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San Diego Unified Port District

Document No. **62147**Filed **AUG 01 2014**
Office of the Port Clerk

**SECOND AMENDMENT TO NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEM
SAN DIEGO REGIONAL STORMWATER COPERMITTEES
MEMORANDUM OF UNDERSTANDING**

This Second Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding (MOU), dated March 21, 2014, is entered into by the County of San Diego (County), the San Diego Unified Port District (Port), the San Diego County Regional Airport Authority (Airport), and the incorporated cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, Santee, San Marcos, Solana Beach, and Vista (Cities), collectively called Copermittees.

RECITALS

WHEREAS, on May 8, 2013, the San Diego Regional Water Quality Control Board (SDRWQCB) issued NPDES Order No. R9-2013-0001, which includes requirements in addition to those that were imposed on the Copermittees in NPDES Permit No. R9-2007-0001; and

WHEREAS, the Copermittees entered into a National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding (MOU) on November 16, 2007 to comport with the NPDES Permit No. R9-2007-001 requirement that they cooperate in the implementation of activities and programs;

WHEREAS, the Copermittees entered into a First Amendment to National Pollution Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, dated November 16, 2007, (First Amendment) on June 15, 2010 in order to allow the refund of budgeted but unspent funds to the Parties at the conclusion of each fiscal year; and

WHEREAS, the Copermittees wish to amend the MOU to extend the termination date of the MOU through August 31, 2015, and expressly limit the sharing of Fiscal Year 2014-15 expenditures to those identified in this amendment; and

NOW, THEREFORE, in consideration of the above recitals and the mutual promises contained herein, the parties agree to amend and supplement the MOU as follows:

**1. SECOND AMENDMENT TO NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM (NPDES), SAN DIEGO REGIONAL STORMWATER
COPERMITTEES MEMORANDUM OF UNDERSTANDING**

1.1 Paragraph four under "RECITALS" is hereby amended and restated to read in its entirety as follows:

WHEREAS, the County, the Port, the Airport, and the Cities desire to implement an integrated stormwater management program with the objective of improving surface water quality in the County of San Diego, but do so without waiving and expressly subject to any and all objections and appeals made by any Copermittee in response to any NPDES Permit; and

1.2 Section II.B.2 of the MOU entitled "Annual Shared Cost Budgets and Work Plans" is hereby amended to add sub-section e, which will read as follows:

e. The regional costs to be shared by the Copermittees during Fiscal Year 2014-15 shall not exceed \$4,051,589. These funds may only be used toward expenditures identified in the FY 2014-15 Consolidated Work Plan and Budget included as MOU Attachment 2, or as subsequently modified by unanimous consent of all Copermittees.

1.3 Attachment 1 to this amendment is hereby added as Attachment 2 to the MOU.

1.4 Section VII.A of the MOU, entitled "Term of Agreement", is hereby amended and restated to read in its entirety as follows:

1. This MOU shall become effective on the date the last party executes the MOU.
2. The life of the MOU shall run through August 31, 2015.

1.5 Section VII.C of the MOU, entitled "Non-Compliance with MOU

Requirements", is hereby amended and restated to read in its entirety as follows:

1. Any participant to this MOU found to be in non-compliance with the conditions of this MOU shall be solely liable for any lawfully assessed penalties resulting from such non-compliance. Failure to comply with MOU conditions within specified or agreed upon timelines shall constitute non-compliance with the MOU.
2. Federal Limitations on Use of Airport Revenue. Notwithstanding the rights and obligations of the Parties created by this MOU, no Party may be found in breach of this MOU where compliance would require that Party to violate any law or grant assurance, including but not limited to provisions of the Federal Aviation Administration 1999 Policy and Procedure Concerning the Use of Airport Revenue [64 Fed. Reg. 7696, dated Feb. 16, 1999]; the Airport and Airway Improvement Act of 1982 codified at 49 U.S.C. § 47107(b); the Federal Aviation Administration Authorization Act of 1994, P.L. 103-305 (Aug. 23, 1994); the Airport Revenue Protection Act of 1996, Title VIII of the Federal Aviation Administration Act of 1996, P.L. 104-264 (Oct. 9, 1996), 110 Stat. 3269 (Oct. 9, 1996); 49 U.S.C. § 46301(n)(5); and 49 U.S.C. § 47133. The Parties recognize that the Authority has received federal Airport Improvement Project ("AIP") grants containing grant assurance 25, which provides: "All revenues generated by the airport . . . will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport."

2. EFFECT OF AMENDMENT

2.1 This Amendment to National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall be effective

and binding on all parties hereto commencing upon the date the last party executes the Second Amendment to MOU.

2.2 This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. In the event that any Copermittee is unable to execute this amendment prior to May 8, 2014, execution of this amendment after that date shall constitute ratification of this amendment, and the MOU and extensions shall be in effect once all signatures are obtained.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS WHEREOF, this Second Amendment to MOU is executed as follows:

COUNTY OF SAN DIEGO

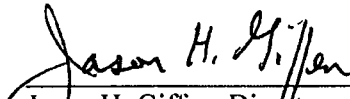
Dated: 6/20/14

By: Bill E. Cyster

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Date: *MAY 6, 2014*



Jason H. Giffen, Director
Environmental & Land Use Management
San Diego Unified Port District, Copermittee



2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

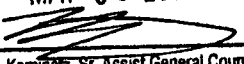
Date:


Thella Bowens, President/CEO
San Diego County Regional Airport Authority, Copermittee

APPROVED AS TO FORM:

APPROVED AS TO FORM

MAY 06 2014


Lee S. Kamintz, Sr. Assist General Counsel

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:


Date:



City of San Diego, Copermittee

APPROVED AS TO FORM:

City Attorney



2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

April 22, 2014
Date

Mark Packard
City of Carlsbad, Copermittee
Mark Packard, Mayor Pro Tem

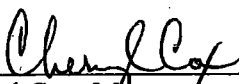
Approved as to form:

Phil Ag...
Deputy City Attorney

2.3 ~~Except as hereinabove amended, the National Pollutant Discharge Elimination System,~~
San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force
and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment,
this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Date:



Cheryl Cox, Mayor
City of Chula Vista, Copermittee

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

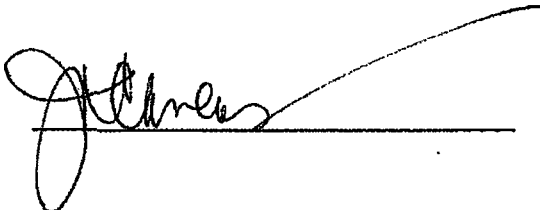
Date: May 6, 2014



City of Coronado, City Manager

APPROVED AS TO FORM:


City Attorney



2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Date:



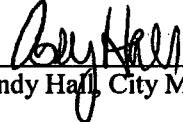
City of Escondido, Copermittee

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

City of Imperial Beach

Date: 5-13-14

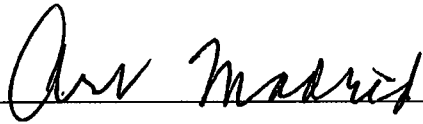
By: 
Andy Hall, City Manager

Second Amendment to San Diego Regional Stormwater Copermittees MOU

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

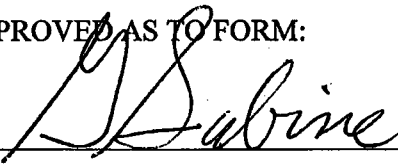
WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Date:



City of La Mesa, Copermittee

APPROVED AS TO FORM:



Glenn Sabine
City Attorney
City of La Mesa

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Date:

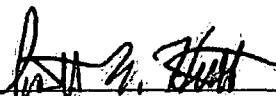


City of San Marcos, Copermittee

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Date:



City of Del Mar, Copermittee
by Scott W. Huth, City Manager

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Date:


City of El Cajon, Copermittee

APPROVED AS TO FORM:

City Attorney

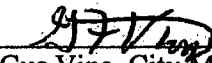


2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Date:

7/9/14



Gus Vina, City Manager
City of Encinitas, Copermittee

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

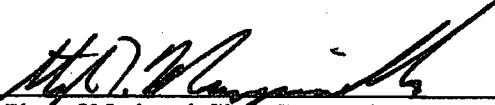
CITY OF LEMON GROVE

Dated: March 26, 2014 By: 
Graham Mitchell, City Manager

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Date:



City of National City, Copermittee


2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Date:



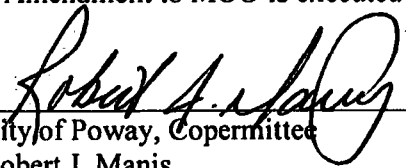
City of Oceanside, Copermittee


APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY
BARBARA L. HAMILTON
Assistant City Attorney

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Date:



City of Poway, Copermitted
Robert J. Manis
Director, Development Services Department

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Dated: _____

4/16/14

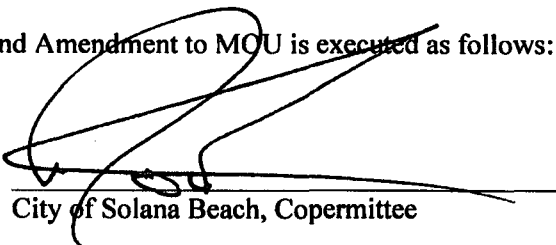


Keith Till, City Manager
CITY OF SANTEE

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS THEREOF, this Second Amendment to MOU is executed as follows:

Date:



City of Solana Beach, Copermittee

RESOLUTION NO. 2014-111

A RESOLUTION OF THE CITY COUNCIL OF THE CHARTERED CITY OF VISTA, CALIFORNIA, APPROVING A SECOND AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF VISTA, THE COUNTY OF SAN DIEGO AND ALL NPDES COPERMITTEES

The City Council of the City of Vista does resolve as follows:

1. Findings. The City Council hereby finds and declares the following:

A. The San Diego Regional Water Quality Control Board ("RWQCB") issued Order No. 2001-01 in February 2001, wherein it required the County of San Diego, the San Diego Port District and the municipalities within the County of San Diego (collectively "Co-Permittees") to improve water quality by preventing pollutants from entering receiving waters from stormwater and urban runoff.

B. On January 24, 2007, the RWQCB issued Order No. R9-2007-0001, which replaced Order No. 2001-01 and expanded on that Order's MOU requirements for the NPDES San Diego Regional Co-Permittees. The original requirements included the establishment of a management structure and determining a cost sharing mechanism for complying with the Order. Order No. R9-2007-0001 required that the Co-Permittees address the new additional requirements and that they add the San Diego Regional Airport Authority as a Co-Permittee.

D. On November 16, 2007 the Co-Permittees entered into a new NPDES San Diego Regional Co-Permittee MOU.

E. On June 15, 2010, the Co-Permittees entered into a First Amendment to the Memorandum of Understanding, which updated the cost sharing mechanism.

F. At this time, a Second Amendment is necessary to extend the termination date of the MOU through August 31, 2015, and expressly limit the sharing of Fiscal Year 2014-15 expenditures to those identified in this amendment.

2. Action.

A. The Second Amendment to the Memorandum of Understanding between the City of Vista, the County of San Diego and all NPDES Co-Permittees is approved.

B. The Mayor is authorized to execute the Agreement.

[Continued on page 2.]

RESOLUTION NO. 2014-111
CITY COUNCIL OF THE CHARTERED CITY OF VISTA
PAGE 2

3. **Adoption.** PASSED AND ADOPTED at a meeting of the City Council held on June 24, 2014, by the following vote:

AYES: MAYOR RITTER, AGUILERA, COWLES, CAMPBELL, RIGBY

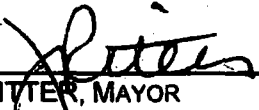
NOES: NONE

ABSTAIN: NONE

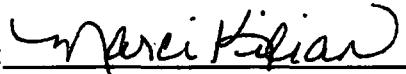
APPROVED AS TO FORM:
DAROLD PIEPER, CITY ATTORNEY

By: 

APPROVED
Darold Pieper
1455 061114


JUDY RITTER, MAYOR

ATTEST:
MARCI KILIAN, CITY CLERK

By: 

RESOLUTION 2014-81

RESOLUTION AUTHORIZING AMENDMENT NO. 2 TO THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE SAN DIEGO REGIONAL STORMWATER COPERMITTEES TO SHARE COSTS AND PROGRAM RESPONSIBILITIES FOR ACTIVITIES REQUIRED UNDER ORDER NO. R9-2013-0001, THE MUNICIPAL STORMWATER PERMIT, TO ESTABLISH A FISCAL YEAR 2014/2015 COST SHARING LIMITATION FOR REGIONAL COSTS NOT TO EXCEED \$4,051,589, FOR THE SAN DIEGO UNIFIED PORT DISTRICT'S SHARE NOT TO EXCEED \$33,438, AND EXTENDING THE MOU TERM TO AUGUST 31, 2015

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, Section 21 of the Port Act states that the Board of Port Commissioners (BPC) may pass all necessary ordinances and resolutions for the regulation of the District; and

WHEREAS, on December 11, 2007, the Board of Port Commissioners (BPC) approved a MOU between the San Diego Regional Copermittees (Copermittees) to share costs and work cooperatively on the regional program requirements contained in Order No. R9-2007-001, the San Diego County Municipal Stormwater Permit (2007 Permit); and

WHEREAS, to comply with the 2007 Permit, the MOU established the responsibilities of each Copermittee and included a cost-share formula that identified each Copermittee's share of regional costs for monitoring, education, and other required collaborative efforts; and

WHEREAS, the MOU was amended in June 2010 to allow Copermittees to be reimbursed directly for expenditures incurred on behalf of regional program development and will expire on May 8, 2014; and

WHEREAS, on May 8, 2013, the San Diego Regional Water Quality Control Board replaced the 2007 Permit with Order No. R9-2013-0001 Regional Stormwater Permit (2013 Permit) and as with the 2007 Permit, the 2013 Permit

2014-81

includes conditions that require the Copermittees to cooperate in the implementation of regional programs and activities; and

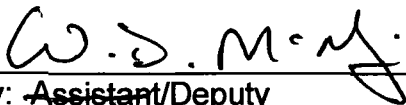
WHEREAS, an MOU is required to memorialize the revisions to the existing MOU or a new MOU may be necessary to meet the needs of all Copermittees over the five-year life of the Permit, however, in the interest of time, a second amendment to the existing MOU is being entered into in order to continue to share regional costs during the remainder of the FY2013/2014 through August 31, 2015; and

WHEREAS, the second amendment also establishes not-to-exceed cost sharing limitation for the total regional cost at \$4,051,589, with the District amount not to exceed \$33,438.

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

That the Executive Director or his designated representative is hereby authorized and directed to enter into Amendment No. 2 to the MOU between the San Diego Regional Stormwater Copermittees to share costs and program responsibilities for activities required under Order No. R9-2013-0001, the Municipal Stormwater Permit, to establish a Fiscal Year 2014/2015 cost sharing limitation for regional costs, and extend the MOU term to August 31, 2015.

APPROVED AS TO FORM AND LEGALITY:
PORT ATTORNEY


By: ~~Assistant~~/Deputy

2014-81

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 6th day of May 2014, by the following vote:

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

NAYS: None.

EXCUSED: None.

ABSENT: None.

ABSTAIN: None.



Robert E. Nelson, Chairman
Board of Port Commissioners

ATTEST:



Laura Nicholson
Deputy District Clerk

(Seal)

SAN DIEGO UNIFIED PORT DISTRICTReference Copy
62147**DATE:** May 6, 2014

SUBJECT: RESOLUTION AUTHORIZING AMENDMENT NO. 2 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN DIEGO REGIONAL STORMWATER COPERMITTEES TO SHARE COSTS AND PROGRAM RESPONSIBILITIES FOR ACTIVITIES REQUIRED UNDER ORDER NO. R9-2013-0001, THE MUNICIPAL STORMWATER PERMIT, TO ESTABLISH A FY15 COST SHARING LIMITATION FOR REGIONAL COSTS NOT TO EXCEED \$4,051,589, FOR THE DISTRICT'S SHARE NOT TO EXCEED \$33,438, AND EXTENDING THE MOU TERM TO AUGUST 31, 2015

EXECUTIVE SUMMARY:

On December 11, 2007, the Board of Port Commissioners (Board) approved a Memorandum of Understanding (MOU) between the San Diego Regional Copermittees¹ (Copermittees) to share costs and work cooperatively on the regional program requirements contained in Order No. R9-2007-001, the San Diego County Municipal Stormwater Permit (2007 Permit). To comply with the 2007 Permit, the MOU established the responsibilities of each Copermittee and included a cost-share formula that identified each Copermittee's share of regional costs for monitoring, education, and other required collaborative efforts. The MOU was amended in June 2010 to allow Copermittees to be reimbursed directly for expenditures incurred on behalf of regional program development. The MOU is set to expire on May 8, 2014.

On May 8, 2013, the San Diego Regional Water Quality Control Board (Regional Board) replaced the 2007 Permit with Order No. R9-2013-0001 Regional Municipal Stormwater Permit (2013 Permit)². As with the 2007 Permit, the 2013 Permit includes conditions that require the copermittees to cooperate in the implementation of regional programs and activities. As such, an MOU is required to memorialize the Copermittee responsibilities and cost sharing structure. More comprehensive revisions to the existing MOU or a new MOU may be necessary to meet the needs of all copermittees over the five-year life cycle of the Permit; however, in the interest of time, a second amendment to the existing MOU is being sought to continue to share regional costs during the remainder of FY 2013/2014 through August 31, 2015. The second amendment will also establish a not-to-exceed cost sharing limitation for the total regional cost at \$4,051,589, with the District amount not to exceed \$33,438.

¹ The San Diego Regional Copermittees include: County of San Diego, Port of San Diego, San Diego Regional Airport Authority, and Cities of Imperial Beach, La Mesa, Lemon Grove, National City, Coronado, Chula Vista, El Cajon, San Diego, Del Mar, Carlsbad, Escondido, Vista, Solana Beach, Encinitas, Oceanside, Poway, Santee, and San Marcos.

² California Regional Water Quality Control Board San Diego Regional Order No. R9-2013-0001 National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges From the Municipal Separate Storm Sewer Systems (MS4s) Draining the San Diego Region http://www.waterboards.ca.gov/sandiego/docs/2013-0523_Order_No._R9-2013-0001_COMPLETE.pdf

Page 2 of 5**RECOMMENDATION:**

Adopt a Resolution authorizing Amendment No. 2 to the MOU between the San Diego Regional Stormwater Copermittees to share costs and program responsibilities for activities required under Order No. R9-2013-0001, the Municipal Stormwater Permit, to establish a FY 2014/2015 cost sharing limitation for regional costs, and extend the MOU term to August 31, 2015.

FISCAL IMPACT:

Funds for this expenditure (\$33,438) are recommended for inclusion for in the Environmental & Land Use Management's FY 2014/2015 proposed budget in the Joint Programs/Studies Assistance Account. Funds are subject to Board approval upon adoption of each fiscal's year's budget.

COMPASS STRATEGIC GOALS:

The stormwater management work proposed with this agenda item supports the District's goal to help protect and improve the environmental conditions of the bay. Through regional coordination efforts, the proposed amendment also allows the District to continue to integrate a comprehensive vision for improving the water quality of the bay among other jurisdictions of the San Diego Bay Watershed.

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.

DISCUSSION:**MOU Background**

The 2007 Permit, Order No. R9-2007-0001 regulated the discharge of storm water and non-storm water runoff from the municipal separate storm sewer systems (MS4s) to the waters of the United States for the time period January 24, 2007, through May 8, 2013. It required the 21 Copermittees in San Diego County to cooperate and coordinate on several Permit-required regional programs and to execute an MOU.

On December 11, 2007, the BPC authorized the District to enter into an MOU with the other San Diego Copermittees (Attachment A). The MOU established the responsibilities of each Copermittee and included a cost-share formula that identified each Copermittee's share of regional costs for monitoring, education, and other required collaborative efforts. The County of San Diego (County) assumed the responsibility for managing the MOU and regional Copermittee budget and invoicing all Copermittees

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because the permit identified the County as the regional lead Copermittee. The cost share structure divided the total regional costs by allocating percentages of costs based on Copermittee population (45%), estimated urbanized land area (45%), and equally dividing the remaining portion (10%) of the cost.

On June 8, 2010, the Board approved the First Amendment to the MOU to allow Copermittees to be reimbursed directly for expenditures incurred on behalf of regional program development (Attachment B). The MOU is set to expire on May 8, 2014.

Regional Municipal Stormwater Permit

On May 8, 2013, the Regional Board adopted a new Municipal Stormwater Permit³ to replace the 2007 Permit. The 2013 Permit takes a different approach to regulating discharges from MS4s from the previous 2007 Permit. It requires that Copermittees demonstrate improvements to water quality and meet numeric action levels rather than complete a list of jurisdictional prescriptive actions. Annual water monitoring is also required so that progress towards water quality goals can be assessed and program modifications can occur, when applicable.

Although the 2013 Permit is not as prescriptive as the previous 2007 Permit, it does contain requirements that necessitate regional cooperation and cost sharing. Some of these items include:

- Drafting a new manual for planning and designing best management practices to treat stormwater runoff from new developments and redevelopment projects that is consistent across the county and compliant with the Permit,
- Carrying out regional monitoring requirements,
- Completing regional reporting,
- Carrying out coordinated regional outreach and education efforts, and
- Maintaining a regional clearinghouse to upload copermittee annual reports.

The 2013 Permit became “effective” on June 27, 2013. That day started a 24-month time period in which updates to regional, jurisdictional, and watershed programs must be completed. Thus, there is a need to continue regional Copermittee collaboration during this period.

Amendment No. 2 to MOU

During the 24-month permit transition period, the Copermittees need an MOU to continue the existing regional cooperation and ensure the programs and activities are updated to fully meet the 2013 Permit requirements. During the first nine-months of the transition, the Copermittees continued to operate under the existing MOU. As part of

³ California Regional Water Quality Control Board San Diego Regional Order No. R9-2013-0001 National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges From the Municipal Separate Storm Sewer Systems (MS4s) Draining the San Diego Region http://www.waterboards.ca.gov/sandiego/docs/2013-0523_Order_No._R9-2013-0001_COMPLETE.pdf

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the regional program updates, the Copermittees identified several potential revisions that were necessary to ensure the MOU was capable of meeting all the needs for the five-year duration of the 2013 Permit. As a result, the Copermittees agreed that an interim step to add time and cap costs would allow the Copermittees to continue updating the required regional programs and activities until final amendments can be worked out for the existing MOU or until a new MOU is drafted that fully meets the 2013 Permit requirements.

As such, the Copermittees agreed to amend the MOU by extending it for a year and capping the total regional cost at \$4,051,589 (Attachment C). This cost was derived based on the consolidated workplan and budget prepared by the Copermittees for FY 2014/2015. Also as identified in Attachment C, the District's FY 2014/2015 cost-share portion is not-to-exceed \$33,438.

District staff is recommending the Second Amendment to the MOU between the San Diego Regional Copermittees to: (1) share costs and program responsibilities for activities required under Order No. R9-2013-0001, the Municipal Stormwater Permit; (2) establish a FY15 cost sharing limitation for regional costs not-to-exceed \$4,051,589, for the District's share not-to-exceed \$33,438; and (3) extend the MOU term to August 31, 2015.

Port Attorney's Comments:

The Office of the Port Attorney has reviewed the issues set forth in this agenda sheet and there are no legal concerns as presented, and has reviewed and approved the Amendment to the MOU for form and legality.

Environmental Review:

The proposed Board action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 and is therefore not subject to CEQA. The activities allowed under the MOU are limited to drafting reports, conducting educational outreach, and inspecting existing monitoring stations, and no physical improvements are being authorized as part of the MOU. No further action under CEQA is required.

The proposed Board action 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 Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

Equal Opportunity Program:

Not applicable.

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Attachment(s):

Attachment A: San Diego Regional Stormwater Copermittees MOU

Attachment B: First Amendment to the MOU

Attachment C: Second Amendment to the MOU