ITEM NO. 6

STAFF REPORT

CITY OF OCEANSIDE

DATE: December 19, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **APPROVAL OF A MEMORANDUM OF UNDERSTANDING BETWEEN SAN DIEGO COUNTY COPERMITTEES OF THE SAN DIEGO COUNTY NPDES MUNICIPAL PERMIT ORDER NO. R9-2007-0001**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council approve a Memorandum of Understanding (MOU) between San Diego County Copermittees of the San Diego County National Pollutant Discharge Elimination System (NPDES) Municipal permit (Permit) that establishes the shared program responsibilities of each party with respect to compliance with the Permit regulations for the five year cycle of the permit, and authorize the Mayor to execute the MOU.

BACKGROUND

The San Diego Regional Water Quality Control Board (Board) adopted Order No. 2007-0001 (Order) on January 24, 2007, which renews the municipal NPDES permit first issued in July 1990. This permit establishes rules and regulations that the 21 copermittees in San Diego County must follow to reduce and/or eliminate urban discharge into city receiving waters. This new permit requires that the copermittees cooperate in the implementation of various Urban Runoff Management Plans and execute a Memorandum of Understanding. The Copermittees are required to sign an MOU for joint activities before December 31, 2007, when the first amendment to the previous MOU dated December 3, 2001 will expire. The NPDES permit is for a five-year cycle and the life of the MOU will run the life of the current Permit plus twelve months.

ANALYSIS

Twenty-one Copermittees in San Diego County are required to cooperate in the implementation of various Urban Runoff Management Plans and share costs for regional programs related to the Permit. A Regional Management Committee (RMC), which consists of one participant from each Copermittee, will develop, approve, and coordinate urban runoff management programs. Underneath the RMC are several committees and workgroups that will spearhead the development of regional urban runoff programs and report to the RMC.

In approximately June 2008, the copermittees anticipate filing a test claim with the Commission on State Mandates to seek reimbursement of a portion of the expenses incurred in implementing the storm water permit.

The City of Oceanside will serve as the lead watershed Copermittee for the San Luis Rey Watershed providing overall coordination of program reports and plans, and provide leadership in the development of programs within the watershed.

FISCAL IMPACT

Prior to the allocation of shared costs for each proposed program and its associated budget the Copermittees sharing that cost shall be identified and costs shall be divided among participating Copermittees as described below:

The default formula for the allocation of shared costs is based on 45 percent population, 45 percent urbanized land area, and 10 percent equal division among all participating Copermittees. The same formula was used in the MOU of December 3, 2001. The formula will be used for regional, watershed, or any other shared programs, unless the Copermittees participating in those programs decide otherwise. Copermittees shall each pay a yearly assessment into the Regional General Program operations fund for their assigned portion of any Regional Shared Costs Budget approved pursuant to this agreement.

A special formula for the Hydromodification Plan Development has been developed. Ten percent of the total cost will be divided equally between all Copermittees. Ninety percent of the cost will be divided based on the estimated number of developable parcels within each Copermittee's jurisdiction.

The Regional General Program operations fund shall be managed by the Regional Principal Permittee, which is designated as the County of San Diego in the MOU. In addition, any Copermittee performing contract administration tasks is entitled to receive 5 percent of the contract amount for their services.

Any Copermittee performing tasks other than contract administration or serving as Working Body Chair, Co-chair, or Secretary, is entitled to reimbursement of the direct costs of performing those services.

Before January 31 of each year, the Management Committee will approve and provide to each Copermittee a work plan and estimated budget for the following fiscal year.

The following table shows the breakdown of the estimated total shared costs per participating copermittees. For FY 2008-2009, the estimated cost to the City is $176,937. The FY 2007-2008, Clean Water (711.666771.5241) has an available balance of $187,468, therefore budgeted funds are available.

Copermittee	Total Invoiced	
	$3,750,000	
	Share of Total	% of Total
Carlsbad	$119,492	3.19%
Chula Vista	$206,252	5.50%
Coronado	$38,992	1.04%
Del Mar	$22,894	0.61%
El Cajon	$94,291	2.51%
Encinitas	$78,765	2.10%
Escondido	$141,088	3.76%
Imperial Beach	$36,522	0.97%
La Mesa	$63,180	1.68%
Lemon Grove	$38,252	1.02%
National City	$63,937	1.70%
Oceanside	**$176,937**	**4.72%**
Poway	$96,299	2.57%
San Diego	$1,103,710	29.43%
San Marcos	$93,014	2.48%
Santee	$73,433	1.96%
Solana Beach	$30,662	0.82%
Vista	$98,115	2.62%
Unincorporated	$1,115,222	29.74%
Airport Authority	$27,995	0.75%
Port District	$30,949	0.83%
TOTALS	**$3,750,000**	100.0%

COMMISSION OR COMMITTEE REPORT

The Utilities Commission approved staff's recommendation at its regularly scheduled meeting on November 20, 2007.

CITY ATTORNEY'S ANALYSIS

The documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATIONS

Staff and the Utilities Commission recommend that the City Council approve a Memorandum of Understanding (MOU) between San Diego County Copermittees of the San Diego County National Pollutant Discharge Elimination System (NPDES) Municipal permit (Permit) that establishes the shared program responsibilities of each party with respect to compliance with the Permit regulations for the five year cycle of the permit, and authorize the Mayor to execute the MOU.

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National Pollutant Discharge Elimination System

San Diego Regional Stormwater Copermittees

MEMORANDUM OF UNDERSTANDING

November 16, 2007

This Memorandum of Understanding (MOU), 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 San Diego, Carlsbad, Chula Vista, Coronado, Escondido, Imperial Beach, La Mesa, San Marcos, Del Mar, El Cajon, Encinitas, Lemon Grove, National City, Oceanside, Poway, Santee, Solana Beach, and Vista (Cities), collectively called Copermittees, establishes the shared program responsibilities of each party with respect to compliance with the National Pollutant Discharge Elimination System (NPDES) stormwater permit regulations administered by the United States Environmental Protection Agency (U.S. EPA) under the authority granted by the Federal Water Pollution Control Act (Clean Water Act) 33 USCA 1251 et seq. as amended.

RECITALS

WHEREAS, in 1987 Congress amended Section 402 of the Federal Water Pollution Control Act (33 USCA §1342p) to require the U.S. EPA to promulgate regulations for applications for permits for stormwater discharges; and

WHEREAS, the U.S. EPA adopted final permit regulations on November 16, 1990; and

WHEREAS, these permit regulations require the control of pollutants from stormwater discharges by requiring an NPDES permit, which would allow the lawful discharge of stormwaters into waters of the United States; and

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; and

WHEREAS, the California State Water Resources Control Board (CSWRCB) as designee of the U.S. EPA has delegated authority to the San Diego Regional Water Quality Control Board (Regional Board) for administration of the NPDES stormwater permit within the boundaries of its region; and

WHEREAS, on, January 24, 2007, the Regional Board issued an NPDES permit as Order No. R9-2007-0001 (Permit) governing waste discharge requirements for stormwater and urban runoff from the County, the Port, the Airport, and the Cities, naming these entities as Copermittees; and

WHEREAS, said Permit requires that the Copermittees cooperate in the implementation of various Urban Runoff Management Plans and execute a Memorandum of Understanding;
NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. DEFINITIONS

Chair means presiding over and providing leadership and direction to a Working Body. This includes serving as a point of contact to external entities such as Regional Board staff, stakeholders, and industry groups, soliciting group input on and developing meeting content, facilitating meetings, and coordinating with the Secretary or Working Body Support staff to finalize work products for distribution to the Working Body. Chair responsibilities may also be divided between Co-Chairs.

Contract Administration means developing, soliciting, awarding, and managing contracts.

Direct Costs mean those costs directly related to the development of a work product, or to the performance of a particular function or service. Direct Costs may include the wages of Copermittee employees engaged in an activity and the cost of materials or supplies needed to support that activity. Depreciation, equipment, and office space are not considered Direct Costs.

Fiscal Year starts on July 1 and ends on June 30 of the following year.

General Programs are collaborative urban runoff management activities which are (1) mandated by or necessary to implement requirements of the Permit, (2) necessary to anticipate the requirements, or prepare for renewal, of the Permit, (3) required to comply with Regional Board Orders or other directives required of Copermittees as dischargers of urban runoff (e.g., 13267 Orders, Total Maximum Daily Loads, etc.), or (4) other urban runoff management activities conducted with the unanimous approval of Copermittees sharing the cost or responsibility.

In-kind Contribution means a non-monetary contribution that can be used to satisfy an equivalent monetary obligation. Examples of In-kind Contributions are equipment or services provided for use.

Other General Programs are activities that apply to a subset of more than one and less than all Copermittees. Other General Programs do not include the activities of the Planning Subcommittee or any Workgroup or Sub-workgroup of the Management Committee. Other General Programs also do not include Watershed URMP Sub-workgroups, but may apply to a subset of any Watershed URMP Sub-workgroup.

Participant means a Copermittee regularly attending meetings, participating in the development, review, and finalization of work products, and carrying out the responsibilities of the Working Body. Participants are a subset of Representatives. Participant implies a higher and more active level of involvement than general representation.

Regional General Programs are activities that apply to all Copermittees.

Representative means a Copermittee providing general representation to a Working Body. This includes serving as a Copermittee point of contact, and, as applicable, receiving, reviewing, and providing input on correspondence, meeting materials, and work products. Representatives are not required to attend meetings, but are expected to maintain a reasonable knowledge of, and involvement in, the activities of the Working Body. To the best of their ability each Copermittee Representative should have expertise and knowledge in the subject matter of each assigned Working Body.

Secretary means a person who takes responsibility for the records, correspondence, minutes or notes of meetings, and related affairs of a Working Body. This includes: maintaining group contact lists;

preparing and sending out meeting notifications and agendas; arranging for meeting rooms and equipment; taking, preparing, and finalizing meeting minutes or notes; and, coordinating with the Chair or Working Body Support staff to organize and distribute work products to the Working Body.

Simple Majority means at least one-half (50%) of applicable Copermittees, rounded up to the nearest integer, or plus one where the number of Copermittees is even. For the purposes of this MOU, a simple majority may never be less than three Copermittees.

Special Formula means any cost share formula that differs from the Default Formula in the selection or weighting of individual factors or in the methodology used to calculate one or more of them.

Three-fourths Majority means at least three-fourths (75%) of applicable Copermittees, rounded up to the nearest integer. For the purposes of this MOU, a Three-fourths Majority may never be less than three Copermittees.

Two-thirds Majority means at least two-thirds (67%) of applicable Copermittees, rounded up to the nearest integer. For the purposes of this MOU, a Two-thirds Majority may never be less than three Copermittees.

Urbanized Land Area means the total of all SANDAG land uses within the geographic area, subject to the cost share, excepting therefrom, the following coded land uses: 1403 Military Barracks; 4102 Military Airports; 6700 Military Use; 6701 Military Use; 6702 Military Training; 6703 Military Weapons; 7209 Casinos; 7603 Open Space Reserves, Preserves; 7609 Undevelopable Natural Areas; 9200 Water; 9201 Bays, Lagoons; 9202 Inland Water; and 9300 Indian Reservations.

Watershed Copermittee means any Copermittee that is a member of a Watershed Management Area as defined in Table 4 of the Permit.

Watershed General Programs are activities that apply to the Copermittees comprising any individual Watershed URMP Sub-workgroup corresponding to a Watershed Management Area (WMA) defined in Table 4 of the Permit.

Working Body means Committees, Subcommittees, Workgroups, Sub-workgroups, or any other group of Copermittees assembled to conduct work required by, for, or in furtherance of, compliance with the Permit (Figure A identifies the Working Bodies established in this MOU).

Working Body Support means those tasks not within the assigned responsibilities of the Chair, Co-chair, or Secretary, or equitably divided amongst the Participants of the Working Body. This includes researching, drafting, modifying, and finalizing work products such as work plans, budgets, and meeting materials, and any other tasks associated with the responsibilities of the Working Body.

II. RESPONSIBILITIES OF ALL COPERMITTEES

The following apply to General Programs.

A. Performance and Reimbursement of Tasks

1. Any individual Copermittee performing tasks necessary to fulfill budgeted General Program responsibilities for a Working Body in which they are a Participant is entitled to reimbursement of the costs incurred in accordance with section II.B.1.
2. Any Copermittee performing contract administration tasks to fulfill budgeted General Program responsibilities for a Working Body in which it is a Participant is entitled to reimbursement of contract management costs at a rate of 5% of the total contract cost or as shown by accounting records and as agreed on by the participating Copermittees.
3. Any Copermittee performing tasks other than contract administration, or serving as a Working Body Chair, Co-chair, or Secretary, is entitled to reimbursement of the Direct Costs of performing those services in accordance with section II.B.1.
4. A Copermittee shall not be obliged to conduct work, enter into any contract, continue with any work or contract, or incur any other cost on behalf of other Copermittees if each Copermittee has not contributed the funds that it is obliged to contribute toward the activity or program, or if the Copermittee has not received adequate assurances that such funds will be received before payments become due. The Copermittee shall have sole discretion to determine whether assurances that require funds will be timely received or adequate.
5. A member of a Working Body providing Working Body Support may terminate those obligations for convenience if another party has been selected to the satisfaction of the other members of the Working Body, agrees to perform the obligations, and the applicable work plan and budget have been modified in accordance with the provisions of this MOU.

B. Fiscal Responsibilities

1. Division of Shared General Program Costs

a. Prior to the allocation of shared costs, each proposed or approved budget element or sub-element shall be identified as either a Regional General Program cost, a Watershed General Program cost, or an Other General Program cost, and the Copermittees sharing that cost shall be identified. The cost of any particular budget element shall be subject to the approval of only the Copermittees to which it applies. The associated costs shall be divided among participating Copermittees as described below.

(1) Default Formula. Shared costs shall be divided according to a Default Formula of 45% Urbanized Land Area, 45% Population, and 10% Equal Division unless a Special Formula is approved by the Copermittees to which the cost applies.

(a) Population costs shall be divided among the Copermittees as follows: Whenever any geographic portion of the Port or Airport jurisdiction(s), respectively, lies(s) within the geographic area to which the shared program or activity is applicable, the Port or Airport, respectively, will each pay a fixed 0.5% of total Population costs. The remaining percentage of the population costs shall be divided among Copermittees by dividing the total population of each Copermittee by the combined total Copermittee population within the geographic area applicable to the shared program or activity. These percentages shall be calculated using the most recently available population data available from the San Diego Association of Governments (SANDAG), unless more recent data are available from an equivalent source such as the U.S. Census Bureau, and are determined to be acceptable by the Copermittees sharing the cost.

(b) Urbanized Land Area costs shall be divided among Copermittees by dividing the total Urbanized Land Area of each Copermittee by the combined total Urbanized Land Area of all participating Copermittees within the geographic area applicable to the shared program or activity. Urbanized Land Area shares shall be calculated using the most recently available San Diego Association of Governments (SANDAG) land use statistics. The Urbanized Land Area share for the County shall include those urbanized lands in the unincorporated portion of the County that are west of the County Water Authority (CWA) service area boundary as it exists on the date of this MOU or as formally amended by the CWA.

(c) Ten Percent (10%) of the total cost to be shared shall be divided equally amongst all of the Copermittees.

(d) Modification of the Default Formula requires the unanimous approval of all Copermittees.

(2) Special Formulas

(a) Special Formulas may be applied to any shared General Program cost, and require the approval of a Three-fourths Majority of the Copermittees participating in the cost.

(b) Special Formula for Hydromodification Management Plan (HMP) development. The Copermittees have initially estimated the total cost of developing an HMP by a professional consultant to be $1,000,000 over a two year period, and on March 15, 2007 approved a Fiscal Year 2007-08 regional shared costs budget that included $600,000 toward such costs, plus an additional 5% for contract management. The remaining estimated costs for completing the HMP, based on the actual consultant contract award amount and associated administrative costs, will be included in the Regional Work Plan and Regional Shared Costs budget for the 2008-09 fiscal year. HMP costs shall be allocated according to the following formula:

i. Ten percent (10%) of the cost shall be divided equally among all Copermittees.

ii. Ninety percent (90%) of the cost shall be divided based on the estimated number of Developable Parcels within each Copermittees' jurisdiction. Developable Parcel-based costs shall be divided among all Copermittees as follows:

[1] The percentage of developable parcel share costs for which each Copermittee is responsible shall be calculated by dividing the Copermittee's total number of developable parcels by the combined total developable parcels of all participating Copermittees. Developable parcels shall be calculated as the number of parcels within each Copermittee's developable land area using the SANDAG 2007 Parcel Layer. Developable lands shall be determined using the SANDAG 2004 developable land layer.

[2] The total developable land area for the County shall include those urbanized lands in the unincorporated portion of the

County that are west of the CWA service area boundary as it exists on the date of this MOU or as formally amended by the CWA.

(3) In-kind Contributions. Subject to approval by the Copermittees participating in a particular shared General Program budget, a Copermittee may provide an in-kind contribution of equal value rather than a monetary contribution toward all or part of the cost of an activity.

2. Annual Shared Cost Budgets and Work Plans

a. No later than October 31st of each year, each Regional Working Body shall prepare and submit to the Planning Subcommittee a Work Plan and estimated Budget of costs and expenses for the upcoming Fiscal Year. These budgets shall describe major tasks, schedules, and projected costs, which Copermittees will provide Working Body Support, Contract Administration, in-kind contributions, and any other information applicable to regional general program costs.

b. To ensure that each Copermittee governing body has sufficient time to consider fiscal impacts, the Planning Subcommittee shall prepare a consolidated draft Regional Work Plan and Regional Shared Costs Budget no later than December 31st of each year for the regional general programs. After consideration of comments and discussion, a final Regional Work Plan and Regional Shared Costs Budget shall be prepared, approved by the Management Committee, and distributed to the Copermittees no later than January 31st of each year. Modifications to any adopted Regional Shared Costs Budget or Regional Work Plan that will result in an overall increase in cost require the approval of the Regional Management Committee.

c. No later than January 31st of each year, each Watershed Urban Runoff Management Plan Sub-workgroup, for which costs will be shared in the ensuing fiscal year, shall prepare, adopt, and distribute to the Watershed Copermittees a Watershed Work Plan and Watershed Shared Costs Budget. These budgets shall include a description of major tasks, schedules, and projected costs, and shall identify the Copermittees that will provide or contract services or incur other costs. Modifications to any adopted Watershed Shared Costs Budget or Watershed Work Plan that will result in an overall increase in cost require the approval of the applicable Watershed URMP Sub-workgroup.

d. Each Copermittee shall submit for approval by its governing body a budget request as necessary to fund its assigned share of any approved Work Plan and Budget for the ensuing fiscal year. The submission shall reference and provide information on the approved Budget, and shall inform the Copermittee's governing body that if the requested funds are not provided the Copermittee will be excluded from further participation and may be in violation of the Permit.

3. Management and Payment of Funds

a. For Regional General Programs, the Copermittees shall each pay a yearly assessment into a Regional General Program operations fund for their assigned portion of any Regional Shared Costs Budget approved pursuant to this MOU. The Regional General Program operations fund shall be managed by the Regional Principal Permittee, or any other Permittee on approval of the Copermittees.

b. For Watershed General Programs, the Watershed Copermittees for each WMA shall each pay a yearly assessment into a Watershed General Program operations fund for their assigned portion of any Watershed Shared Costs Budget approved pursuant to this MOU. Each Watershed General Program operations fund shall be managed by the Watershed Lead Permittee, or any other Watershed Permittee on approval of the Watershed Copermittees.

c. The Copermittee managing each General Program operations fund shall provide Budget Balance and Expenditure Status Reports quarterly and following the end of each fiscal year. This shall include a detailed accounting of all costs and expenses in accordance with the adopted Work Plan and Shared Costs Budget, including those incurred by Copermittees providing Working Body Support, contracting services, in-kind services, or other applicable costs.

d. Each Copermittee shall pay invoices within 60 days of receipt from the Copermittee managing the applicable General Program operations fund.

e. Funds collected and not expended in any fiscal year shall be credited to the Copermittees' share of the next fiscal year's costs in accordance with the Copermittees' defined shared costs.

f. Copermittees providing Working Body Support, Contract Administration, in-kind services, or incurring other budgeted costs on behalf of other Copermittees shall provide documentation of those expenses as requested by the Copermittee managing the applicable General Program operations fund. They shall only receive credit for those expenses if a detailed accounting of all costs and expenses meeting the minimum standards agreed upon by the Copermittees has been provided.

g. Differences in the approved actual cost of expenses from those budgeted shall be either credited or added as appropriate to the amount of the Copermittee's share.

III. REGIONAL GENERAL PROGRAMS

In addition to the requirements of section II, the following apply to Regional General Programs.

A. Regional Principal Permittee

1. The County is hereby designated Regional Principal Permittee (Principal Permittee).

   a. A change in the assignment or responsibilities of the Principal Permittee requires the unanimous approval of all Copermittees.

   b. In addition to the responsibilities of all Copermittees described in Section II, the Principal Permittee shall provide general coordination for the development and implementation of Regional General Programs, including the following tasks and responsibilities:

      (1) Establish, chair, and provide overall coordination and leadership of the Regional Stormwater Management Committee (Management Committee) and the Regional Program Planning Subcommittee (Planning Subcommittee).

      (2) Submit to the Regional Board the formal agreement between the Copermittees that provides a management structure for meeting the requirements of the Permit.

      (3) Collect and assemble individual and joint program reports and plans, and submit them to the Regional Board as required by the Permit.

(4) Maintain a current contact list of Copermittees and interested parties.

(5) Maintain knowledge of and advise the Copermittees regarding current and proposed state and federal policies, regulations, and other NPDES programs; assist the Copermittees in the development and presentation of positions on these issues before local, state, and federal agencies.

(6) Formally advise appropriate state and federal agencies of termination or amendment of this MOU.

B. Regional Stormwater Management Committee

1. The purpose of the Management Committee is to provide a public forum for the development, approval, and coordination of urban runoff management programs, and for the exploration of issues of regional significance.
2. The Management Committee shall consist of one Participant representing each Copermittee. Each Copermittee shall have one vote.
3. The Management Committee shall meet at least four times per year.
4. At a minimum, the Management Committee shall have the following responsibilities:

   a. Address common issues, promote consistency among jurisdictional and watershed programs, and plan and coordinate activities required under the Permit;

   b. Develop, implement, and arrange for implementation of Regional General Programs;

   c. Provide a general forum for informing and receiving input from stakeholders and interested parties;

   d. Provide a forum for public participation in the development and implementation of regional urban runoff management programs and activities;

   e. Establish or modify Working Bodies to review specific issues, make recommendations, or conduct work in support of shared regional priorities or objectives;

   f. Adopt by-laws for the conduct of all Working Body meetings;

   g. Formally approve the recommendations, work products, and deliverables of Working Bodies presented for consideration;

   h. Adopt an Annual Regional Shared Costs Budget;

   i. Approve an Annual Regional Work Plan; and

   j. Approve quarterly and year-end Budget Balance and Expenditure Status Reports.

5. The Management Committee shall be chaired by the Principal Permittee, or may alternatively be chaired or co-chaired by any other Copermittee upon approval of the Management Committee.
6. For a meeting or a vote to be held, a quorum of a Two-thirds Majority of voting representatives of the Management Committee must be present.
7. Management Committee voting shall not be conducted outside of meetings (e.g., by email).
8. For a motion to be approved, an affirmative vote of a Simple Majority of the Management Committee is needed.
9. To approve any shared cost, or any cost-sharing formula or methodology applicable to a shared cost, (1) the affirmative votes must represent greater than fifty percent (50%) of the cost being shared, and (2) any Copermittee that is responsible for 25% or more of the total proposed cost must be present.

10. Meetings of the Management Committee, including any closed sessions with legal counsel, shall be conducted in accordance with the "Brown Act" (Government Code Section 54950 et seq.). Except for official meetings of the Management Committee, nothing herein shall be interpreted to require meetings between staff members of the individual Copermittees (including designated representatives of the Copermittees) to be subject to the Brown Act, where the Brown Act would not otherwise apply.

C. Regional Program Planning Subcommittee

1. The purpose of the Planning Subcommittee shall be to provide regional coordination of urban runoff management activities, to develop and implement Regional General Programs, and to direct and coordinate the activities of Regional, Watershed, or Other General Programs.
2. Unless a different minimum meeting frequency is established through the unanimous approval of all Copermittees, the Planning Subcommittee shall meet at least six times per year.
3. At a minimum, the Planning Subcommittee shall have the following responsibilities:

    a. Serve as an intermediary between the Management Committee and other Copermittee Working Bodies;
    b. Plan and coordinate Management Committee meetings;
    c. Report the activities of the Management Committee to the County and City Managers Association or equivalent;
    d. Prepare and recommend by-laws for Management Committee approval for the conduct of all Working Body meetings;
    e. Schedule, coordinate, and track the progress of Working Bodies in the completion of their assigned responsibilities;
    f. Establish and maintain a calendar of Copermittee meetings and events;
    g. Direct and assign work products and information requests between Working Bodies;
    h. Conduct regional program planning including developing an Annual Regional Work Plan and Regional Shared Costs Budget for Management Committee consideration and approval;
    i. Review and recommend Management Committee approval of work products, recommendations, and requests of Working Bodies for consideration and approval;
    j. Annually receive, review, comment on, and consolidate the recommended Work Plan and Shared Costs Budget of each regional Working Body;
    k. Annually prepare and present for Management Committee approval a final recommended Regional Work Plan and Regional Shared Costs budget;
    l. Monitor and recommend Management Committee approval of budget expenditures of Working Bodies in accordance with the adopted Regional Work Plan and Regional Shared Costs budget;
    m. Provide a Representative to each Regional Workgroup;
    n. Regularly coordinate and liaise with Regional Board staff, stakeholders, regulated parties, and other interested parties to identify and explore key regional issues and concerns.
    o. Provide Representation to the following California Stormwater Quality Association (CASQA) Working Bodies or their equivalent; Executive Program Committee, Board of Directors (if elected), Stormwater Policy and Permitting and Legislation; Phase II Programs;

p. Provide representation or participation for other professional organizations and societies as appropriate and feasible;
q. Provide regular updates to Copermittees and interested parties via Management Committee meetings or other appropriate means (e-mail, etc.); and
r. Provide subject area input as needed for the development, implementation, review, and revision of General Programs, and the development of associated reports and work products.

4. The Planning Subcommittee may not alter the responsibilities of, or impose new fiscal obligations on, any Copermittee or Working Body, except as approved by the Management Committee.
5. Each Watershed Lead Permittee shall provide one Participant to the Planning Subcommittee. Subject to approval of the applicable WURMP Sub-workgroup, a Copermittee other than the Watershed Lead Permittee may also serve as the Planning Subcommittee representative for a WMA. Upon approval of the Management Committee, up to two additional representatives may be appointed to the Planning Subcommittee in any year, so long as the total number of representatives does not exceed ten. The Management Committee shall determine the length of these additional appointments, but they shall be at least one year.
6. The Planning Subcommittee shall be chaired by the Principal Permittee, or may alternatively be chaired or co-chaired by any other Copermittee upon approval of the Management Committee.
7. Voting Requirements for the Planning Subcommittee:

   a. The Planning Subcommittee shall only make advisory recommendations for Management Committee approval.
   b. The Planning Subcommittee may use any voting methodology it deems appropriate to develop advisory recommendations or conduct other business, and, shall present minority or dissenting recommendations for consideration by the Management Committee as applicable.
   c. Except as prohibited by law, the Planning Subcommittee may conduct votes outside of meetings (e.g., by e-mail) as appropriate.

D. General Responsibilities of Regional Workgroups and Sub-Workgroups

1. The purpose of Regional Workgroups and Sub-workgroups is to provide regional coordination of urban runoff management activities within assigned subject areas, to develop and implement recommended Regional General Programs, and to provide coordination of activities with stakeholders and interested parties. Regional Workgroups are advisory to the Management Committee through the Planning Subcommittee. Regional Sub-workgroups are advisory to the Regional Workgroups to which they are subordinate.
2. Unless a different minimum meeting frequency is established through the unanimous approval of all Copermittees, each Regional Workgroup and Sub-workgroup shall meet at least four times per year.
3. At a minimum, each Regional Workgroup and Sub-workgroup shall have the following responsibilities within its assigned subject area:

   a. Nominate for Management Committee approval a Chair or Co-chairs, and a Secretary from among its participants;
   b. Facilitate consistency in the development, implementation, review, and revision of General Programs, and the development of associated reports and work products;

c. Develop, annually review, and update as necessary subject-specific standards for reporting, assessment, and data and information management;

d. Develop and implement Regional General Programs as appropriate and feasible;

e. Provide subject area input to other Working Bodies as requested by the Planning Subcommittee; and

f. Regularly coordinate and liaise with Regional Board staff, stakeholders, regulated parties, and other interested parties to identify and explore key regional issues and concerns.

4. Regional Workgroups shall also have the following responsibilities:

a. By October 31st of each year, prepare and submit to the Planning Subcommittee a recommended Work Plan for the activities of the Workgroup and its Sub-workgroups in the ensuing fiscal year. This shall include a description of major tasks, deliverables, and projected schedules, and the assignment and/or division of responsibilities for task completion.

b. By October 31st of each year, prepare and submit to the Planning Subcommittee a recommended Work Plan and Shared Costs Budget for the ensuing fiscal year.

c. Twice per year, provide Written Status Reports to the Planning Subcommittee describing (1) activities and accomplishments for the previous period, (2) success in completing scheduled tasks, and (3) key issues, activities, and tasks to be addressed in the next period. Written Status Reports shall be submitted as directed by the Planning Subcommittee.

d. Provide Workgroup updates at Management Committee meetings.

5. Voting Requirements for Regional Workgroups and Sub-workgroups

a. Regional Workgroups shall make consensus recommendations to the Planning Subcommittee, who shall in turn make recommendations for formal votes to the Management Committee.

b. Regional Sub-workgroups shall make consensus recommendations to the Regional Workgroup to which they are subordinate.

c. Regional Workgroups and Regional Sub-workgroups may use any voting methodology they deem appropriate to develop consensus, and, as applicable, shall present minority or dissenting recommendations for consideration.

d. Regional Workgroups and Sub-workgroups may conduct votes outside of meetings (e.g., by email) as appropriate.

6. Copermittee Representation and Participation on Regional Workgroups and Regional Sub-workgroups:

a. Each Copermittee shall provide at least one Representative to each Regional Workgroup or Regional Sub-workgroup.

b. Each of the Copermittees represented on the Planning Subcommittee shall serve as a Participant on at least one Regional Workgroup or Regional Sub-workgroup each year. Assignments shall be coordinated through the Planning Subcommittee to ensure adequate participation in each Regional Workgroup and Regional Sub-workgroup.

c. Each of the Copermittees that is not a Participant on the Planning Subcommittee in a given year shall serve as a Participant on at least two Regional Workgroups or Regional Sub-workgroups during that year.

d. Each Copermittee shall serve as a Regional Workgroup or Sub-workgroup Chair, Co-chair, or Secretary each year. The responsibilities of Chairs, Co-chairs, and Secretaries are not reimbursable. Subject to Management Committee approval, Copermittees may voluntarily serve the required assignments of other Copermittees so long as the minimum number of required assignments is filled in each year.

E. Responsibilities Specific to Individual Regional Workgroups and Sub-Workgroups

In addition to the general responsibilities described in section III.D, the following apply to individual Workgroups and Sub-workgroups. Regional Workgroups and Sub-workgroups may be added, deleted, or modified through the unanimous approval of the Management Committee.

1. Fiscal, Reporting, and Assessment Workgroup

The purpose of the Fiscal, Reporting, and Assessment Workgroup is to provide regional standards and consistency in the implementation, assessment, and reporting of Copermittee urban runoff management activities and programs. At a minimum the Fiscal, Reporting, and Assessment Workgroup shall have the following responsibilities:

a. Develop, annually review, and update as necessary regional reporting, assessment, and program data and information management standards;

b. Develop regional fiscal analysis standards and metrics by December 31, 2008;

c. Develop, annually review, and update as necessary standards for tracking and reporting expenditures;

d. Receive and consolidate data for budget preparation and monitoring;

e. Develop the Copermittees' Regional URMP (RURMP);

f. Develop the Copermittees' RURMP Annual Reports;

g. Develop the Copermittees' Long-Term Effectiveness Assessment (LTEA);

h. Develop the Copermittees' Report of Waste Discharge (ROWD); and

i. Provide representation on the CASQA Effectiveness Assessment Subcommittee or equivalent.

2. Education and Residential Sources Workgroup

The purpose of the Education and Residential Sources Workgroup is to provide regional standards and consistency in the development, implementation, assessment, and reporting of Copermittee educational and residential source management activities and programs. At a minimum, this shall include the following responsibilities:

a. Develop, annually review, and update as necessary recommended regional standards and approaches for conducting educational activities;

b. Develop and coordinate the implementation of the Copermittees' Regional Residential Education Plan;

c. Develop, annually review, and update as necessary regional reporting, assessment, program data and information management standards for Copermittee educational activities and programs;

d. Review and comment on the educational content of work products developed by other Working Bodies;

e. Liaise with and assist the Regional WURMP, Land Development, Industrial and Commercial, and Municipal Workgroups in developing training and outreach strategies, materials, and activities;

f. Provide a Representative to the CASQA PIPP, Website, and Workshops subcommittees or their equivalent;

g. As applicable, facilitate the centralized management of educational program data and information;

h. Develop, annually review, and update as necessary regional standards and approaches for the management of residential sources to address at a minimum:

(1) Priority Sources and Inventories,

(2) BMP Requirements and Recommendations, and

(3) Program Implementation Approaches (including education);

i. Develop, annually review, and update as necessary recommended regional reporting, assessment, program data and information management standards for residential urban runoff management activities and programs;

j. As applicable, facilitate the centralized management of regional residential program data and information (sources, BMP inventories, etc.); and

k. Coordinate with the Regional WURMP workgroup to assist in the development of residential content for watershed program strategies.

3. Regional Monitoring Workgroup and Sub-workgroups

The purpose of the Regional Monitoring Workgroup and its Sub-workgroups is to provide regional standards and consistency in the development, implementation, assessment, and reporting of receiving waters and urban runoff monitoring activities and programs. At a minimum, the following responsibilities shall apply to the Regional Monitoring Workgroup, or may be delegated to its Dry Weather and Coastal Monitoring Sub-workgroups as appropriate:

a. Develop, annually review, and update as necessary recommended regional standards and approaches for conducting monitoring activities;

b. Develop and coordinate the implementation of the Copermittees' Regional Receiving Waters Monitoring Program or other specific monitoring program elements;

c. Develop and update as necessary reporting, assessment, program data and information management standards for Copermittee monitoring activities and programs;

d. Develop, review, and recommend approval of work plans, monitoring reports, and other required work products;

e. Provide a Representative to the CASQA Stormwater Monitoring and Science subcommittee or its equivalent;

f. Regularly coordinate and liaise with Regional Board staff, stakeholders, regulated parties, and other interested parties to identify and explore key monitoring issues; and

g. As applicable, facilitate the centralized management of water quality monitoring data.

4. Regional Watershed URMP Workgroup

The purpose of the Regional Watershed URMP Workgroup is to provide regional standards and consistency in the development, implementation, assessment, and reporting of Copermittee watershed management activities and programs. At a minimum, this shall include the following responsibilities:

a. Coordinate Watershed URMP administration and reporting;

b. Develop, annually review, and update as necessary recommended regional standards and approaches for conducting watershed urban runoff management activities and programs;

c. Develop, annually review, and update as necessary regional reporting, assessment, program data and information management standards for watershed urban runoff management activities and programs;

d. As applicable, coordinate the implementation of regionally applied watershed urban runoff management activities and programs;

e. As applicable, facilitate the centralized management of watershed program data and information;

f. Coordinate as necessary with other Copermittee Working Bodies to assist in the development of watershed-related program content;

g. Provide a Representative to the CASQA Watershed Management and Impaired Waters subcommittee or equivalent; and

h. As appropriate, facilitate Total Maximum Daily Load development, implementation, and reporting.

5. Land Development Workgroup

The purpose of the Land Development Workgroup is to provide regional standards and consistency in the development, implementation, assessment, and reporting of urban runoff activities and programs related to the construction and post-construction phases of the land development process. At a minimum, this shall include the following responsibilities:

a. Develop, annually review, and update as necessary recommended regional standards and approaches for the management of construction and post-construction sources to address at a minimum:

(1) Priority Sources and Inventories,

(2) BMP Requirements and Recommendations, and

(3) Program Implementation Approaches;

b. Develop the Copermittees' Hydromodification Management Plan (HMP);

c. Update the Model Standard Urban Stormwater Mitigation Plan (SUSMP) in accordance with Permit requirements;

d. Develop, annually review, and update as necessary regional reporting, assessment, program data and information management standards for construction and post-construction sources;

e. As applicable, coordinate the implementation of regional urban runoff management programs and activities for construction and post-construction sources;

f. As applicable, facilitate the centralized management of construction and post-construction program data and information; and

g. Provide a Representative to the CASQA Construction Workgroup or its equivalent.

6. Municipal Activities Workgroup

The purpose of the Municipal Activities Workgroup is to provide regional standards and consistency in the development, implementation, assessment, and reporting of urban runoff activities and programs related to municipal activities and sources. At a minimum, this shall include the following responsibilities:

a. Develop, annually review, and update as necessary recommended regional standards and approaches for the management of municipal sources to address at a minimum:

(1) Priority Sources and Inventories,

(2) BMP Requirements and Recommendations, and

(3) Program Implementation Approaches;

b. Develop, annually review, and update as necessary regional reporting, assessment, program data and information management standards for municipal sources;

c. As applicable, coordinate the implementation of regional urban runoff management activities and programs for municipal sources;

d. As applicable, facilitate the centralized management of municipal program data and information.

7. Industrial and Commercial Sources Workgroup

The purpose of the Industrial and Commercial Sources Workgroup is to provide regional standards and consistency in the development, implementation, assessment, and reporting of urban runoff activities and programs related to industrial and commercial activities and sources. At a minimum, this shall include the following responsibilities:

a. Develop, annually review, and update as necessary recommended regional standards and approaches for the management of industrial and commercial sources to address at a minimum:

(1) Priority Sources and Inventories,

(2) BMP Requirements and Recommendations, and

(3) Program Implementation Approaches;

b. As applicable, coordinate the implementation of regional urban runoff management activities and programs for industrial and commercial sources;

c. Develop, annually review, and update as necessary regional reporting, assessment, program data and information management standards for industrial and commercial sources; and

d. As applicable, facilitate the centralized management of industrial and commercial program data and information.

IV. WATERSHED GENERAL PROGRAMS

The following apply to Watershed General Programs.

A. Watershed Lead Permittees

1. The following Copermittees are hereby designated as Watershed Lead Permittees for the Watershed Management Areas listed:

   a. Santa Margarita WMA: County of San Diego
   b. San Luis Rey River WMA: City of Oceanside
   c. Carlsbad WMA: City of Carlsbad
   d. San Dieguito River WMA: City of Escondido
   e. Penasquitos WMA: City of Poway
   f. Mission Bay WMA: City of San Diego
   g. San Diego River WMA: City of El Cajon
   h. San Diego Bay WMA: Port of San Diego
   i. Tijuana WMA: County of San Diego

2. Changes in the assignment or responsibilities of Watershed Lead Permittees require unanimous approval of the applicable Watershed Permittees.
3. In addition to the responsibilities of all Copermittees described in Section II, each Watershed Lead Permittee shall provide general program coordination for Watershed General Programs applicable to their respective WMA, including the following tasks and responsibilities:

   a. Establish, chair, and provide overall coordination and leadership of its respective WURMP Sub-workgroup;
   b. Collect and assemble the individual and joint program reports, plans, and submit them to the Regional Principal Permittee or the Regional Board as required in the Permit; and
   c. Maintain knowledge of and advise the Watershed Copermittees regarding current and proposed watershed-related State and Federal policies, regulations, and other NPDES programs; assist the Copermittees in the development and presentation of positions on these issues before local, State, and Federal agencies.

B. Watershed URMP Sub-workgroups

1. For each WMA listed in section IV.A.1, a Watershed URMP Sub-workgroup is hereby established.

2. Copermittee Participation in Watershed URMP Sub-workgroups

   a. Each of the Watershed Copermittees shall have one Participant as a member of the Watershed URMP Sub-workgroup; and

   b. The Chair of the Watershed URMP Sub-workgroup shall be the Watershed Lead Permittee, or any other Copermittee on approval of the group.

3. Unless a different minimum meeting frequency is established through the unanimous approval of all Copermittees, each Watershed URMP Sub-workgroup shall meet at least four times per year.

4. At a minimum, each Watershed URMP Sub-workgroup shall have the following responsibilities:

   a. Develop and implement a Watershed URMP as required by the Permit;

   b. Develop and implement watershed activities and programs that are consistent with all minimum regional standards established through the Regional WURMP Workgroup and approved by the Management Committee;

   c. Provide data, information, and other input to the Regional WURMP Workgroup and other Copermittee Working Bodies as requested;

   d. Coordinate the development, implementation, and reporting of TMDL activities and programs within the WMA; and

   e. Adopt an annual Watershed Work Plan and Watershed Shared Costs Budget in accordance with section II.B.2.c.

5. Voting Requirements for Watershed URMP Sub-workgroups

   a. The voting membership of each Watershed URMP Sub-workgroup shall consist of one designated voting representative for each Watershed Copermittee;

   b. For a vote to be held, a quorum representing a Three-fourths Majority of the voting representatives of the Watershed URMP Sub-workgroup must be present;

   c. For a vote to pass, an affirmative vote of at least a Simple Majority of voting members of the Watershed URMP Sub-workgroup is needed;

   d. The affirmative votes must represent greater than fifty percent (50%) of any cost being shared;

   e. Any Copermittee that is responsible for 25% or more of the total proposed cost must be present for a vote to be approved; and

   f. Watershed URMP Sub-workgroup voting on matters related to approving shared costs, designating watershed leads, or approving Special Formulas shall not be conducted outside of meetings (e.g., by e-mail).

V. OTHER GENERAL PROGRAMS

The following apply to Other General Programs.

1. For convenience, the Management Committee or any applicable Watershed Sub-workgroup may provide a forum for deliberating and voting on issues and costs applicable to a subset of its membership, and for which a separate Working Body has not been established.
2. For a vote to be held, a Two-thirds Majority of the Copermittees participating in or subject to the activity or cost must be present, and voting shall be limited to those Copermittees.
3. For a vote to be approved:

    a. An affirmative vote of a Simple Majority of the Copermittees participating in or subject to the activity or cost is needed;

    b. The affirmative votes must represent greater than fifty percent (50%) of any cost being shared; and

    c. Any Copermittee that is responsible for 25% or more of the total proposed cost must be present.

VI. DISPUTE RESOLUTION

Should a dispute arise among any of the parties regarding any matter related to this MOU, the parties agree to first meet and confer in good faith to attempt to resolve the dispute. If that fails to resolve the dispute, they shall submit the matter to mediation.

1. Mandatory Non-binding Mediation. If a dispute arises out of, or relates to this MOU, or the breach thereof, and if the dispute cannot be settled through normal contract negotiations, the Parties agree to settle the dispute in an amicable manner, using mandatory mediation under the Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law. The cost of mediation shall be borne by the parties equally.

2. Selection of Mediator. A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party.

3. Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

    a. Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

    b. Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is

otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

VII. GENERAL PROVISIONS

A. Term of Agreement

1. This MOU shall become effective on the date the last party executes the MOU.
2. The life of the MOU shall run with the life of the current Permit plus twelve months. For purposes of this paragraph, any permit renewal or replacement after January 2012 shall be considered a new permit; any earlier amendment of the Permit increasing the obligations of the Regional Principal Permittee or a Watershed Lead Permittee may at that Copermittee's sole option, be declared to be a new permit; and the Management Committee shall determine whether any other earlier amendment to the Permit is of such significance as to effectively be a new Permit.

B. Withdrawal of Copermittee

1. Participation in this MOU may be withdrawn by any Copermittee for any reason only after the Copermittee complies with all of the following conditions of withdrawal:

    a. The Copermittee shall notify all of the other Copermittees in writing 90 days prior to its intended date of withdrawal.

    b. The withdrawing Copermittee shall have its name deleted as a Copermittee to the Permit prior to or on the withdrawal date.
2. Any expenses associated with withdrawal, including but not limited to, filing and obtaining the withdrawing Copermittee's individual NPDES permit and the amendment of the Permit will be solely the responsibility of the withdrawing Copermittee.
3. The withdrawing Copermittee shall be responsible for their portion of any shared costs incurred according to the conditions of this MOU up to the time that each of the conditions in Section VII.B.1. has been met.
4. Any monies paid by withdrawing Copermittee in excess of the amount due under the terms of the MOU shall be refunded to the Copermittee at the time the withdrawal becomes final as set forth in Section VII.B.1.a.
5. The withdrawing Copermittee shall not be entitled to participate in the division of proceeds in any reserve fund account when the MOU is dissolved.

C. Non-Compliance with MOU Requirements

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.

D. Amendments to the Memorandum of Understanding

This MOU may be amended only by consent of all Copermittees. No amendment shall be effective unless it is in writing and signed by the duly authorized representatives of the Copermittees.

E. Governing Law

This MOU shall be governed and construed in accordance with the laws of the State of California. If any provision or provisions shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

The headings used throughout this MOU are for convenience only and do not in any way limit or amplify the terms or provisions of the MOU.

F. Consent and Breach Not Waiver

No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Copermittee to have waived or consented. Any consent by any Copermittee to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

G. Indemnification

1. Each Copermittee shall have the sole responsibility to comply with the Permit.
2. Each Copermittee shall pay all fines, penalties, and costs which may arise out of such Copermittees's non-compliance with the Permit.
3. By entering into this MOU, no Copermittee assumes liability for claims or actions arising out of the performance of any work or actions or omissions, by any other Copermittee, its agents, officers, and employees under this MOU.
4. By entering into this MOU, each Copermittee agrees to defend itself from any claim, action or proceeding arising out of the acts or omissions of itself and retain its own legal counsel, and bear its own defense costs.

H. Application of Prior Agreements

This MOU constitutes the entire Agreement between the parties with respect to the subject matter; all prior agreements, representations, statements, negotiations, and undertakings are superseded hereby.

I. Execution of Agreement

This MOU may be executed in counterpart and the signed counterparts shall constitute a single instrument.

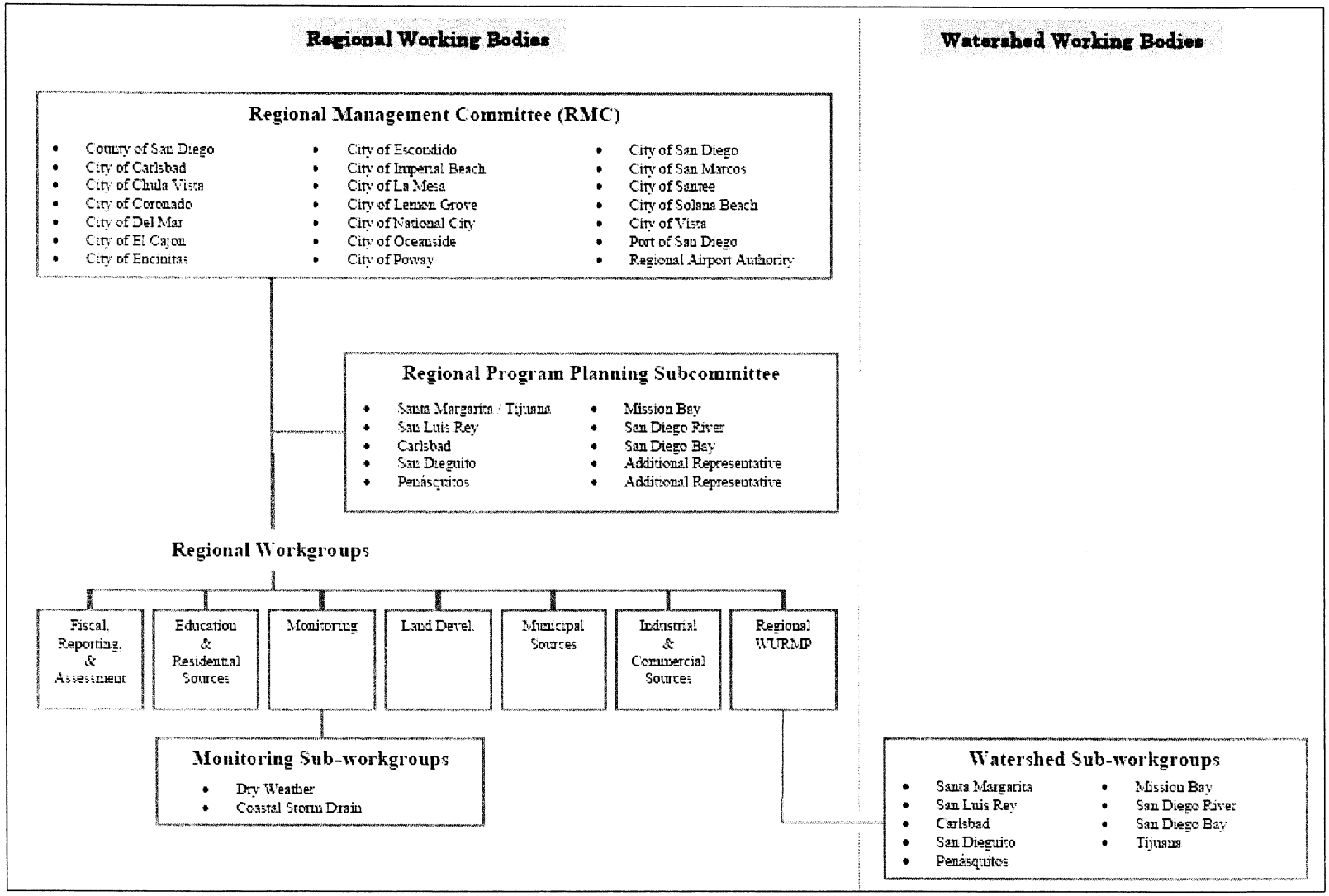

Figure A. Copermittee Regional and Watershed Working Bodies

IN WITNESS THEREOF, this Agreement is executed as follows:

Date:

_____

City of Oceanside, Copermittee

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY

JOHN P. MULLEN
City Attorney