbor Monitoring Program (RHMP).
- B. The Service Provider will be required to represent the Regional Harbor Monitoring Program (RHMP) Agencies by attending and participating in Bight Program planning meetings, design monitoring programs, conduct monitoring and sample collection, and provide a variety of analytical and reporting services for the RHMP Agencies to include: The District, the Cities of San Diego and Oceanside and the County of Orange. The work should be focused on collecting information pertaining to ambient conditions, evaluating the status of beneficial uses and trends, and identifying and determining the sources and effects of pollutants in the four harbors. A summary of the methods, results, and subsequent analyses is required. A discussion of the results as they pertain to the RHMP questions is also required. Additional focused studies and reporting may be required as well, pending the proposed program design. All work will be incorporated into deliverables including a technical report and a public-friendly document.
- C. Aligning RHMP monitoring framework with current monitoring goals had been discussed in a series of meetings with the SDRWQCB and stakeholders during the fall of 2016 and winter of 2017, and the program may further evolve from what is discussed below as Bight planning begins in summer 2017.

II. SCOPE OF SERVICES

- A. Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.

Phase 1 - Year 1

1. Meeting Support

As directed by the District, attend meetings with the District, Cities, County and necessary stakeholders, which may include District tenants, SDRWQCB, members of the public, or the scientific community. Meetings may be conducted to design monitoring plans and special studies, discuss program progress, present results, and/or provide technical and scientific counsel. In some instances, the Service Provider may be required to attend meetings on behalf of the RHMP Agencies. Furthermore, the Service Provider may be required to prepare presentations and/or provide relevant literature or other forms of documentation during meetings.

2. Work Plan

Prior to monitoring, the Service Provider must develop a work plan that is approved by the District outlining the Core Monitoring Program (discussed below), which shall include, but not be limited to: a schedule of monitoring, analysis, and reporting; sequence of work; and a list of team members and roles (including those of sub-consultants).

3. Sample Design

The foundation of the RHMP is a monitoring program to assess the quality of water, sediments, aquatic life, and trends within the RHMP harbors. As directed by the District, the Service Provider will design a program that can adequately answer the RHMP core monitoring questions and as further set forth herein. The Service Provider must review and become familiar with the sample design, monitoring requirements, data, and methods used to conduct monitoring and analysis associated with the 2008 and 2013 RHMP as well as the Bight Program. In addition, the monitoring program shall generally comply with the 2012 SDRWQCB Staff Report "A Framework for Monitoring and Assessment in the San Diego Region" as well as the 2015 SDRWQCB Strategy for a Healthy San Diego Bay. A review of methodologies in similar monitoring programs shall be conducted to ensure best practices and industry standards are used. If the sample design or methodologies practiced in the 2008 and 2013 RHMP need to be updated or revised, the Service Provider should propose new methodology that will provide a defensible comparison to previous results and trends.

All programs should be designed to integrate with existing or future monitoring programs that are regularly conducted in the region, including National Pollutant Discharge Elimination System (NPDES) monitoring, Total Maximum Daily Load (TMDL) monitoring, Water Quality Improvement Plan (WQIP) monitoring, Unified monitoring and the San Diego Bay Strategy, and other permit compliance monitoring, ongoing special studies, and, most importantly, the Bight Program. Additionally, the RHMP and all accompanying analytical results must be designed to be

comparable with the California's Surface Water Ambient Monitoring Program (SWAMP).

4. Quality Assurance Project Plan

For the core monitoring program and/or each focused study, the Service Provider shall provide a Quality Assurance Project Plan (QAPP) that outlines all quality assurance/quality control procedures for the District's review and acceptance. The QAPP shall have all of the 24 elements consistent with SWAMP requirements. The QAPP shall be prepared prior to monitoring (core monitoring or focused monitoring) and submitted to the RHMP Agencies and/or SWAMP for review and approval. A copy of the approved QAPP shall be present with the Service Provider during monitoring events and shall be strictly followed. The QAPP must be included in the final report(s). If approved methods deviate from the sample design, monitoring program, analytical approach, or QAPP or data is determined to contain errors, the District shall be notified immediately and a remedy shall be implemented to correct the problem or inaccuracy. If the Service Provider choose to sub-contract analytical work or other work to an outside vendor, applicable standard operating procedures (SOPs) should be provided and included as appendices of the QAPP subject to review by the RHMP Agencies.

Phase 2 -Year 2, and as needed Years 3 through 5:

5. Monitoring

It is anticipated that the program may require different types of monitoring efforts to address the RHMP questions. Core monitoring will be used to evaluate ambient conditions and the status of long-term trends. Focused studies may be designed to answer specific questions that do not require long-term assessment. Details on each monitoring program's requirements are defined below which shall be conducted at the direction of the District.

a. Core (Ambient) Monitoring

- (1) Core monitoring will include the collection of data regarding status of physical, chemical, and biological indicators as well as observations of trash and debris. The core monitoring program should provide adequate information to address the core monitoring questions and allow statistically valid statements to be made about the status of conditions and trends (improving or degrading over time) in each harbor as well as the harbors as a whole.

- (2) Samples will be collected during the summer months in each harbor (July through September 2018). The summer months were selected for the monitoring period because these months represent stabilization of the benthic community following winter storms and spring generation of organisms. This timing allows for integration with the Bight Program, which is scheduled for the summer of 2018. The core sampling schedule, procedures, quality assurance requirements, methodologies for all indicators, and data standardization/management must be consistent with the Bight Program as the data collected during the RHMP will be integrated into the Bight dataset. The Bight Program has fully developed protocols that will be adapted to the RHMP. As stated, the core monitoring program shall be designed so that a defensible comparison to the 2008 and 2013 RHMP results can be analyzed and discussed. The design elements detailed here will be used as part of the RHMP core monitoring program.

- (3) Monitoring Indicators:

The general requisite components of monitoring are listed below.

- i. Water: general parameters, chemistry, toxicity
- ii. Sediment: chemistry, grain size, benthic community, and toxicity
- iii. Fish and Macroinvertebrates (trawls): abundance, biomass, community indices, and tissue
- iv. Trash: type, abundance, location

Lists of indicators including units of measurement and reporting limits are presented as an example in Appendix B to this RFP. The final list of indicators will be reviewed prior to monitoring and may be adjusted to compliment the 2018 Bight Program or other needs.

- (4) Previously, in both 2008 and 2013 the harbors have been portioned into five strata for the purposes of the RHMP. These strata may continue to be used to facilitate sample design during the new program, with the possibility of additional strata and the numbers of sampling stations within each changing from previous sampling as Bight 2018 planning begins. The five strata previously used are listed below:

- i. Freshwater inputs
- ii. Shallow water
- iii. Deep water

- iv. Marinas
- v. Port/Industrial

The extent and identification of strata for each harbor during 2008 and 2013 are available in a GIS format.

- (5) Water and sediment sampling stations shall be present within each stratum. All stations, including trawl sampling stations, shall be selected according the 2018 Bight Program protocols and remain similar to the sampling design presented in the 2008 and 2013 RHMP. Sampling station location names and geographic coordinates will be provided to the Service Provider prior to the commencement of monitoring. The number of water and sediment stations shall not exceed 75; trawl stations shall not exceed 18.

b. Focus Studies Monitoring

- (1) Research that is suitable for focused studies based on the results and analysis of the core monitoring program may be conducted. These studies may be designed and conducted in designated portions of all or some of the harbors.
- (2) Studies will be developed in conjunction with input from the RHMP Agencies and will address common, emerging, or high priority issues on an as-needed basis.
- (3) All monitoring programs will be designed with consideration of existing programs, such as unified monitoring, NPDES, TMDL, or other permit required monitoring programs, so that resources are effectively leveraged and efforts are not duplicated.
- (4) One possible new area of focus may be related to the development of a new program component that will seek to address and characterize trash and debris in the harbors. This potential new focus will address data gaps while not overlapping with trash and debris programs already in place via other monitoring programs (see attached Meeting minutes).

6. Quality Assurance

a. Internal QA Officer

A QA Officer within the Service Provider team shall be used to review draft laboratory data to ensure consistency with the project QAPP and determine the quality of all draft, raw data prior to conducting and interpreting statistical analyses, drawing scientifically valid conclusions, and developing a draft report. A report that ensures data accuracy and consistency with the QAPP shall be presented to the RHMP Agencies for review prior to the

development of draft report(s) (including laboratory reports) and shall be included in the final project report(s) appendices.

b. Third Party Review

As required by SWAMP, a third-party QA Officer shall be used to review draft laboratory data to ensure consistency with the project QAPP and determine the quality of all draft, raw data prior to conducting and interpreting statistical analyses, drawing scientifically valid conclusions, and developing a draft report. A third-party QA Officer shall be assigned from a third-party firm or competent professional who is familiar with SWAMP but is not involved in the acquisition processes. A report to ensure data accuracy and consistency with the QAPP shall be presented to the RHMP Agencies for review prior to the development of draft report(s) (including laboratory reports) and shall be included in the final project report(s) appendices.

7. Equipment

The Service Provider will be responsible for furnishing all equipment and materials, including a boat, required to complete all phases of the RHMP. All disposable materials furnished by the Service Provider will be new and unused materials only and must be approved by the District before use. Service Provider will provide sample collection containers, coolers, sample labels, sample preservative supplies, filter media and chain of custody forms, as needed. Sample collection containers will include the appropriate preservative, if required. Service Provider will also be responsible for transporting samples to the analytical laboratories within required holding times.

Waste generated by the Service Provider and/or Sub-Contractors during District activities shall be the Service Provider's responsibility to store, transport, and dispose of in accordance with federal, state, and local laws. The District, Cities, and County shall remain liable as generator of the waste from each jurisdiction according to law. Service Provider shall be responsible for proper storage and ensure that a proper transporter and disposal facility has been approved. All contractors shall comply with California and Federal OSHA regulations, or any other appropriate laws. Service Provider personnel assigned to collect samples for the District must be 40-hour OSHA trained per 29 CFR 1910.120. The laboratory or laboratories providing analysis of samples must be certified by the California Department of Public Health or applicable agency.

8. Analysis and Reporting

a. Analysis

The Service Provider shall become familiar with the analytical methods used in the previous RHMP studies and apply similar or consistent methods to assess the quality of water, sediments, aquatic life, and trends within the RHMP harbors. The analysis shall be conducted with regard to the RHMP questions and to determine if beneficial uses are being protected and attained. As necessary, analysis shall provide statistically valid statements to be made about the status of conditions and trends. New analyses will likely be required and will be addressed as planning progresses for the 2018 RHMP Monitoring event. Analytical methods shall remain consistent with the 2013 Bight Program and should follow current industry standard guidelines for marine analysis (ie, Sediment Quality Objectives, Benthic Response Index, etc.).

If the analytical methods need to be revised or updated, the new analytical methods shall provide for a comparable analysis to previous methods and results. Revisions and/or updates shall be presented to and discussed with the RHMP Agencies, as applicable.

b. Reporting

For all RHMP deliverables associated with this contract, the Service Provider shall prepare and submit a draft report(s) summarizing the background and purpose of the project, methods pertaining to field sample collection, reporting limits, and analysis, limitations of the methodology (as necessary), results, a discussion regarding the RHMP questions and relevant information, and final conclusions for the District's review and approval. An executive summary and list of references, as needed, shall also be included. Specific recommendations for the reporting format and/or inclusion of additional information shall be decided upon by the RHMP Agencies.

In addition to technical, scientific reports associated with the Core Monitoring Program and/or Focused Studies, a final synthesis report summarizing the findings of the entire RHMP program shall be prepared prior to the conclusion of the contract for the District's review and approval. The synthesis report shall be used to convey the goals and results of the RHMP and developed and formatted in a public-friendly manner similar to work products such as the "Pulse of the Estuary" reports produced by the San Francisco Estuary Institute .

The RHMP Agencies shall review and comment on the draft report(s). Based on comments, the Service Provider will revise the draft report and submit final copies – 1 Word version, 5 hard copies, and 8 CD-ROMs to the District. Final reports shall also

include but not be limited to field sampling logs, station GPS coordinates, QAPP, chains-of-custody, raw chemical and biological data, complete mortality and water quality tables, bioaccumulation data, sediment chemistry, and reports associated with independent third party review. Appendices containing all of the chemical and biological analyses QA/QC data shall also be provided. Electronic versions of data should be formatted according to an agreed upon standard (ie, SWAMP and/or Bight formatting) for input into the District's data management structure.

9. Electronic Data Submittal Standards

The District's Planning and Green Port Department is implementing environmental Electronic Data Deliverable (EDD) Specifications to standardize and streamline the process by which environmental data are collected, organized, compiled, stored, processed, reported, transmitted, and archived. EDD Specifications will allow the District to access summary and detailed information on a data management and geographic information systems (GIS) platform.

EDD Specifications shall be used under this contract including the collection of project and field environmental data and measurements, laboratory analysis, and reports. EDD Specification-compliant deliverables are required for all field investigations and field sampling activities for all media. EDD Specification-compliant electronic deliverables will generally include, but will not be limited to:

- site location information,
- project information,
- locational and sample data,
- field measurements,
- physical, chemical, and biological measurements assessed,
- electronic submission of laboratory reports, and
- electronic submission of all paper document submittals.

All electronic submittals shall conform to EDD Specifications and shall be submitted in a format that is consistent with software used by the District. The EDD Specification-compliant electronic submittals, including but not limited to, reports, figures, appendices, data tables, spreadsheets, and database files pertaining to the program shall be submitted to the District for all tests performed unless other arrangements have been approved by the District. The District may specify additional electronic submittals.

All laboratory reports will be typewritten, well presented, easily understood, and consistent in format. QA/QC results will also be included with the analytical results. Laboratory report pages shall be numbered and contain the name of the laboratory responsible for analysis.

All laboratory reports will contain the name of the laboratory, sample identification number, name of the analytical test, analytical results, date the samples were analyzed, the time analysis was initiated, percent standard deviation, description of and results of control runs and method blank analysis, and the name of the person responsible for analysis.

10. Quality of Work

All work shall be conducted in accordance with current criteria and regulations established by District and regulatory agencies. All plans and laboratory reports shall be typewritten, neat, and legible. All elements of submittal from Service Provider shall be completely and thoroughly checked by the Service Provider before submittal to the District.

Service Provider shall ensure all QAPP procedures are strictly followed by its project staff as well as by its sub-contractors. The QAPP must meet SWAMP requirements. The QAPP shall include but not be limited to documentation of analytical reproducibility, analytical detection limits, reference materials, instrument calibration, and record keeping for various tests, which are consistent with applicable standard protocols. The appropriate analysis of blanks, reagent blanks, and standard reference materials shall be performed.

11. Liaison with District

Service Provider shall designate one person as the Project Manager who shall be cognizant of the District's requirements and ensure these requirements are met during the course of these services. The Service Provider shall provide project updates, discuss problem areas, and obtain additional direction from the District as required. All liaisons with the District shall be through the Planning and Green Port Department

**ATTACHMENT B
COMPENSATION & INVOICING
San Diego Unified Port District**

1. COMPENSATION

a. For the satisfactory performance and completion of the services under this Agreement, District shall pay Service Provider compensation as set forth hereunder.

(1) Service Provider shall be compensated and reimbursed by District on the basis of invoices submitted each month for services performed during the preceding month. Task Authorizations shall be Time and Materials and each invoice for work performed shall include:

Date work performed;
Description of the work performed;
Hours worked by personnel classification;
Rate per personnel classification;
Total personnel cost by classification; and
Direct Costs.

(2) Professional services shall be invoiced in accordance with the following Rate Schedules:

Labor Classification	Fully Burdened Hourly Billing Rate
Principal	\$195.37
Associate 2	\$152.04
Associate 1	\$141.58
Senior 1	\$99.90
Eng/Sci Professional 3	\$90.52
Eng/Sci Professional 1	\$73.38
Senior 2	\$122.04
Administrative Staff 6	\$103.99
Functional/Professional 3	\$92.14
Eng/Sci Professional 2	\$80.40
Administrative Staff 4	\$72.88

(a) The following shall be considered part of the fully burdened hourly rates stated in this Agreement: vehicle expenses, parking, tolls, film, postage, facsimiles, computer usage, printing, normal copying and document reproduction, blue print services, travel, lodging, telecommunications, photography, and all other costs and expenses incurred in completing such services. No Escalation (0%) in rates will be permitted over the term of the agreement.

- (b) Additional classifications and fully burdened hourly rates not listed in the Rate Schedule above may be authorized via Task Authorization with the approval of the District's Project Manager.

b. **Reimbursable Expenses**

Sub-Contractor Costs	0% mark-up
Direct Costs	At Cost (zero mark-up)

Note: Reimbursement for other costs in excess of \$50.00 shall require the advance written approval by District's Project Manager. All other project related direct costs shall require appropriate documentation for reimbursement.

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.
- b. Service Provider shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section 1, above:
- 1) Agreement No. **106-2017SN**
 - 2) Task Authorization(s) (TA) number being charged.
 - 3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. _____, and that payment has not been received."
 - 4) Dates of service provided
 - 5) Date of invoice
 - 6) A unique invoice number
- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Kelly Tait, Planning & Green Port, San Diego Unified Port District, P.O. Box 120488, San Diego, CA 92112-0488.

- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

**EXHIBIT A
TASK AUTHORIZATION
San Diego Unified Port District**



Planning & Green Port
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-6254
Fax (619) 686-6467

TASK AUTHORIZATION NO. __

Date

(Name)

(Title)

(Name of Company)

(Address)

(City, State, Zip)

Email:

Subject: Task Authorization for Agreement No. __ - 20__

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$_____. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #_** on invoice(s) for this Task.

TASK DESCRIPTION

1.	Requestor:		4.	WBS# or IO# CC# GL# Budget Sub-item Name	
2.	Date of Request:		5.	Task Start Date:	
3.	Task Budget:	\$	6.	Task End Date:	
7.	Task Title:				

8. **Scope of Services:**

9. **Contractor Staffing** (If applicable)

Name	Classification	Hours
	Staff as needed per Agreement rates	

10. **List of Sub-Contractors** (If applicable)

N/A

11. Please acknowledge acceptance of this Task Authorization by signing below and returning via email to _____, Contracts Administrator for Planning & Green Port.

APPROVALS

Service Provider:

Signature: _____

Name: _____

Title: _____

Firm: _____

Date: _____

Project Manager:

Signature: _____

Name: _____

Title: _____

Date: _____

Assistant Vice President:

Signature: _____

Name: Jason H. Giffen

Title: Assistant Vice President, Planning & Green Port

Date: _____

**EXHIBIT B
CERTIFICATE OF INSURANCE
San Diego Unified Port District**

By signing this form, the authorized agent or broker **certifies** the following:

- (1) The Policy or Policies described below have been issued by the noted Insurer(s) [Insurance Company(ies)] to the Insured and is (are) in force at this time.
- (2) As required in the Insured's agreement(s) with the District, the policies include, or have been endorsed to include, the coverages or conditions of coverage **noted on page 2 of this certificate**.
- (3) Signed copies of **all** endorsements issued to effect require coverages or conditions of coverage are attached to this certificate.

Return this form to: **San Diego Unified Port District**
c/o Ebix BPO
P.O. Box 100085 – 185
Duluth, GA 30096 – OR –
Email: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)

SDUPD Agreement Number: _____

This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability <input type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-made Form Retro Date _____ <input type="checkbox"/> Liquor Liability Deductible/SIR: \$ _____		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____
	Commercial Automobile Liability <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date: Expiration Date:	Each Occurrence: \$ _____
	Workers Compensation – Statutory Employer's Liability		Commencement Date: Expiration Date:	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	Professional Liability <input type="checkbox"/> Claims Made Retro-Active Date _____		Commencement Date: Expiration Date:	Each Claim \$ _____ \$ _____
	Excess/Umbrella Liability		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____

CO LTR	COMPANIES AFFORDING COVERAGE	A. M. BEST RATING
A		
B		
C		
D		

A. M. Best Financial Ratings of Insurance Companies Affording Coverage Must be A-VII or better unless approved in writing by the District.

Name and Address of Authorized Agent(s) or Broker(s)	E-mail Address:
	Phone: _____ Fax Number: _____
	Signature of Authorized Agent(s) or Broker(s)
	Date: _____

SAN DIEGO UNIFIED PORT DISTRICT
REQUIRED INSURANCE ENDORSEMENT

<u>ENDORSEMENT NO.</u>	<u>EFFECTIVE DATE</u>	<u>POLICY NO.</u>
NAMED INSURED:		
GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES): All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises		

Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or in any endorsement now or hereafter attached thereto, it is agreed as follows:

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.
2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.
3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").
4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

Except as stated above, and not in conflict with this endorsement, nothing contained herein shall be held to waive, alter or extend any of the limits, agreements or exclusions of the policy(ies) to which this endorsement applies.

 (NAME OF INSURANCE COMPANY)

 (SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
 c/o Ebix BPO
 P.O. Box 100085 – 185
 Duluth, GA 30096 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

DRAFT**RESOLUTION 20xx-xxx**

RESOLUTION SELECTING AND AUTHORIZING AN AGREEMENT WITH AMEC FOSTER WHEELER ENVIRONMENT AND INFRASTRUCTURE, INC. FOR AN AMOUNT NOT TO EXCEED \$1,525,000 FOR A PERIOD OF FIVE (5) YEARS, FROM JULY 1, 2017 THROUGH JUNE 30, 2022, TO IMPLEMENT THE REGIONAL HARBOR MONITORING PROGRAM AND EVALUATE THE STATUS AND TRENDS OF WATER, SEDIMENTS, AND AQUATIC LIFE IN THE REGION'S HARBORS PURSUANT TO § 13225 OF THE CALIFORNIA WATER CODE

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 to establish a policy governing the processing and administration of public projects, consulting and service agreements, the purchasing of supplies, materials and equipment, and grants; and

WHEREAS, in 2003, under § 13225 of the California Water Code, the San Diego Regional Water Quality Control Board issued a requirement to the District, Cities of San Diego and Oceanside (Cities), and the County of Orange (County) to coordinate and develop a Regional Harbor Monitoring Program (RHMP) to assess conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor; and

WHEREAS, in 2005, upon the BPC's approval, the District entered into a Memorandum of Understanding (MOU) with the Cities and County to perform a pilot project, and again in both 2008 and 2013 to create and continue a cost effective and consistent monitoring program with the District acting as the lead agency, the current MOU is valid through June 30, 2018; and

WHEREAS, to date, the RHMP has provided valuable data to evaluate the status and trends in water and sediments in each harbor via measurements in chemistry, toxicity, benthic community analyses and biodiversity; and

WHEREAS, technical services are needed to effectively plan and implement the RHMP moving forward; and

20xx-xxx

WHEREAS, the District, Cities and County are seeking a consultant to conduct monitoring, analyses, reporting and provide scientific counsel, year one (1) of the five (5) year consultant agreement will be focused on planning the study design and the subsequent years will include implementation, reporting, and additional special studies, for a maximum amount of \$1,525,000; and

WHEREAS, approximately \$125,000 of this expenditure will occur in FY 17/18 (Phase 1), which will include planning meetings, developing the study design, and producing planning documents, funds for the first year of this expenditure are budgeted for in the proposed FY 17/18 Planning and Green Port Professional Services Account (#620100) and years two (2) – five (5) (Phase 2) will be under a new MOU that will be brought back to the Board before June 30, 2018, and that no additional work will commence until approved and funds required for future fiscal year(s) will be budgeted for in the appropriate fiscal year and cost account subject to Board approval upon adoption of each fiscal year's budget; and

WHEREAS, 44 percent of the cost of \$1,525,000 will be reimbursed to the District by the Cities and the County, with the District portion not exceeding \$854,802; and

WHEREAS, the District shall be paid an additional 5% administrative cost by the Cities and the County in the amount of \$76,250, over the term of five (5) years; and

WHEREAS, pursuant to BPC Policy 110, in March 2017, District staff issued a Request for Proposals (RFP) seeking qualified firms to provide RHMP services; and

WHEREAS, two firms submitted proposals: Amec Foster Wheeler Environment & Infrastructure, Inc. (Amec Foster Wheeler) and Weston Solutions, Inc.; and

WHEREAS, a decision analysis conducted by a selection panel comprised of District staff and representatives from each of the Cities and County reviewed the proposals and interviews were conducted on May 2, 2017; and

WHEREAS, the decision was based on the information gathered through interviews and written proposals using the criteria stated in the RFP, staff evaluated and ranked each firm's experience of proposed staff, approach to the project, capability to perform, cost/pricing, and firm's relevant experience, as well as their information related to the Equal Opportunity Program Requirements section of the RFP; and

WHEREAS, staff is recommending the Board select Amec Foster Wheeler; and

20xx-xxx

WHEREAS, upon Board approval, Agreement #106-2017SN between the District and Amec Foster Wheeler would be executed for a period of five (5) years, from July 1, 2017 through June 30, 2022, in an amount not to exceed \$1,525,000.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

The Executive Director or her designated representative is hereby authorized and directed on behalf of the San Diego Unified Port District to enter into Agreement No. 106-2017SN with Amec Foster Wheeler Environment and Infrastructure, Inc., in an amount not to exceed \$1,525,000, for a period of five (5) years, from July 1, 2017 through June 30, 2022, to implement the Regional Harbor Monitoring Program and evaluate the status and trends of water, sediments, and aquatic life in the region's harbors pursuant to § 13225 of the California Water Code.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 20th day of June 2017, by the following vote:

9. 2017-0172



San Diego Unified Port District

File #:2017-0172

DATE: June 20, 2017

SUBJECT:

A) RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO BLUE ECONOMY AGREEMENTS OR BLUE ECONOMY AGREEMENTS IN SUBSTANTIAL CONFORMANCE THEREWITH, THROUGH THE DISTRICT'S BLUE ECONOMY INCUBATOR WITH:

1. SAN DIEGO BAY AQUACULTURE LLC. FOR A 5-YEAR PILOT PROJECT TO DEMONSTRATE SHELLFISH AQUACULTURE NURSERY OPERATIONS AND MANAGE THE FLOATING UPWELLER SYSTEM; AND
2. RED LION CHEM TECH LLC. FOR A 1-YEAR PILOT PROJECT TO DEMONSTRATE COPPER REMEDIATION APPLICATIONS FOR A TOTAL AMOUNT NOT TO EXCEED \$165,000; AND
3. RENTUNDER AB. FOR A 2-YEAR PILOT PROJECT TO DEMONSTRATE A DRIVE-IN BOATWASH TECHNOLOGY FOR A TOTAL AMOUNT NOT TO EXCEED \$140,000; AND
4. SWELL ADVANTAGE LTD. FOR A 1-YEAR PILOT PROJECT TO REFINE DEVELOPMENT OF A SMART MARINA SOFTWARE AND SMART PHONE APPLICATION FOR A TOTAL AMOUNT NOT TO EXCEED \$100,000

B) RESOLUTION AWARDED A SOLE SOURCE AGREEMENT TO SNOW & COMPANY, INC. FOR THE PURCHASE AND INSTALLATION OF A CUSTOM-MADE FLOATING UPWELLER SYSTEM (FLUPSY) FOR SHELLFISH AQUACULTURE NURSERY OPERATIONS IN AN AMOUNT OF \$351,600 PURSUANT TO BPC POLICY NO. 110 SECTION III.E.

C) RESOLUTION AMENDING THE FY 16/17 BUDGET BY TRANSFERRING \$351,600 FROM THE AQUACULTURE AND BLUE TECHNOLOGY NON-PERSONNEL EXPENSE BUDGET APPROPRIATION TO THE EQUIPMENT OUTLAY BUDGET APPROPRIATION, PURSUANT TO BPC POLICY NO. 90, TO PURCHASE THE FLUPSY

EXECUTIVE SUMMARY:

In 2016 the District established a Blue Economy incubator and strategic investment fund to assist in the creation, development and scaling of new business ventures on San Diego Bay, focusing on aquaculture and blue technology. Since the launch of the Blue Economy incubator, seven proposals were submitted and four were deemed complete and were moved forward for consideration under the incubator four step competitive review process. The review process balanced each proposal's potential financial return on investment; potential social and environmental benefits; and alignment with the District's core mission and Public Trust obligations.

(3)

TASK AUTHORIZATION
San Diego Unified Port District

66846



Planning & Green Port
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-6254
Fax (619) 686-6467

TASK AUTHORIZATION NO. 1

September 7, 2017

Barry J. Snyder
Amec Foster Wheeler Environment & Infrastructure, Inc.
9210 Sky Park Court, Suite 200
San Diego, CA 92123
Tel. 858-300-4300
Email: barry.snyder@amecfw.com

Subject: Task Authorization for Agreement No. 106-2017SN
REGIONAL HARBOR MONITORING PROGRAM

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$125,000. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #1** on invoice(s) for this Task.

TASK DESCRIPTION

1. Requestor:	Kelly Tait	4. IO#	300520
		CC#	146,
		GL#	620100
		Budget Sub-item Name	RHMP
2. Date of Request:	September 7, 2017	5. Task Start Date:	September 7, 2017
3. Task Budget:	\$125,000	6. Task End Date:	June 30, 2018
7. Task Title: Phase 1: RHMP 2018 Planning			

8. Scope of Services:

The 2018 Regional Harbor Monitoring Program core and ambient monitoring is scheduled for the Summer 2018. This Task Authorization will support all Phase 1 Planning Activities required prior to the core and ambient monitoring and reporting events that are scheduled to begin starting in the summer of 2018. Phase 1 tasks will include meeting support and hard copies of meeting summaries, deliverables in the form of a Work Plan and Quality Assurance Project Plan (QAPP), and collaboration with the Bight program for sampling design. The total will not exceed \$125,000. Note that estimated costing for each task is not available at this time and associated effort for each will be determined by the outcome of scoping meetings and Bight related planning efforts that begin in September 2017.

Task 1- Meeting Support

Attend meetings with the District, Cities, County and necessary stakeholders, which may include District tenants, SDRWQCB, members of the public, or the scientific community. Meetings may be conducted to design monitoring plans and work plans, discuss program progress, and/or provide technical and scientific counsel. Meetings may also be attended by Amec Foster Wheeler on behalf of the RHMP Agencies. Meetings may require Amec Foster Wheeler to prepare presentations and/or provide relevant literature or other forms of documentation in advance of scheduled meetings. Deliverables from Task 1 include meeting notes and summaries that will be provided to the District by Amec Foster Wheeler after each meeting to document items addressed.

Task 2- Work Plan

Amec Foster Wheeler will review the 2013 RHMP Report, identify data gaps, and propose special studies to occur either as part of the core monitoring or in the years following. Amec Foster Wheeler may also contribute to designing the core and special study elements of the Bight program while attending planning meetings on behalf of the RHMP agencies. Amec Foster Wheeler will design a program that can adequately answer the RHMP core monitoring questions and should draw from methods used to conduct monitoring and analysis associated with the 2008 and 2013 RHMP as well as the Bight Program. In addition, the monitoring program shall generally comply with the 2012 SDRWQCB Staff Report "A Framework for Monitoring and Assessment in the San Diego Region" as well as the 2015 SDRWQCB Strategy for a Healthy San Diego Bay. Amec Foster Wheeler will produce a Work Plan that describes the Core Monitoring Program, which shall include, but not be limited to: a schedule of monitoring, analysis, and reporting; sequence of work; and a list of team members and roles (including those of sub-consultants). The Work Plan will be submitted to the RHMP Agencies for review and approval. The end deliverable for Task 2 will be a hard copy Work Plan for the 2018 Regional Harbor Monitoring Program to each RHMP agency, which the District will then submit to the Regional Board.

Task 3- Quality Assurance Project Plan (QAPP)

Amec Foster Wheeler will develop a Quality Assurance Project Plan (QAPP) that outlines all quality assurance/quality control procedures. The QAPP will be submitted to the RHMP Agencies for review and approval. The QAPP must be

included in the final report(s). In the case where sub-contractors are used for analytical work or other tasks, applicable standard operating procedures (SOPs) should be provided and included as appendices of the QAPP. A final deliverable for Task 3 will be a hard copy QAPP submitted to each RHMP agency.

9. Contractor Staffing (If applicable)

Name	Classification	Hours
	Staff as needed per Agreement rates (see attached Professional Services Item)	

10. List of Sub-Contractors (If applicable)

Brock Bernstein, Ph.D.
Allen Burton, Ph.D.
Merkel & Associates

11. Please acknowledge acceptance of this Task Authorization by signing below and returning via email to ktait@portofsandiego.org and jhabib@portofsandiego.org, Contracts Administrators.

APPROVALS

Service Provider:

Signature: *Barry J. Snyder*
 Name: Barry Snyder
 Title: Branch Manager, Aquatic Sciences
 Firm: AMEC Foster Wheeler
 Date: 9/5/17

Project Manager:

Signature: *Kelly Tait*
 Name: Kelly Tait
 Title: Senior Environmental Specialist
 Date: 9/5/17

Director:

Signature: *Karen Holman*
 Name: Karen Holman
 Title: Director, Environmental Protection, Planning & Green Port
 Date: 9/5/17

Attachment C to Agenda File No. 2018-0135

San Diego Unified Port District



File #:2016-0219

DATE: May 10, 2016

SUBJECT:

PRESENTATION ON THE REGIONAL HARBOR MONITORING PROGRAM AND THE ASSESSMENT OF THE QUALITY OF WATER, SEDIMENT, AND BIOLOGY OF SAN DIEGO BAY

EXECUTIVE SUMMARY:

In 2003, the San Diego Regional Water Quality Control Board (SDRWQCB), under §13225 of the California Water Code, requested that the District, Cities of San Diego and Oceanside (Cities), and the County of Orange (County) coordinate and develop a Regional Harbor Monitoring Program (RHMP) to assess conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor. The District, Cities, and County developed a monitoring approach whereby ambient monitoring occurs in the harbors every five years. Following the first core monitoring effort in 2008, the RHMP agencies conducted the second regional monitoring effort in 2013.

The results of the 2013 RHMP were summarized in a final report and submitted to the SDRWQCB in February 2016. Most of the sampling results indicate sediment and water quality conditions that are supportive of healthy biological resources. Areas of the harbors most closely associated with anthropogenic influences (for example, marinas and industrial/port water-side areas) tended to have higher chemical concentrations and certain exceedances of chemical thresholds in surface waters and sediments. When compared to the program's thresholds established to evaluate trends, the 2013 RHMP indicates continuing improvement from historical conditions. These results will help evaluate the District's programs aimed at reducing pollution in the Bay. In addition, during 2016-2017 the data will be used by the SDRWQCB as part of their comprehensive assessment of San Diego Bay.

RECOMMENDATION:

Receive a presentation from staff regarding the results of the Regional Harbor Monitoring Program and the assessment of the quality of water, sediment, and biology of San Diego Bay.

FISCAL IMPACT:

This presentation has no fiscal impact. Funds for the FY 16/17 Budget will be considered by the Board, and funds required for future fiscal years will be budgeted in the appropriate fiscal year and cost accounts and will be subject to Board approval.

File #:2016-0219

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

Background

In 2003, the San Diego Regional Water Quality Control Board (SDRWQCB), under §13225 of the California Water Code, requested that the District, Cities of San Diego and Oceanside (Cities), and the County of Orange (County) coordinate and develop a Regional Harbor Monitoring Program (RHMP). (Attachment A) The RHMP is a comprehensive effort to determine ambient conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor. Following receipt of the SDRWQCB's §13225 request, the District, Cities, and County began the development of the RHMP framework. A technical report outlining the monitoring objectives, approach, and sample design was completed and submitted to the SDRWQCB in February 2004.

The RHMP consists of a core monitoring effort that is incorporated into a larger Southern California Bight Regional Monitoring Program (Bight Program) that is conducted every five years. Consistent with the Bight Program, the harbors were classified into five strata according to function, surrounding land uses, and environmental factors. The strata can be compared based on the results of monitoring to better understand the spatial distribution of pollutants. The five strata include:

- Marinas: Areas in close proximity to permanent docks for recreational or commercial (i.e.: fishing or excursion) vessels.
- Industrial/Port: Areas surrounded and influenced by heavy industrial or maritime port activities. This stratum is only located in San Diego Bay.
- Freshwater Influence: Areas located at the mouth of major streams or major storm drain outfalls (greater than 50 inches in diameter) which may be influenced by the input of fresh water or storm water runoff.
- Shallow: Areas less than 12 feet in depth not otherwise categorized above.
- Deep: Areas greater than 12 feet in depth not otherwise categorized above.

San Diego Bay contains all five of these strata.

The sampling design consists of a question-driven approach where a predetermined number of sampling stations are allocated and randomly placed within each stratum across the harbors to address the program's core questions. Constituents sampled in the program include general chemistry, metals, microbiology, pesticides, and organics. In addition, the benthic community and demersal fish populations are assessed to measure biologic health. Utilizing historical data from

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previous monitoring programs, thresholds were developed for a set of primary and secondary constituents that could be used to compare trends over time.

RHMP 2005 Pilot Program and 2008-2013 Core Monitoring Effort

To effectively implement the RHMP, the District, Cities, and County entered into their first Memorandum of Understanding (MOU) in July of 2005 and a second in July 2008. The MOU outlined the responsibilities of all parties and provided a mechanism to share the costs between the parties. The District was identified as the lead agency with responsibilities to act as a liaison with the RWQCB; administer the program budget; and oversee the consultant contract. According to the cost share formula, the District's share of costs was approximately 56 percent of the total cost because the District represents the largest harbor area. Roughly 44 percent of costs were designated to be reimbursed annually to the District from the Cities and County. Pursuant to the MOU, the Cities and County were also required to provide the District with a five percent fee based on annual total costs of the consultant contract to account for administrative responsibilities, coordination efforts, and management of the consultant agreement.

A pilot program took place in 2005 to determine the level of sampling effort to assess trends and refine the design as needed. Following the pilot, the RHMP conducted its first core monitoring effort in July 2008 in coordination with the Bight Program. Seventy-five sampling locations were randomly placed among the four harbors and 18 fish trawling stations were assigned to evaluate the condition of demersal fish and invertebrate communities. Results of the 2008 monitoring effort indicated that the majority of the areas within the harbors had sediment and water quality conditions supportive of biological resources and human uses.

Between 2008 and 2013, the RHMP expended over \$1,379,000. The Cities and County reimbursed the District over \$650,000, which included a five percent administrative fee.

RHMP 2013-2018

The District, Cities, and County entered into a new MOU for the five-year period from July 1, 2013 to June 30, 2018 to continue the RHMP's trend assessments (Attachment B). The MOU remained consistent with previous versions; however, a budget of \$1,525,000 was established for the five-year period. Since the 2013 MOU, the RHMP has expended \$1,274,245. The Cities and County have reimbursed the District approximately \$560,000. The District has also received administrative fees of approximately \$63,712.

The 2013 core monitoring effort followed the same question-driven monitoring approach, with 75 sampling stations randomly allocated among the four harbors; 15 stations were assigned to each stratum. During 2013, four stations were located in Dana Point Harbor; three were located in Oceanside Harbor, nine in Mission Bay, and 59 in San Diego Bay. Sampling occurred in the four harbors during August and September of 2013.

The results of monitoring were summarized in a final report and submitted to the RWQCB in February of 2016. (Attachment C) The results are discussed in relation to the three core monitoring questions:

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What are the contributions and spatial distributions of inputs of pollutants?

Fifty-two analytes were evaluated in the water column and compared to regulatory water quality objectives. The only constituents in the water column which demonstrated exceedances were total and dissolved copper. These exceedances occurred primarily in the marina stratum of San Diego Bay and the other harbors.

Sediment chemistry indicators were compared to two common thresholds used in sediment analysis¹. The greatest number of exceedances observed in the sediment samples occurred primarily in marina and industrial/port strata and to a lesser extent in the freshwater-influenced stratum. Constituents exceeding the sediment thresholds in San Diego Bay and in other harbors included metals, arsenic, chromium, copper, lead, mercury, nickel, and zinc; organics, PAHs and PCBs; and pesticides, chlordane and DDTs.

Do the waters and sediments in the harbors sustain healthy biota?

The RHMP utilized state standards known as Sediment Quality Objectives (SQOs)² to evaluate the biological community conditions and the potential for chemical effects to impact benthic organisms. The SQOs consist of three lines of evidence including sediment chemistry, sediment toxicity, and the condition of the benthic community. Combined, the three lines of evidence provide an integrated ranking (ranging from “unimpacted” to “clearly impacted”) to determine the potential impacts of sediment quality.

Data indicated that the benthic infauna at a majority of stations occurred in most areas at an abundance and diversity indicative of healthy communities. Overall, 72 percent of stations were classified as “unimpacted” or “likely unimpacted” based on the SQO analysis. Additionally, 100-percent of the stations throughout all harbors were considered non-toxic or having low toxicity. A total of 60-percent of stations had benthic infaunal communities consistent with reference or low disturbance conditions.

The evaluation of the demersal fish and invertebrate community also revealed healthy individuals, with a diversity and abundance of species that were consistent with those of prior regional monitoring assessments. Of note, the proportion of top predators caught during fish trawls represented 30-percent in Oceanside Harbor, 40 percent in both Mission Bay and San Diego Bay, and 70 percent in Dana Point Harbor of all individuals caught. Various studies indicate that presences of top predators are an important indicator of ecological health.

What are the long-term trends in water and sediment quality?

In order to evaluate trends over time, the RHMP established thresholds for a suite of primary and secondary indicators. Of the 22 indicators assessed for trends, the results of 16 indicators showed improvement during 2013. The remaining six indicators did not indicate a trend. There was no sign of degradation from historical conditions.

Comparing the results of sampling conducted during 2013 to the previous 2008 sampling, the harbors appear to have reached a steady state with some improvements. The percentage of stations with integrated SQO scores considered to be “unimpacted” and having a “low impact” increased from

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64 percent to 72 percent between 2008 and 2013. In addition, stations indicating nontoxic or low toxicity conditions improved from 92 percent during 2008 to 100 percent in 2013.

Conclusion

The District currently has a number of programs directed at improving the quality of water and sediment in San Diego Bay. Under the Municipal Storm Water Permit, Order No. R9-2013-0001³, staff members regularly inspect District and tenant operations for compliance with required best management practices to reduce pollutants from entering the storm drain network and the Bay. A Total Maximum Daily Load (TMDL) for dissolved copper exists in the Shelter Island Yacht Basin and requires a reduction of dissolved copper in the water column. In addition, a variety of sediment remediation efforts have taken place to cap or dredge Bay sediments impacted by historical contamination. Through habitat restoration efforts such as at the Chula Vista Wildlife Reserve and the salt ponds in the south Bay, the District is actively engaged in improving the biological resources in the Bay. Lastly, the SDRWQCB intends to utilize the 2013 RHMP results to conduct a comprehensive assessment of the ecological health of San Diego Bay.

The results of the 2013 RHMP demonstrate that most of the areas sampled within San Diego Bay and the other harbors have sediment and water quality conditions that are supportive of healthy biological resources. Management efforts such as those described above should continue to improve the health of the bay, while ongoing implementation of the RHMP's long-term monitoring will enable the District to track trends over time.

General Counsel's Comments:

The General Counsel's office reviewed this agenda sheet as presented to it and approved it as to form and legality.

Environmental Review:

This presentation to the Board does not constitute an "approval" or a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur, including without limitation, physical changes within the District's jurisdiction. CEQA requires that the District adequately assess the environmental impacts of its projects. This presentation to staff will not bind the District to a definite course of action prior to CEQA review. Full CEQA analysis will be completed prior to the approval of any projects that may be contemplated as part of the Regional Harbor Monitoring Program. Moreover, the Board/District in its sole and absolute discretion, reserves its discretion to adopt any and all feasible mitigation measures, alternatives to the project, including a no project alternative, a statement of overriding consideration, if applicable, as well as approve or disapprove the project and any necessary permits or entitlements. Based on the totality of the circumstances and the entire record, the Board's direction does not commit the District to a definite course of action prior to CEQA review being conducted. No further action under CEQA is required at this time.

In addition, this presentation allows for the District to administrate its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the

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Public Trust Doctrine. Consequently, this presentation is consistent with the Public Trust Doctrine.

Finally, this presentation to the Board does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a CDP or exclusion is not required. However, the District’s projects require processing under the District’s CDP Regulations. The Board will consider approval of future development projects formulated as a result of the Regional Harbor Monitoring Program after the appropriate documentation under District’s CDP Regulations has been completed and authorized by the Board, if necessary. The Board’s direction in no way limits the exercise of the District’s discretion under the District’s CDP Regulations.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

Philip Gibbons
Senior Environmental Specialist, Planning & Green Port

Attachment(s):

- Attachment A: California Water Code §13225 Letter from the San Diego Regional Water Quality Control Board
- Attachment B: Memorandum of Understanding Regarding the Regional Harbor Monitoring Program 2013-2018
- Attachment C: Executive Summary of the Regional Harbor Monitoring Program 2013 Final Report

¹Common thresholds for sediment analysis include effects concentrations where toxic impacts to biota in the sediment may be observed or predicted due to chemical concentration. Effects range low (ER-L) is a measurement where effects are rarely observed or predicted due to chemical concentrations. Effects range median (ER-M) is a measurement where effects are frequently or always observed or predicted among species of biota.

²California State Water Resources Control Board. Sediment Quality Objectives.
<http://www.waterboards.ca.gov/water_issues/programs/bptcp/sediment.shtml>

³San Diego Regional Water Quality Control Board. Order R9-2013-0001 San Diego Regional Municipal Separate Storm Sewer System Permit. http://www.swrcb.ca.gov/rwqcb9/water_issues/programs/stormwater/index.shtml

Attachment D to File No. 2018-0135

IN WITNESS WHEREOF, this Regional Harbor Monitoring Program MOU, is executed as follows:

CITY OF OCEANSIDE

BY Pete Weis
Mayor

Approved as to form.

Antonia Hamilton, Esq.
Oceanside City Attorney



THE CITY OF SAN DIEGO

April 11, 2018

VIA EMAIL TO: kholman@portofsandiego.org

Karen Holman
 Director
 San Diego Unified Port District
 3165 Pacific Highway
 San Diego, CA 92101

Subject: Regional Harbor Monitoring Program MOU

Dear Ms. Holman:

The City of San Diego (City) is submitting this letter to indicate our interest in participating in the Regional Harbor Monitoring Program (RHMP) Memorandum of Understanding (MOU), pending Mayoral approval of the MOU. The RHMP is required by the July 24, 2003 Order of the San Diego Regional Water Quality Control Board pursuant to §13225 of the California Water Code. The intent of this program is to develop a coordinated monitoring effort of harbors in the San Diego Region to provide water quality status and trends information, as well as to assess the receiving water's abilities to support designated beneficial uses.

The City supports partnering with the San Diego Unified Port District and other responsible parties on the RHMP. The Storm Water Division is currently processing the MOU and will be requesting authorization to expend an amount not to exceed \$334,913 to participate in the Regional Harbor Monitoring Program in Fiscal Years 2019-2023, contingent upon City Council approval of the annual Appropriations Ordinance for the applicable fiscal year, and upon the Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

If you have questions, please contact Ruth Kolb at (858) 541-4328 or at rkolb@sandiego.gov.

Sincerely,

Drew Kleis
 Deputy Director

DK\rk

cc: Paz Gomez, Deputy Chief Operating Officer, Office of the Mayor
 Kris McFadden, Director, Transportation & Storm Water Department
 Davin Widgerow, Deputy City Attorney, City Attorney's Office
 Ruth Kolb, Program Manager, Transportation & Storm Water Department
 Kelly Tait, Senior Environmental Specialist, San Diego Unified Port District

Transportation & Storm Water Department

FINAL BPC MEETING AGENDA 05-08-2018
 9370 Chesapeake Drive, Suite 100, MS 7900 • San Diego, CA 92123
 Reso/Ords D2# 1220041

Hotline (619) 235-1000 Fax (858) 541-4350



DRAFT**RESOLUTION 20xx-xxx**

RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE DISTRICT AND THE CITY OF SAN DIEGO, CITY OF OCEANSIDE AND COUNTY OF ORANGE FROM JULY 1, 2018 THROUGH JUNE 30, 2023 TO WORK COLLABORATIVELY ON A REGIONAL HARBOR MONITORING PROGRAM TO EVALUATE THE STATUS AND TRENDS OF WATERS, SEDIMENT, AND AQUATIC LIFE IN THE REGION'S HARBORS AS REQUIRED BY THE SAN DIEGO REGIONAL QUALITY CONTROL BOARD PURSUANT TO §13225 OF THE CALIFORNIA WATER CODE; ALL FUNDS REQUIRED FOR FUTURE FISCAL YEARS WILL BE BUDGETED IN THE APPROPRIATE FISCAL YEAR, SUBJECT TO BOARD APPROVAL UPON ADOPTION OF EACH FISCAL YEAR'S BUDGET

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1 (Port Act); and

WHEREAS, in 2003, the San Diego Regional Water Quality Control Board issued an order pursuant to § 13225 of the California Water Code to the District, Cities of San Diego and Oceanside (Cities), and the County of Orange (County) to coordinate and develop a Regional Harbor Monitoring Program (RHMP) to assess conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor; and

WHEREAS, following the Board of Port Commissioner's (BPC) approval, the District entered into a Memorandum of Understanding (MOU) to work collaboratively with the Cities and County in 2005 for the pilot program and again in 2008 and 2013 which has resulted in a cost effective and consistent monitoring program with the District acting as the lead for this program; and

WHEREAS, the current MOU was made effective on July 1, 2013, and will expire on June 30, 2018; and

WHEREAS, a new MOU is needed to continue implementing the RHMP and assessing conditions and trends in each harbor; and

WHEREAS, the proposed MOU herein will be for a five-year period from

20xx-xxx

July 1, 2018, to June 30, 2023, and will reaffirm the District as the lead to oversee implementation of the RHMP; and

WHEREAS, the cost share formula presented in the MOU is based on the same formula used in the previous MOUs, which accounts for the acreage and stratification of each harbor as well as fixed costs per agency; and

WHEREAS, due to the size and stratification of San Diego Bay, under the proposed MOU approximately 56 percent of consultant costs will be attributed to the District with the remaining 44 percent of costs reimbursed to the District from the Cities and County on an annual basis; and

WHEREAS, in addition to the reimbursed costs, the MOU includes a provision requiring the Cities and County to provide the District a five percent fee to administer the RHMP and consultant contract; and

WHEREAS, the total cost consultant contracts to assist with RHMP services will not exceed \$1,525,000 for the five year period; and

WHEREAS, the MOU establishes a schedule for budget and payment for each fiscal year, and provides options for early termination; and

WHEREAS, District staff recommends that the BPC authorize the execution of the MOU.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District as follows:

The Executive Director or her designated representative is hereby authorized to enter into a Memorandum of Understanding between the District and the City of San Diego, City of Oceanside and County of Orange from July 1, 2018, through June 30, 2023.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 8th day of May, 2018, by the following vote: