



Legislation Text

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DATE: May 9, 2023

SUBJECT:

RESOLUTION FINDING THE BOARD ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), INCLUDING, BUT NOT LIMITED TO, CEQA GUIDELINES SECTION 15306, AND AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE DISTRICT AND THE CITY OF SAN DIEGO, CITY OF OCEANSIDE, AND COUNTY OF ORANGE FROM JULY 1, 2023, THROUGH JUNE 30, 2028, 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 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, under § 13225 of the California Water Code, issued a requirement to the District, City of San Diego and City of 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 every five years. Upon the Board of Port Commissioner's (Board) approval, the District entered into a Memorandum of Understanding (MOU) with the Cities and County in 2005 for the pilot program and in 2008, 2013 and again in 2018 which has resulted in a cost effective and consistent monitoring program with the District acting as the lead for this program. The 2018 MOU will expire on June 30, 2023. A new MOU between the District and the Cities and County is required to continue the commitment to shared program responsibilities and reaffirm the District as the lead for a period of five years (July 1, 2023 through June 30, 2028).

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 counsel as it relates to the RHMP. Due to the size and stratification of San Diego Bay, 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, 2023 through June 30, 2028 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 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 MOU represents the binding commitment of signatories to participate in cost sharing for continued RHMP implementation. The fiscal impact for this program was analyzed and secured via Board approved Agreement No. 27-2022JR (Document No. 73733, April 19, 2022, Attachment A) with consultant firm Wood Environment and Infrastructure Solutions, Inc.¹ to implement the upcoming cycle of the RHMP through FY 2028. 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.

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 \$1,611,000 over the five-year duration of this MOU. Approximately \$1,130,000 of this expenditure will occur in FY 2024, of which the District will be reimbursed \$553,107 (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 Costs²

5-Year RHMP Budget	FY 23/24	FY 24/25	FY 25/26	FY 26/27	FY 27/28	Total
District Portion of Cost	(\$633,393)	(\$129,481)	(\$53,250)	(\$16,816)	(\$70,066)	(\$903,006)
RHMP Cost Share - Other Agencies ¹	\$496,607	\$101,519	\$41,750	\$13,184	\$54,934	\$707,994
<i>Total Requested for Consultant Services- Professional and Other²</i>	\$1,130,000	\$231,000	\$95,000	\$30,000	\$125,000	\$1,611,000

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.

Additional Revenue	FY 23/24	FY 24/25	FY 25/26	FY 26/27	FY 27/28	Total
5% Administration Cost ¹	\$56,500	\$11,550	\$4,750	\$1,500	\$6,250	\$80,550

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 23/24	FY 24/25	FY 25/26	FY 26/27	FY 27/28	Total
RHMP Cost Share - Other Agencies ¹	\$496,607	\$101,519	\$41,750	\$13,184	\$54,934	\$707,994
5% Administration Cost ²	\$56,500	\$11,550	\$4,750	\$1,500	\$6,250	\$80,550
Total Reimbursement to the District	\$553,107	\$113,069	\$46,500	\$14,684	\$61,184	\$788,544

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 share costs 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.

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 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 B). As a result, the District has been working cooperatively with the other parties to effectively and efficiently develop and implement the RHMP.

An MOU was established in 2005³ and reissued in 2008⁴, 2013⁵ and 2018⁶ to formalize the parties' commitment to work together and share costs for this program. The current MOU was made effective on July 1, 2018, and will expire on June 30, 2023.

In April 2022, the consultant firm WSP USA Environment and Infrastructure Inc. (formerly Wood Environment and Infrastructure Solutions, Inc.) was selected to implement the upcoming RHMP through Board approved Agreement No. 27-2022JR (Document No. 73733, April 19, 2022, Attachment A).

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 three-year pilot program conducted between 2005 and 2008⁷ and three core monitoring cycles conducted in 2008⁸, 2013⁹, and 2018¹⁰. In addition to the core monitoring events, special studies were performed separately to answer specific questions that arose from core monitoring data analyses, including (1) identifying dissolved copper sources as part of the 2008 RHMP; (2) assessing bioaccumulation of contaminants in fish and invertebrate tissues as part of both the 2013 and 2018 RHMP; and (3) completing a causal assessment of impaired sites in 2018.

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 most of the areas within the harbors had sediment and water quality conditions that were supportive of ecosystem health and human recreational uses. Elevated chemicals of concern have been identified to be primarily located in the marina and industrial strata. The 2018 core monitoring program findings have indicated a general improvement in impaired conditions over time (Attachment C). This long-standing dataset can help the RHMP Agencies manage progress towards goals of various environmental programs being implemented in the harbors. The next core monitoring effort is scheduled to occur this summer (July through September 2023), pending budget approval.

2023 MOU

The current MOU is set to expire June 30, 2023. 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, 2023, to June 30, 2028 (Attachment D). The MOU 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 5 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 of the present and any future consultant contracts to assist with RHMP services will not exceed \$1,611,000 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 FY24 Board budget approval,

the RHMP will conduct its core monitoring program during fiscal year 2023-2024, which is estimated not to exceed \$1,130,000.

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 provisions to indemnify and hold harmless the District, Cities, and County against all claims and/or liabilities regarding this partnership.

Concurrently with the District, the other MOU Agencies are obtaining their respective MOU approvals. The City of Oceanside and the City of San Diego have approved the MOU (Attachment D), while the County of Orange has the MOU slated for its May 23, 2023 Board Meeting agenda. The County of Orange has submitted a Letter of Intent (Attachment E) to sign the MOU contingent upon Orange County Board of Supervisors approval of the annual appropriations for the applicable fiscal year.

Staff recommends that the Board adopt a resolution authorizing an 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, 2023 through June 30, 2028.

General Counsel's Comments:

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

Environmental Review:

The proposed Board action, including without limitation, authorizing an MOU between the District and the City of San Diego, City of Oceanside, and County of Orange to work collaboratively on an RHMP, is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15306 of the District's Guidelines for Compliance with CEQA because the project would consist of basic data collection/research/experimental management/resource evaluation activities, including providing data to evaluate the status and trends in water and sediments in San Diego Bay via measurements in chemistry, toxicity, benthic community analyses, and biodiversity, which would not result in a serious or major disturbance to an environmental resource. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

The proposed Board action complies with Section 87.(a)(7) of the Port Act, which allows the District to undertake the establishment and maintenance of those lands for open space, ecological preservation, and habitat restoration, for public trust purposes. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action is considered excluded development pursuant to Section 8.e. of the

District's Coastal Development Permit Regulations because the project would consist of working collaboratively on the RHMP and would not result in a serious or major significant disturbance to an environmental resource. If the Board approves this action, District staff would notify California Coastal Commission (CCC) staff in accordance with Coastal Act Section 30717. The approval would become effective after the 10th working day after notification to CCC staff, unless an appeal is filed with the CCC within that time frame.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

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Attachment(s):

Attachment A: Agreement Between San Diego Unified Port District and Wood Environment and Infrastructure Solutions, Inc. for Regional Harbor Monitoring Program, Agreement No.27-2022JR . Document No. 73733.

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

Attachment C: 2018 RHMP Public Friendly Report

Attachment D: Memorandum of Understanding (MOU) Regarding the Regional Harbor Monitoring Program (RHMP) 2023-2028.

Attachment E: County of Orange Letter of Intent to Sign the MOU upon May 23, 2023 Board approval.

¹ The firm changed names to WSP USA Environment and Infrastructure Inc. and the agreement was amended to reflect the change (Document No. 74639, November 7, 2022).

² Reimbursements are percentage-based projections assuming 100-percent of the contract expenditures for the FY.

³ Resolution 2005-179. Authorization to Execute a Memorandum of Understanding Regarding the Regional Harbor Monitoring Program.

⁴ Resolution 2008-30. Authorization to Execute a Memorandum of Understanding Regarding the Regional Harbor Monitoring Program.

⁵ 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

⁶ 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 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; All Funds Required For Future Fiscal Years Will Be Budgeted In The Appropriate Fiscal Year, Subject To Board Approval Upon Adoption Of Each Year's Fiscal Year Budget.

⁷ 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

⁸ 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

⁹ 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>

10 Regional Harbor Monitoring Program 2018 Final Report. Prepared for the Port of San Diego, City of San Diego, City of Oceanside and County of Orange. Prepared by Wood Environment and Infrastructure Solutions, Inc. 2020.
<https://pantheonstorage.blob.core.windows.net/environment/San-Diego-Regional-Harbor-Monitoring-Program-2018-FINAL-REPORT-REVISED.pdf>