

STAFF REPORT



ITEM NO. 11

CITY OF OCEANSIDE

DATE: June 20, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **APPROVAL OF AMENDMENT 1 IN THE AMOUNT OF \$35,730 TO THE AGREEMENT WITH THE COUNTY OF SAN DIEGO FOR THE SAN DIEGO REGIONAL STORMWATER COPERMITTEES MEMORANDUM OF UNDERSTANDING**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 in the amount of \$35,730 to the agreement between the City of Oceanside and the County of San Diego for the San Diego Regional Stormwater Copermittees Memorandum of Understanding and authorize the Mayor to execute the amendment.

BACKGROUND:

The City of Oceanside is collaborating with all other jurisdictions in the County (collectively termed "Copermittees") on several mandated shared activities, primarily regional monitoring and educational programs which are requirements of the Regional Water Quality Control Board, Storm Water National Pollutant Discharge Elimination System (NPDES) Permit. The Copermittees (21 in total) entered into a Memorandum of Understanding (MOU) on December 3, 2001, to comply with NPDES Permit No. 2001-01 requirement that Copermittees cooperate in the implementation of a Storm Water Management Plan. On January 24, 2007, the San Diego Regional Water Quality Control Board (SDRWQCB) issued NPDES Permit No. R9-2007-0001 which includes additional requirements to those imposed on the Copermittees in NPDES Permit No. 2001-01. A new MOU is also required and is currently being prepared; however, there is a need for an interim Amendment to begin cost-sharing of some compliance activities and to carry the Copermittees through until the new MOU is fully executed. The primary new requirement that must be in place prior to the new MOU is the development of a Hydromodification Management Plan. Hydromodification is caused by urbanization and results in changes in creek configuration because of increased stream flows, sediment transport, and erosion of creek banks. The Hydromodification Management Plan will most likely result in additional requirements for best management practices (BMPs) to reduce peak flows associated with new development.

ANALYSIS:

The Copermittee staff recommends amending the December 2001 MOU to:

- 1) Set forth a different cost-allocation formula from the original MOU for the development of the Hydromodification Management Plan.
- 2) Extend the termination date of the MOU to such time as the Copermittees agree to terminate the MOU.
- 3) Allow for the inclusion of the San Diego Regional Airport Authority in the division of costs related to the development of a Hydromodification Management Plan.
- 4) Provide for the recovery of administrative costs by Copermittees administering contracts related to the development of a Hydromodification Management Plan.

Staff will be required to participate in the development of the Hydromodification Management Plan in a review capacity and eventually will need to modify ordinances to incorporate required actions.

FISCAL IMPACT:

The original MOU outlined the following cost-sharing formula between all Copermittees:

- 10% of costs divided equally
- 45% shared costs divided based on population
- 45% of shared costs divided based on urbanized land area

The amendment allows for a cost-sharing formula that considers only “developable parcels” since these are the only areas that will be affected by the Hydromodification Management Plan. It is currently estimated that the FY2007-08 total cost for the Hydromodification Management Plan development will be \$1,000,000, of which the City of Oceanside’s share will be approximately \$35,730 split evenly between Update Master Plan (511.815422.5241), (512.815437.5241) and (514.815431.5241).

CITY ATTORNEY’S ANALYSIS

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

RECOMMENDATION

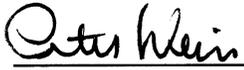
Staff recommends that the City Council approve Amendment 1 in the amount of \$35,730 to the agreement between the City of Oceanside and the County of San Diego for the San Diego Regional Stormwater Copermittees Memorandum of Understanding and authorize the Mayor to execute the amendment.

PREPARED BY:



Greg Blakely
Administration Manager

SUBMITTED BY:



Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Lonnie Thibodeaux, Water Utilities Director



Paul Bussey, Interim Financial Services Director



Exhibit 1 – Amendment to Memorandum of Understanding

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

THIS FIRST AMENDMENT TO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES), SAN DIEGO REGIONAL STORMWATER COPERMITTEES MEMORANDUM OF UNDERSTANDING (First Amendment to MOU), made and entered into this ____ day of _____, 200__ by County of San Diego (herein called County), the San Diego Unified Port District (herein called Port), 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 (herein called Cities), collectively called Copermittees, with reference to the following facts.

RECITALS

A. Copermittees entered into a National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding (MOU) on December 3, 2001, known as County of San Diego Contract No. _____, to comport with NPDES Permit No. 2001-01 requirement that Copermittees cooperate in the implementation of a Storm Water Management Plan; and

B. On January 24, 2007, the San Diego Regional Water Quality Control Board (SDRWQCB) issued NPDES Permit No. R9-2007-0001 which includes requirements in addition to those that were imposed on the Copermittees in NPDES Permit No. 2001-01, including a requirement that the Copermittees collaborate to develop and implement a Hydromodification Management Plan; and

C. Copermittees wish to amend the MOU to: (1) set forth a different cost allocation formula for the development of the Hydromodification Management Plan (HMP) (2) extend the

termination date of the MOU to such time as the Copermittees agree to terminate the MOU; (3) allow for the inclusion of the San Diego Regional Airport Authority in the division of costs related to the development of a Hydromodification Management Plan; (4) provide for the recovery of administrative costs by Copermittees administering contracts related to the development of a Hydromodification Management Plan; and

D. The Copermittees have initially estimated the total cost of developing an HMP, including contracting with outside sources for such services, 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; and

E. The San Diego Regional Airport Authority (Airport) is a Copermittee under NPDES Permit No. R9-2007-0001; and

F. Airport, although not a party to this MOU, has voluntarily agreed to share in all HMP costs in accordance with the formula set forth herein; and

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

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

1.1 Section IV.A.8 of the MOU entitled "Fiscal Responsibilities, General Responsibilities" is hereby amended and restated to read as follows:

8. Except as set forth herein, the Principal Copermittee agrees to waive administrative or other costs necessary to fulfill the responsibilities described in Section 1.A. For purposes of Hydromodification Management Plan (HMP) cost allocation, as described in section IV.B.2, County or any other Copermittee contracting for services to develop a HMP,

shall be entitled to reimbursement of contract management costs at a rate of 5% of the total contract cost minus their proportionate share and shall be reimbursed from the fund established for program operations described in section IV.A.1 of the MOU.

1.2 Section IV.B of the MOU, entitled "Fiscal Responsibilities, Division of General Program Costs", is hereby amended and restated to read in its entirety as follows:

1. Except as set forth in subsection B.2 or as subsequently determined, the following cost share allocation shall apply to the development and administration of the annual Management Committee Budget described in IV.A. Only shared Regional General Program costs described in Section IV.A.6 are required to be included as part of this Budget. However, for convenience or economy, groups of Copermittees may elect to include Watershed or Other General Programs within this overall Budget. The cost share basis among the participating Copermittees for Watershed or Other General Programs included in the budget may differ from the cost allocation formula described below. The waiver of administrative costs described in Section IV.A.8 shall apply to Watershed and Other General Programs only with consent of the Principal Permittee.

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, a Watershed General Program, or an Other General Program, 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. For each, costs shall be divided among participating Copermittees. The costs of Regional General Programs shall be allocated according to the following formula:

- a. Ten percent (10%) of the cost shall be divided equally among all Copermittees
- b. Forty-five percent (45%) of the cost shall be divided based on population.
Population-based costs shall be divided among all Copermittees as follows:

- (i) The percentage of Population Share Costs for which each Copermittee is responsible shall be calculated by dividing their total population by the combined total population of all participating Copermittees within the geographic area applicable to the shared program or activity. These percentages shall be calculated using the “Household” population figures of the San Diego Association of Governments (SANDAG) “Population and Housing Estimates” for the year 2000 or as formally updated or amended by SANDAG.
 - (ii) The County’s population for Regional Programs shall be the entire population of the unincorporated County. The County acknowledges that this will be a greater total population than that which would otherwise be included within the geographic area described in Section IV.B.1.c(iii). below.
 - (iii) The Port’s population shall be based on the most recent available estimate of the number of persons whose primary place of residence is aboard a vessel within San Diego Bay (e.g., marinas, moorings, etc.). These numbers shall be based on estimates provided by the Harbor Police.
- c. Forty-five percent (45%) of the cost shall be based on urbanized land area to be divided among all participating Copermittees as follows.
 - (i) The percentage of land area costs for which each Copermittee is responsible shall be calculated by dividing their total urbanized land area by the combined total urbanized land area of all participating Copermittees within the geographic area applicable to the shared program or activity.

- (ii) These totals shall be calculated using the most recently available San Diego Association of Governments (SANDAG) land use statistics.
- (iii) The total urbanized land area 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 Agreement or as formally amended by the CWA, plus land areas east of this line but draining toward the ocean that are served by a public water supply authority on the date of this Agreement (i.e., parts of Julian, Descanso, and Jamul/Dulzura).
- (iv) The total urbanized land area for the Port shall include those urbanized lands within Port District boundaries. These totals shall be subtracted from the urbanized land areas of each of the respective Port member cities (San Diego, Coronado, National City, Chula Vista, and Imperial Beach).

2. The cost allocation formula among the Copermittees for the development of a Hydromodification Management Plan by a professional consultant, is estimated to be \$1,000,000. \$600,000 of that amount is included in the Copermittees' FY 2007-08 regional shared costs budget. The final cost of a consultant contract for the development of a HMP, which shall not exceed \$1,250,000, except by written amendment of this MOU, shall be determined upon its award, with remaining funding to be budgeted by each of the Copermittees in FY 2008-09.

HMP costs shall be allocated according to the following formula:

- a. Ten percent (10%) of the cost shall be divided equally among all Copermittees.
- b. 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:

- (i) 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. Numbers of parcels shall be determined using the San Diego Association of Governments (SANDAG) 2007 Parcel Layer, and Developable lands determined using the SANDAG 2004 developable land layer.
 - (ii) 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 County Water Authority (CWA) service area boundary as it exists on the date of this Agreement or as formally amended by the CWA.
- c. The Port shall pay its share and the Airport's fair share costs but shall only be responsible for the Airport's fair share costs to the extent that the Port has received sufficient funding from the Airport. Any costs for which the Port has not received sufficient funding from the Airport shall be re-allocated to the remaining Copermittees according to the formula described in Sections IV.B.2.a and b above.

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

The term of this MOU commences on the date of its execution by each and all of the duly authorized representatives in the County, the Port and the Cities. The MOU shall terminate on December 31, 2007, or upon written agreement of the parties, whichever occurs

first.

2. EFFECT OF AMENDMENT

2.1 This Amendment to National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall be effective and binding on all parties hereto commencing upon the date the last party executes the First Amendment to MOU.

2.2 This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

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

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

COUNTY OF SAN DIEGO

Dated: _____

By: _____

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

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

Date:

City of Oceanside, Copermittee

<p>APPROVED AS TO FORM OCEANSIDE CITY ATTORNEY</p>  <p>BARBARA L. HAMILTON Assistant City Attorney</p>
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4/4/2007

**Developable Parcels (City of San Diego)
2004/2007 Data**

Copermittee	Developable Parcels 90%			Equal Division 10%	Total Invoiced \$1,000,000	
	Developable Parcels	% of Total	Fee	Equal Division Fee	Share of Total	% of Total
<i>Carlsbad</i>	5,115	5.99%	\$53,952	\$4,762	\$58,714	5.87%
<i>Chula Vista</i>	8,850	10.37%	\$93,348	\$4,762	\$98,110	9.81%
<i>Coronado</i>	53	0.06%	\$559	\$4,762	\$5,321	0.53%
<i>Del Mar</i>	77	0.09%	\$812	\$4,762	\$5,574	0.56%
<i>El Cajon</i>	305	0.36%	\$3,217	\$4,762	\$7,979	0.80%
<i>Encinitas</i>	951	1.11%	\$10,031	\$4,762	\$14,793	1.48%
<i>Escondido</i>	2,242	2.63%	\$23,648	\$4,762	\$28,410	2.84%
<i>Imperial Beach</i>	63	0.07%	\$665	\$4,762	\$5,426	0.54%
<i>La Mesa</i>	544	0.64%	\$5,738	\$4,762	\$10,500	1.05%
<i>Lemon Grove</i>	87	0.10%	\$918	\$4,762	\$5,680	0.57%
<i>National City</i>	494	0.58%	\$5,211	\$4,762	\$9,973	1.00%
<i>Oceanside</i>	2,936	3.44%	\$30,968	\$4,762	\$35,730	3.57%
<i>Poway</i>	978	1.15%	\$10,316	\$4,762	\$15,078	1.51%
<i>San Diego</i>	19,322	22.64%	\$203,804	\$4,762	\$208,566	20.86%
<i>San Marcos</i>	4,531	5.31%	\$47,792	\$4,762	\$52,554	5.26%
<i>Santee</i>	1,224	1.43%	\$12,910	\$4,762	\$17,672	1.77%
<i>Solana Beach</i>	103	0.12%	\$1,086	\$4,762	\$5,848	0.58%
<i>Vista</i>	1,296	1.52%	\$13,670	\$4,762	\$18,432	1.84%
<i>Unincorporated</i>	36,155	42.37%	\$381,355	\$4,762	\$386,117	38.61%
<i>Airport Authority</i>	0	0.00%	\$0	\$4,762	\$4,762	0.48%
<i>Port District</i>	0	0.00%	\$0	\$4,762	\$4,762	0.48%
TOTALS	85,326	100%	\$900,000	\$100,000	\$1,000,000	100.0%

Cost Share Updated 7-20-06