

STAFF REPORT



ITEM NO. 10
CITY OF OCEANSIDE

DATE: August 15, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **APPROVAL OF A COST SHARE AGREEMENT IN THE AMOUNT OF \$493,515 FOR FY 2007-08 WITH THE COUNTY OF SAN DIEGO FOR IMPLEMENTATION OF INVESTIGATION ORDER R9-2006-076 FOR THE LAGOONS IN THE CARLSBAD HYDROLOGIC UNIT AND APPROVE A BUDGET APPROPRIATION IN THE AMOUNT OF \$493,515 FROM THE WATER UTILITIES FY2007-08 UNALLOCATED FUND BALANCE**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council approve a cost-share agreement in an amount not to exceed \$493,515 with the County of San Diego for implementation of Investigative Order R9-2006-076 for the Lagoons in the Carlsbad Hydrologic Unit (Watershed), pursuant to California Water Code Section 13267; approve a budget appropriation in the amount of \$493,515 from the Water Utilities FY2007-08 Unallocated Fund balance; and authorize the Mayor to execute the agreement.

BACKGROUND

The Clean Water Act (CWA) Section 303(d) requires States to develop a list of waterbodies that do not or are not expected to meet water quality standards and requires the State Water Resources Control board to develop Total Daily Maximum Loads (TMDLs). The purpose of a TMDL is to attain water quality objectives and restore the waterbody's beneficial uses. TMDLs can be for a single water body and a single pollutant, or may be grouped by location and pollutant type.

There are eleven (11) water quality-limited segments in San Diego County, comprised primarily of lagoons and their tributary creeks, being addressed under one TMDL. In the Carlsbad Hydrologic Unit (Watershed), Loma Alta Slough, Buena Vista Lagoon, Agua Hedionda Lagoon (and creek), and San Elijo Lagoon (and Escondido Creek) have been listed by the San Diego Regional Water Quality Control Board (SDRWQCB). The

impairments that lead to the Section 303(d) listings vary by lagoon and creek, but generally include bacteria, nutrients, sediment and total dissolved solids (TDS). Other lagoons affected by this TMDL process include Santa Margarita Lagoon, Los Penasquitos Lagoon and Famosa Slough.

In order to develop the TMDL, the SDRWQCB must prepare a computer model of the watersheds and lagoons to determine the pollutant load allocations to the various responsible parties within the watershed. The SDRWQCB has determined that existing water quality monitoring data is insufficient, and therefore adopted Investigation Order R9-2006-076 (Order), which requires the responsible parties to furnish the necessary monitoring required to develop TMDLs. The SDRWQCB has determined that the responsible parties in the Carlsbad Watershed are the County of San Diego, Caltrans, the Hale Avenue Resource Recovery Facility (HARRF), and the incorporated cities of Carlsbad, Escondido, San Marcos, Encinitas, Oceanside, Solana Beach, and Vista.

The monitoring will include water quality, sediment and physical parameter monitoring in the watershed, within the lagoon and at the ocean inlet to properly characterize the fate and transport of the pollutants. Sampling will include bacteria, nutrients, sediment, pH, dissolved oxygen, temperature, conductivity (salinity), flow, and water surface elevation. Samples will consist of grab sampling composite sampling, and continuous monitoring. It will be performed periodically throughout a year-long period beginning in October 2007.

For the past four years, eight of the Responsible Parties within the Carlsbad Watershed, representing the seven cities and the County, have been collaborating together to develop and implement the Carlsbad Watershed Urban Runoff Management Plan (WURMP) pursuant to the Municipal National Pollutant Discharge Elimination System (NPDES) Permit. Costs incurred for the management and implementation of the WURMP have been successfully cost shared. Encinitas has been designated as the contracting agent for this effort.

ANALYSIS

The Carlsbad Watershed responsible parties have determined that it is in their best interest to work collaboratively on this project using the precedent set by the WURMP to guide the effort. Thus, they have agreed to work together to fulfill the requirements of the Order for Loma Alta Slough, Buena Vista Lagoon, Agua Hedionda Lagoon, and San Elijo Lagoon and have also agreed to share the cost of hiring a consultant to perform the required monitoring. Furthermore, the City of Encinitas has agreed to lead the effort by providing project management and contract administration services for the Carlsbad Watershed responsible parties and will hire a consultant to perform the services described in the order. In exchange for this service, Encinitas will receive an amount equal to 5 percent of the contract total.

The responsible parties have been working with the SDRWQCB and the Southern California Coastal Water Research Project (SCCWRP) over the past six (6) months to develop a workplan for the Investigation Order. The workplan is now final and the responsible parties are required to begin its implementation.

The California Water Code Section 13267 authorizes the SDRWQCB to require the submission of monitoring program reports from any person discharging pollutants into waters of the State, thus this program is a regulatory requirement and any alternative action puts the City of Oceanside in violation with the Clean Water Act.

FISCAL IMPACT

A cost estimate has been prepared for the Investigation Order R9-2006-076 within the Carlsbad Watershed, and the following cost-sharing formula has been agreed upon by all the responsible parties in the Carlsbad Watershed:

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

The Investigation Order is specific to each lagoon so the costs have been individually shared on a watershed-by-watershed basis using the above formula. The costs are spread across two fiscal years. Following are the estimated total costs for the Investigation Order per lagoon.

- Loma Alta Lagoon/Watershed - \$ 380,549
- Buena Vista Lagoon/Watershed - \$ 505,394
- Agua Hedionda Lagoon/Watershed - \$ 431,798
- San Elijo Lagoon/Escondido Creek Watershed - \$ 522,353

PARTY	Cost-Share FY 07-08	Cost-Share FY 08-09	Cost-Share Total
Carlsbad	\$250,038	\$102,178	\$352,216
Encinitas	\$65,801	\$26,166	\$91,967
Escondido	\$210,208	\$83,590	\$293,798
Oceanside	\$493,515	\$211,715	\$705,230
S.D. County	\$328,449	\$132,909	\$461,358
San Marcos	\$64,444	\$26,201	\$90,645
Solana Beach	\$13,912	\$5,532	\$19,444
Vista	\$342,853	\$140,026	\$482,879
Caltrans	\$55,203	\$22,718	\$77,921
HARRF	\$15,671	\$6,232	\$21,903
TOTALS	\$1,840,094	\$757,267	\$2,597,361

It should be noted that several concurrent efforts are underway that have offset some of the costs of the Investigation Order. The Environmental Protection Agency (EPA) is paying approximately \$600,000 for the TMDL model development and SCCWRP has received a nearly \$1.5 million grant from the SWRCB to perform special studies associated with the Investigation Order. Furthermore, SCCWRP has offered to perform most of the sediment testing for the project amounting to a cost savings of

approximately \$30,000. The one-time costs will be funded by the water unallocated funds (711.3351) and \$493,515 will be appropriated to the Water Utilities account (711.666771.5241).

COMMISSION OR COMMITTEE REPORT

The Utilities Commission approved staff's recommendation at its regularly scheduled meeting on July 17, 2007.

CITY ATTORNEY'S ANALYSIS

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

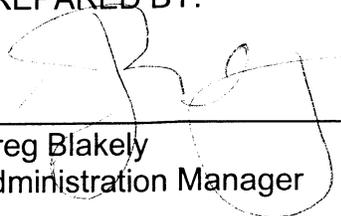
INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

RECOMMENDATION:

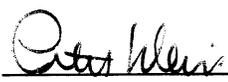
Staff and the Utilities Commission recommend that the City Council approve a cost-share agreement in an amount not to exceed \$493,515 with the County of San Diego for implementation of Investigative Order R9-2006-076 for the Lagoons in the Carlsbad Hydrologic Unit (Watershed), pursuant to California Water Code Section 13267; approve a budget appropriation in the amount of \$493,515 from the Water Utilities FY2007-08 Unallocated Fund balance; and authorize the Mayor to execute the agreement.

PREPARED BY:



Greg Blakely
Administration Manager

SUBMITTED BY:



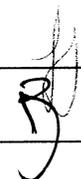
Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Lonnie Thibodeaux, Water Utilities Director

Paul Bussey, Interim Financial Services Director



COST-SHARE AGREEMENT

Investigation Order R9-2006-076 Carlsbad Hydrologic Unit

This Cost Share Agreement (AGREEMENT) entered into _____, 2007, by the County of San Diego (hereinafter called County), California Department of Transportation (hereinafter called Caltrans), Hale Avenue Resource Recovery Facility (hereinafter called HARRF), and the incorporated cities of Carlsbad, Escondido, San Marcos, Encinitas, Oceanside, Solana Beach, and Vista, (hereinafter collectively called PARTIES and individually called PARTY), to establish the responsibilities of each Party with respect to compliance with the Investigation Order R9-2006-076 administered by the California Regional Water Quality Control Board, San Diego Region (hereinafter called SDRWQCB) in accordance with the Clean Water Act (CWA section 303(d)).

RECITALS

1. WHEREAS, the Clean Water Act (CWA) section 303(d) requires states to develop a list of waterbodies that do not or are not expected to meet water quality standards after implementing technology-based controls; and
2. WHEREAS, Loma Alta Slough and Pacific Ocean Shoreline, Buena Vista Lagoon and Pacific Ocean Shoreline, Agua Hedionda Lagoon and Creek, and San Elijo Lagoon and Pacific Ocean Shoreline have been listed, by the State Water Resources Control Board (SWRCB) as water quality limited segments for which Total Maximum Daily Loads (TMDLs) must be developed pursuant to section 303(d) in order to attain water quality objectives and restore the waterbody's beneficial uses; and
3. WHEREAS, the SWRCB as designee of the U.S. EPA has delegated authority to the SDRWQCB for administration of the TMDLs within the boundaries of its region; and
4. WHEREAS, the SWRCB has determined that water quality monitoring data are needed to develop TMDLs, and load and wasteload allocations for the water quality limited segments for each impairing pollutant and the Water Code section 13267 authorize the SDRWQCB to require the submission of monitoring program reports from any person discharging pollutants into waters of the State; and
5. WHEREAS, the SDRWQCB has adopted Investigation Order R9-2006-076 (Order), attached as Exhibit 1 to this Agreement and incorporated herein by reference, which orders the responsible parties to furnish the Monitoring Program Reports required by the SDRWQCB in order to develop TMDLs, and load and wasteload allocations for the water quality limited segments, and
6. WHEREAS, the SDRWQCB has determined that the responsible parties in the Carlsbad Hydrologic Unit are the County, Caltrans, HARRF, and the incorporated cities of Carlsbad, Escondido, San Marcos, Encinitas, Oceanside, Solana Beach, and Vista (PARTIES) as outlined in Exhibit 1, and;
7. WHEREAS the PARTIES in the Carlsbad Hydrologic Unit have agreed to work together to fulfill the requirements of the Order for Loma Alta Slough, Buena Vista Lagoon, Agua Hedionda Lagoon, and San Elijo Lagoon; and
8. WHEREAS, the PARTIES recognize that expenditures will be needed to complete the Quality Assurance Project Plan (QAPP) and monitoring identified in the Order and that the costs will be shared among the PARTIES,

9. WHEREAS, the City of Encinitas has agreed to lead the effort by providing project management and contract administration services for the PARTIES and will hire a consultant to perform the services described in the Order.

NOW, THEREFORE, the PARTIES hereto mutually agree as follows:

I. **PURPOSE:** This AGREEMENT is entered into for the purpose of outlining the responsibilities of the PARTIES and funding the development of the QAPP and implementation of the monitoring as required in the Order.

II. **TERM:** The term of this AGREEMENT commences on its execution by each and all of the duly authorized representatives of the PARTIES and shall run until the completion of the monitoring or December 31, 2008, whichever is later.

III. **PARTY RESPONSIBILITIES AND PARTICIPATION:**

A. **RESPONSIBILITIES OF PARTY LEAD:** The City of Encinitas is hereby designated PARTY Lead. As such, the City of Encinitas incurs the responsibility of overall project management, administration of consultant contracts and submittal of required work products on behalf of the PARTIES for the Order.

B. **RESPONSIBILITIES OF ALL PARTIES:** Each PARTY agrees to be participatory in the development of the QAPP and implementation of the monitoring, and will assign one (1) person to serve as the representative PARTY to participate in meetings (at least 80% of all meetings), participate in consultant selection panel (as deemed appropriate by all PARTIES), collaborate on developing strategies, making decisions, and reviewing work products and submittals. Each PARTY agrees to supply the PARTY Lead with data associated with its jurisdiction (e.g. water quality data, rainfall data, land use data) in a timely manner.

IV. **FUNDING:**

A. The cost of development of the QAPP and implementation of the monitoring is estimated to be \$2,597,362 and shared as follows based on land area and population contributing to the lagoons named in the Order:

PARTY	Cost-Share FY 07-08	Cost-Share FY 08-09	Cost -Share Total
Carlsbad	\$250,038	\$102,178	\$352,216
Encinitas	\$65,801	\$26,166	\$91,967
Escondido	\$210,208	\$83,590	\$293,798
Oceanside	\$493,515	\$211,715	\$705,230
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TOTALS	\$1,840,094	\$757,267	\$2,597,361

- B. Each PARTY shall pay its share of expenses within 60 days of receipt of an invoice from the PARTY Lead. Invoices shall be sent to each PARTY on a quarterly basis based on an even distribution of costs over the Fiscal Year. Funds collected and not expended at the end of the project shall be refunded or credited to each PARTY. If the costs are in excess of the estimates in this AGREEMENT, the PARTIES will be invoiced by the PARTY Lead.
- C. The PARTIES will reimburse the PARTY Lead for overhead expenses associated with overall administration of consultant contracts, and submittal of required work products associated with the Order in the amount of 5% of the total cost shared project cost amount. This administration cost has been built into the costs shown in Section IV.A.
- V. **NON-COMPLIANCE WITH AGREEMENT REQUIREMENTS:** Any participant to this AGREEMENT found to be in non-compliance with the conditions of this AGREEMENT shall be solely liable for any lawfully assessed penalties resulting from such non-compliance. Failure to comply with AGREEMENT conditions within specified or agreed upon timelines shall constitute non-compliance with the AGREEMENT.
- VI. **AMENDMENTS TO THE AGREEMENT:** This AGREEMENT may be amended only by consent of all the PARTIES. No amendment shall be effective unless it is in writing and signed by the duly authorized representatives of the PARTIES.
- VII. **GOVERNING LAW:** This AGREEMENT 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. In addition, each PARTY agrees to comply with all federal, state and local laws and ordinances applicable to the work to be performed under the terms of this AGREEMENT.
- VIII. **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 PARTIES to have waived or consented. Any consent by any PARTY 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.
- IX. **DISPUTES:** 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 AGREEMENT to enforce its terms, each PARTY shall be responsible for their own attorneys' fees and costs.
- X. **INDEMNIFICATION:** Each PARTY to this AGREEMENT (1) shall have the sole responsibility to comply with the Order, (2) shall pay all fines, penalties, and costs which may arise out of such PARTY's non-compliance with the Permit, and (3) shall enter into agreements with PARTIES named in this AGREEMENT as necessary to address cross-boundary pollution.
- XI. **APPLICATION OF PRIOR AGREEMENTS:** This AGREEMENT constitutes the entire Agreement between the parties with respect to the subject matter; all prior agreements, representations, statements, negotiations, and undertakings are superseded hereby.
- XII. **TERMINATION:** Any PARTY may terminate this AGREEMENT by giving written notice to the other parties no less than 30 days prior to the effective date of termination. Termination of this agreement does not release any PARTY for obligations of the Order, nor does it release the PARTY from their financial responsibilities as outlined in Section IV of this AGREEMENT. Upon termination, the terminating PARTY shall pay their cost share in full.
- XIII. **ENCUMBRANCE:** By reason of constraints in California law and the California constitution, Caltrans encumbers \$ 77,921 as its portion of the shared cost and no further funding will be available to address the Caltrans obligations assumed under this Agreement unless this Section XIII is amended by Caltrans to reflect a new enhanced funding limit.

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date:

County of San Diego, Responsible Party

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date:

Caltrans, Responsible Party

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date:

HARRF, Responsible Party

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date:

City of Carlsbad, Responsible Party

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date:

City of Escondido, Responsible Party

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date:

City of San Marcos, Responsible Party

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date:

City of Encinitas, Responsible Party

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date:

City of Oceanside, Responsible Party

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY

Barbara L. Hamilton

BARBARA L. HAMILTON
Assistant City Attorney

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date:

City of Solana Beach, Responsible Party

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date:

City of Vista, Responsible Party