



## Legislation Text

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File #: 2018-0135, Version: 1

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**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.

**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 Costs<sup>1</sup>

<b>5-Year RHMP Budget</b>	<b>FY 18/19</b>	<b>FY 19/20</b>	<b>FY 20/21</b>	<b>FY 21/22</b>	<b>FY 22/23</b>	<b>Total</b>
District Portion of Cost	\$588,551	\$84,079	\$56,053	\$56,053	\$70,066	\$854,802
RHMP Cost Share - Other Agencies <sup>1</sup>	\$461,449	\$65,921	\$43,947	\$43,947	\$54,934	\$670,198
<i>Total Requested for Consultant Services- Professional and Other<sup>2</sup></i>	<b>\$1,050,000</b>	<b>\$150,000</b>	<b>\$100,000</b>	<b>\$100,000</b>	<b>\$125,000</b>	<b>\$1,525,000</b>

<sup>1</sup> 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.

<sup>2</sup> 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.

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

<sup>1</sup> 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.

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

<sup>1</sup> 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.

<sup>2</sup> 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 2005<sup>2</sup>, 2008<sup>3</sup>, and 2013<sup>4</sup>. The current MOU was made effective on July 1, 2013, and will expire on June 30, 2018.

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 2008<sup>5</sup> and two core monitoring cycles conducted in 2008<sup>6</sup> and 2013<sup>7</sup>. 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.

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 Categorically 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 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.

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

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

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

<sup>4</sup> 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

<sup>5</sup> 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.

[http://www.portofsandiego.org/public-documents/doc\\_view/3208-study-regional-harbor-monitoring-program-pilot-project-2005-2008-summary-final-report.html](http://www.portofsandiego.org/public-documents/doc_view/3208-study-regional-harbor-monitoring-program-pilot-project-2005-2008-summary-final-report.html)

<sup>6</sup> 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](http://www.portofsandiego.org/public-documents/doc_view/3209-study-regional-harbor-monitoring-program-2008-final-report.html)

<sup>7</sup> 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>