



DATE: April 2, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Harbor and Beaches Department

SUBJECT: **APPROVAL OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OCEANSIDE, THE CITY OF SAN DIEGO, THE SAN DIEGO UNIFIED PORT DISTRICT AND THE COUNTY OF ORANGE TO FUND THE REGIONAL HARBOR MONITORING PROGRAM AND APPROVAL OF A PURCHASE ORDER NOT TO EXCEED \$132,000 TO THE SAN DIEGO UNIFIED PORT DISTRICT**

SYNOPSIS

Staff recommends that the City Council and Harbor Board of Directors approve the Memorandum of Understanding (MOU) between the City of Oceanside, the City of San Diego, the San Diego Unified Port District and the County of Orange, which establishes the shared program responsibilities of each party with respect to compliance with the Regional Harbor Monitoring Program (RHMP); and authorize the Mayor to execute the MOU; approve a purchase order in an amount not to exceed \$132,000 to fund the City's share of the MOU; and authorize the Financial Services Director, or designee, to execute the purchase order..

BACKGROUND

On July 24, 2003, the San Diego Regional Water Quality Control Board (Board) requested, under §13225 of the California Water Code, that the region's harbors begin a coordinated monitoring program. The program was designed to answer the following questions:

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

A three-year pilot monitoring program was designed and the original MOU commenced on July 5, 2005. The pilot program was implemented in August 2005 with plans for the full program to begin in August 2008. The original MOU expires on June 30, 2008.

ANALYSIS

The governing agencies of the region's four harbors are required by the San Diego Regional Water Quality Control Board to cooperate in the monitoring program, per Permit Order No. R9-2007-0001.

The pilot program was completed in 2007. Oceanside's cost share for the pilot program was approximately \$40,000 per year.

In 2008, the RHMP will be expanded for one year to coincide with the Southern California Coastal Water Research Project's (SCCWRP) regional monitoring program of the Southern California Bight. Every five years, SCCWRP coordinates monitoring from Point Conception to the Mexican border to provide an assessment of environmental conditions in the region. In 2009, the monitoring level will continue at the 2007 level.

The San Diego Unified Port District has the largest area of the four harbors and administers the program. The Port District will send out a Request for Proposal in May 2008. Based on previous monitoring experience, the Port has estimated the cost for Oceanside Harbor's portion to be no more than \$132,000.

FISCAL IMPACT

The program will be paid for from funds from the Harbor and Beaches operating accounts (751.596280.5241).

INSURANCE REQUIREMENTS

Does not apply.

COMMISSION OR COMMITTEE REPORT

Text.

CITY ATTORNEY'S ANALYSIS

The City Attorney has reviewed the MOU and approved it as to form.

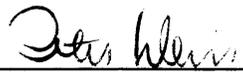
RECOMMENDATION

Staff recommends that the City Council and Harbor Board of Directors approve the Memorandum of Understanding (MOU) between the City of Oceanside, the City of San Diego, the San Diego Unified Port District and the County of Orange, which establishes the shared program responsibilities of each party with respect to compliance with the Regional Harbor Monitoring Program (RHMP); and authorize the Mayor to execute the MOU; approve a purchase order in an amount not to exceed \$132,000 to fund the City's share of the MOU; and authorize the Financial Services Director, or designee, to execute the purchase order.

PREPARED BY:


Ray Duncan
Harbor and Beaches Manager

SUBMITTED BY:


Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager
Donald L. Hadley, Deputy City Manager
Teri Ferro, Financial Services Director



Attachment A: MOU

Attachment B: Cost Sharing Formula

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

This Memorandum of Understanding, hereinafter called the "The Regional Harbor Monitoring Program MOU" is made and entered into in July 2008, between the County of Orange, City of Oceanside and City of San Diego, all municipal corporations ("County & Cities"), and the San Diego Unified Port District, a public corporation ("Port"). The Port and County & Cities shall be referred to hereinafter collectively as "Party/ies."

RECITALS

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

Whereas, the Port has agreed to lead the RHMP for the County & Cities.

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

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

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

Whereas, the Parties intend this MOU to provide for the performance of studies, monitoring and development of programs and funding therefore for a period through June 30, 2013, after which it is recognized that additional agreements may be necessary for further monitoring, studies and load reduction implementation projects over the period covered by the RHMP.

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

1. TERM OF MOU

- a. The term of this MOU shall commence on July 1, 2008, and is effective until June 30, 2013, unless earlier terminated by the Parties as provided below.

2. DIVISION OF PROGRAM COSTS

- a. Exhibit A, attached hereto and by reference made a part hereof, presents the default cost-share formula agreed upon by the Port and County & Cities. The cost share formula is applicable to all consultant costs and work performed under the RHMP. The associated costs shall be divided among participating Parties using the default formula described below, unless a Special Formula is approved by the Parties to which the cost applies.
 - i. Fifty percent (50%) of the total RHMP costs shall be allocated for water area in each harbor. Water areas shall be divided among the Parties by dividing the total water area for the harbor of each Party by the combined total water areas for the harbors within the geographic area applicable to the RHMP.
 - ii. Thirty-five percent (35%) of the total RHMP costs shall be allocated for harbor stratification. Harbor stratification costs shall be divided among Parties by dividing the number of strata present for each harbor area by the overall number of strata possible for inclusion within each harbor area.
 - iii. Fifteen percent (15%) of the total RHMP costs shall be allocated equally amongst all of the Parties for data analysis, data management and reporting.
 - iv. Modification of the Default Formula requires the unanimous approval of all Parties signatory to this MOU.
- b. The County & Cities will reimburse the Port for overhead expenses associated with the administrative costs incurred during the role of leading the RHMP in the amount of five percent (5%) of the total RHMP cost. This administrative cost shall be divided evenly among all Parties.
- c. The obligation of each Party is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the Parties to expend or as involving the Parties in any contract or other obligation for the future payment of money in excess of appropriations authorized by law.
- d. Special cost-share formulas may be needed to fund special studies or other efforts required for RHMP compliance and conducted jointly by the Parties. The special cost-share formula shall be developed as appropriate

to satisfy required efforts. Unanimous approval by all Parties participating in the cost is required to adopt a special cost-share formula.

3. FUNDING AND PROGRAM BUDGET

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

4. PAYMENT

- a. The Port will invoice County & Cities by the beginning of each fiscal year with the agreed upon amount for the upcoming fiscal year.
- b. The County & Cities will pay the invoice within 45 calendar days from the date of the invoice.

5. OBLIGATIONS OF THE PORT

- a. Project Administration
 - i. The Port will provide overall administrative and other professional services required for design and managing the Regional Harbor Monitoring Program. Responsibilities shall include, but not be limited to, the coordination of Parties and consultants; set up and lead RHMP meetings; preparing annual RHMP budgets, invoices, etc.; correspond with the RWQCB regarding work completed; and review and/or prepare documents and reports.

- ii. The Port will assign qualified personnel to the RHMP project and be responsible for the general administration of the work performed by the selected consultant.
 - iii. The Port will provide quality assurance services to ensure all required monitoring, submittals, and other contract requirements are met by the consultant.
 - iv. The Port will provide annual invoices, detailed in the aforementioned Section 4, PAYMENT, by July 1 of each year to the County & Cities detailing the nature of the work to be performed and the amount of funding required during the next fiscal year. These invoices will include all monies needed for consultant services for sampling, monitoring etc., and administration of the contract work.
- b. Consultant selection
- i. The Port will be responsible for the preparation of, advertising for, opening, reviewing bids, award and administration of the consultant contract.
- c. The Port will develop the terms and conditions that reasonably protect the Parties from liability that may occur as a result of the Port executing the consultant agreement and acting as the contracting agent.
- d. The Port will include language in the consultant agreement to include all Parties as additional insured. Language will also be added to the consultant agreement to ensure that consultant agrees to indemnify the County & Cities as well as the Port.

6. OBLIGATIONS OF THE COUNTY & CITIES

- a. The County & Cities will attend meetings, promptly return telephone calls and correspondence, participate in discussions, provide review and comments on consultant deliverables, and will share information essential for task development and completion.
- b. The County & Cities will coordinate with the Port to review and approve an RHMP budget for each fiscal year that is agreed upon by all Parties.
- c. The County & Cities will provide funding for the costs incurred under this MOU, subject to appropriations, based upon the terms and conditions of this MOU. County & Cities will pay full amount of invoice by 45 calendar days from the date of the invoice.
- d. The County & Cities agree to participate in the selection of a single consultant to perform the work identified for the RHMP. The participation will include, but not be limited to, review of submitted proposals, interviews with consultants, and determination of final consultant selection.

- e. The County & Cities will provide services to review and approve consultant submittals. In the event any change in consultant scope of work is required due to unforeseen conditions, the County & Cities shall review any changes and provide appropriate response.
- f. County & Cities agree to allow Port and/or their consultants to enter property for work undertaken as a part of the RHMP. Before any such monitoring activities, County & Cities will be contacted and the appropriate measures will be taken to ensure access.
- g. The County & Cities will provide funding to the Port for an additional five percent (5%) of the total consultant's cost for overall project management including general administration ("Administrative Cost"). This administrative cost shall be shared equally among all Parties.

7. GENERAL CONDITIONS

- a. The Parties shall comply with all federal, state, and local laws and ordinances applicable to the work to be performed under the terms of this "Regional Harbor Monitoring Program MOU."
- b. The Parties will follow the practice of the environmental professional in rendering findings, opinions, factual presentations, professional advice, and recommendations.
- c. Administration of this MOU and the associated consultant agreement is under the jurisdiction of the Port herein, and any communication of the terms or conditions or any changes thereto.
- d. This MOU shall be effective on July 1, 2008.
- e. Notices required or permitted pursuant to this " Regional Harbor Monitoring Program MOU" shall be sufficiently given in writing and either served personally or mailed by certified mail; however, invoices, payments, and other communications according to this MOU may be served by first class U.S. mail to:

E. David Merk
Director, Environmental Services
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488

Mario Sierra
Director, General Services Department
City of San Diego
1970 B Street
San Diego, CA 92102

Chris Crompton
County of Orange
1750 S. Douglass Road
Anaheim, CA 92806

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

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

- f. In the event of litigation with respect to this MOU or the interpretation thereof, and in respect to all disputes or controversies arising hereunder, this MOU shall be construed in accordance with, and governed by, the laws of the State of California. Venue in respect to any suit or proceeding brought under or in connection with this MOU shall be the County of San Diego, State of California.
- g. This MOU and all rights and obligations contained herein shall be in effect whether or not any of the parties to this MOU have been succeeded by another entity, and all rights and obligations of the parties signing this MOU shall be vested and binding on their successor of interest.
- h. No failure of either the Port or the County & Cities to insist on strict performance by the other of any covenant, agreement, term, or condition of this MOU or to exercise any right or remedy consequent of a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this MOU, but each and every covenant, agreement, term and condition of this MOU shall continue in full force and effect without respect to any other existing or subsequent breach.
- i. This MOU represents the entire understanding of the Port and the County & Cities as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This MOU may not be modified or altered except in writing signed by all parties.
- j. The Parties agree to mediate any dispute prior to filing suit or prosecuting suit against the other parties. In the event suit is brought upon this MOU to enforce its terms, each party shall be responsible for their own attorneys' fees and costs.
- k. The County & Cities agree to defend, indemnify, protect, and hold the Port and its agents, officers and employees harmless from any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the Port's employees, agents, or officers, which arise from or are connected with or are caused or claimed to be

caused by the acts or omissions of the County & Cities and its contract agents, officers, or employees resulting from the consultant and all expenses of investigating and defending against same; provided, however, that the County & Cities duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the Port, its agents, officers or employees.

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

8. TERMINATION

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

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

SAN DIEGO UNIFIED PORT DISTRICT

Date: _____ BY _____

I HEREBY APPROVE the form and legality of the foregoing "Regional Harbor Monitoring Program MOU" on this _____ day of _____, 2008.

Port Attorney

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

CITY OF SAN DIEGO

Date: _____ BY _____

I HEREBY APPROVE the form and legality of the foregoing "Regional Harbor Monitoring Program MOU" on this _____ day of _____, 2008.

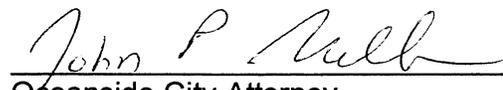
San Diego City Attorney

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

CITY OF OCEANSIDE

BY _____

I HEREBY APPROVE the form and legality of the foregoing "Regional Harbor Monitoring Program MOU" on this 4th day of March, 2008.



Oceanside City Attorney

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

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

BY _____
BRYAN SPEEGLE, Director
Resources and Development
Management Department

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

By: _____
Geoffrey K. Hunt, Deputy

Date: _____

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

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

BY _____
BRAD GROSS, Director
Dana Point Harbor Division

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

By: _____
Geoffrey K. Hunt, Deputy

Date: _____

Regional Harbor Monitoring Program
Exhibit A

**Regional Harbor Monitoring Program
Proposed Default Cost Sharing Formula***

Agency	Harbor	Acreage ¹		Strata ²		Equal Division ³	Total**	Administrative Cost***
		50.00%		35.00%		15.00%		5.00%
		Total Harbor Acreage (mapped)	% of Total Acreage	Total Strata Present in Harbor	% of Total Strata	% Equal Division	% of Total Costs**	% Equal Division
County of Orange	Dana Point	159	1.21	4	0.25	15	13	1.25
Oceanside	Oceanside	61	0.47	3	0.19	15	11	1.25
San Diego	Mission Bay	2041	15.59	4	0.25	15	20	1.25
Port	San Diego Bay	10,831	82.73	5	0.31	15	56	1.25
Totals		13,092	100	16	1.00		100	

*Unless specified under a special formula per terms of the MOU, agency costs will be divided according to the following cost allocation formula:

- 1) Fifty percent (50%) of the total cost shall be divided based upon total acreage in each agency's respective harbor/bay
- 2) Thirty-five percent (35%) of the total cost shall be divided based upon number of strata contained in each bay/harbor
- 3) Fifteen percent (15%) of the total cost will be divided equally among all participating agencies for consultant costs (i.e. data management, analysis, etc.)

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

***An Administrative Cost, comprised of 5% of the total RHMP costs will be added on and divided equally amongst all agencies.