

THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL



Glen R. Googins
City Attorney

Dated: 6-20-14

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COUNTY OF SAN DIEGO,
THE SAN DIEGO UNIFIED PORT DISTRICT,
THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, AND
THE CITIES OF SAN DIEGO, CHULA VISTA, CORONADO,
IMPERIAL BEACH, LA MESA, LEMON GROVE, AND NATIONAL
CITY, COLLECTIVELY CALLED COPERMITTEES, AND CALTRANS
FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
SAN DIEGO BAY WATERSHED MANAGEMENT AREA
MUNICIPAL PERMIT ORDER NO. R9-2013-0001

National Pollutant Discharge Elimination System
San Diego Bay Watershed Management Area
MEMORANDUM OF UNDERSTANDING

April 16, 2014

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, Chula Vista, Coronado, Imperial Beach, La Mesa, Lemon Grove, and National City (Cities), collectively called Copermittees, and Caltrans, (together with the Copermittees collectively called Parties, and each of the Parties may individually hereinafter be called a Party), establishes the responsibilities of each Party with respect to the development of a Water Quality Improvement Plan (WQIP) in compliance with the San Diego Regional Water Quality Control Board's National Pollutant Discharge Elimination System (NPDES) Municipal Permit, Order No. R9-2013-0001 (Municipal Permit). NPDES regulations are 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 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, May 8, 2013, the Regional Board issued the Municipal 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. The Municipal Permit became effective on June 27, 2013; and

WHEREAS, the San Diego Bay Watershed Management Area is defined in the Municipal Permit to include the Pueblo San Diego, Sweetwater and Otay Hydrologic Units and identifies the County, Port, Airport, and the incorporated cities of San Diego, Chula Vista, Coronado, Imperial Beach, La Mesa, Lemon Grove, and National City as the Copermittees of the San Diego Bay Watershed Management Area; and

WHEREAS, pursuant to Provision B of the Municipal Permit the Copermittees located within each Watershed Management Area are required to develop a Water Quality Improvement Plan (WQIP) ; and

WHEREAS, the Regional Board adopted Resolution No. R9-2002-0123 approving an amendment to the Water Quality Control Plan for the San Diego Basin (Basin Plan) to incorporate a Total Maximum Daily Load (TMDL) for Diazinon in the Chollas Creek Watershed and Resolution No. R9-2007-0043 approving an amendment to the Basin Plan to incorporate TMDLs for dissolved copper, lead, and zinc in the Chollas Creek Watershed and Resolution No. R9-2010-0001 approving an amendment to the Basin Plan to incorporate the Beaches and Creeks Bacteria TMDL. These TMDL resolutions are collectively called the Chollas Creek TMDLs; and

WHEREAS, Caltrans has been named in the Chollas Creek TMDLs as a responsible party and is required to participate in the development of and updates to a Comprehensive Load Reduction Plan (or CLRP); and

WHEREAS, Attachment E of the Municipal Permit requires provisions and schedules for implementation of TMDLs, including Chollas Creek TMDLs to be incorporated into the WQIP; and

WHEREAS, the Copermittees desire to develop a WQIP in compliance with the requirements of the Municipal Permit but do so without waiving and expressly subject to any and all objections and appeals made by any Copermittee in response to the Municipal Permit; and

WHEREAS, although Caltrans is not a part of the Municipal Permit, Caltrans will work cooperatively with the local MS4s per NPDES permit 2012-0011-DWQ NO. CAS000003 in developing the portions of the WQIP related to the Chollas Creek TMDLs; and

WHEREAS, the Parties recognize that resources, including consultant services and staff time, are needed to complete the development of the WQIP; and

WHEREAS, the Copermittees acknowledge that it is imperative for each Copermittee to accept certain roles and responsibilities in order to achieve timely completion of the final WQIP; and

WHEREAS, all Parties intend this MOU to provide the management and cost-sharing structures, and an outline of the Copermittees' participation requirements necessary for the development of, and Regional Board approval of the WQIP.

WHEREAS, the Port, as part of their shared responsibilities in joint activities, has accepted to execute and administer consultant contracts.

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

I. DEFINITIONS

CLRP means Comprehensive Load Reduction Plan. For the purposes of this MOU, the CLRP refers to the work occurring in Chollas Creek by TMDL Participants to comply with the Chollas Creek TMDLs.

Contract Administration means developing, soliciting, awarding, and managing consultant contracts. Consultants shall be selected by a panel comprised of at least three Copermittees nominated by the Watershed Management Committee.

Copermittee means any responsible Copermittee listed in Table B-1 of the Municipal Permit under the San Diego Bay Watershed Management Area and a signatory to this MOU.

Copermittee Special Responsibilities and Roles means responsibilities listed under Sections V.1 to V.5 below. Each Copermittee's special responsibilities are in addition to the General Copermittee Responsibilities listed under Section IV below.

Coordinator means a Copermittee that has accepted a nomination by the Watershed Management Committee to provide leadership and direction to other Copermittees participating in any one of the Copermittee Special Responsibilities described in Section V of this MOU. Coordinator positions include WQIP Coordinator, Monitoring Coordinator, and Public Participation Coordinator.

Fiscal Year means July 1 of each year to June 30 of the following year.

Quorum means the minimum number of Copermittees needed for a voting item to occur during a meeting. As specified in Section VIII of this MOU, depending on the nature of the voting item, different numbers of Parties may be eligible to vote. For the purposes of this MOU, a Quorum can never be less than three Parties. The following provides the Quorum that corresponds to each number of Parties eligible to vote.

Number of Parties Eligible to Vote	Quorum
11	At least 9
10	At least 8
9	At least 8
8	At least 7
7	At least 6
6	At least 5
5	At least 4
4	4
3	3

Monitoring Coordinator means a Coordinator that has taken on monitoring coordination responsibilities as described in Section V of this MOU.

Party or Parties means all of the Copermittees and Caltrans.

Party General Responsibilities means an established level of participation required by all Parties during Watershed Management Committee meetings and public functions. Examples of Party General Responsibilities include: regularly attending meetings; receiving, reviewing, and providing input on correspondence, meeting materials, and work products; participating in the development, review, and finalization of work products; and carrying out responsibilities designated by the Watershed Management Committee.

Principal Watershed Copermittee means presiding over and providing leadership and direction for the watershed during development of the WQIP. 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 finalizing work products for distribution, all in cooperation of all other Parties as determined by the Watershed Management Committee.

Public Participation Coordinator means a Coordinator that has taken on public participation coordination responsibilities as described in Section V of this MOU.

San Diego Bay Watershed Management Area means the area comprised of the Pueblo San Diego, Sweetwater, and Otay Hydrologic Units, as stated in the Municipal Permit.

Secretary means a Copermittee nominated by the Watershed Management Committee to take responsibility for tasks listed under Section V.5 of this MOU. This includes: maintaining group contact lists; preparing and sending out meeting notifications and agendas; arranging presenters, facilitators, and presentation materials prior to meeting; arranging for meeting rooms and equipment; taking, preparing, and finalizing meeting minutes or notes; organizing and maintaining records, correspondence, minutes or notes of meetings, and other information; and, coordinating with the Principal Watershed Copermittee(s) to organize and distribute work products to the Parties.

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

TMDL Participant means a sub-set of Copermittees identified in Attachment E of the Municipal Permit as “Responsible Copermittees” plus any other Party to this MOU also named in a TMDL or accepted as a participant in that TMDL by the Copermittees.

Two-Thirds Majority means at least two-thirds (67%) of the Parties making up the Quorum, rounded up to the nearest integer.

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 Management Committee means a committee comprised of the ten San Diego Bay Watershed Copermittees and Caltrans. The Watershed Management Committee meets on a regular frequency to discuss watershed-related issues and works collectively to comply with the Municipal Permit’s watershed requirements.

Water Quality Improvement Consultation Panel means a panel of stakeholders with relevant interest and expertise formed pursuant to Section F.1.a.(1).(b) of the Municipal Permit to provide input and recommendations during the development of the WQIP.

Water Quality Improvement Plan (WQIP) means a document to be developed pursuant to Section B of the Municipal Permit in order to guide the Copermittees’ jurisdictional runoff

management programs towards achieving the outcome of improved water quality in municipal storm water discharges and receiving waters.

WQIP Coordinator means a Coordinator that has taken on WQIP coordination responsibilities as described in Section V of this MOU.

WQIP Consultant means a contracted firm selected by the Copermittees to collaborate and develop the WQIP for the San Diego Bay Watershed Management Area. The WQIP Consultant shall be selected by a panel of Copermittees nominated by the Watershed Management Committee. The agreement with the WQIP Consultant shall be administered by the WQIP Coordinator by means of an approved process deemed standard procurement practice by the WQIP Coordinator.

WQIP Scope of Work means the detailed work plan created by the Parties to ensure that the WQIP Consultant has a clear understanding of the level of services to be provided when developing the WQIP. The WQIP Scope of Work shall be used to solicit consultant services, develop cost estimates and dictate specific deliverables throughout the course of the WQIP development.

II. TERM:

The term of this MOU commences on the date of the last signature of the duly authorized representatives of the Parties and shall expire on June 30, 2015.

III. MEETING FREQUENCY

Unless a different minimum meeting frequency is established through the unanimous approval of all Parties, the Watershed Management Committee shall meet at least twelve (12) times per year. Notice of any meeting at which a vote will be held will be provided via email to the designated contact person for each Party, based on the most recent contact list maintained by the Secretary, at least one week (seven calendar days) before the meeting.

IV. PARTY GENERAL RESPONSIBILITIES

The Parties of this MOU shall collaborate on the development and implementation of a WQIP, including strategies and approaches designed to achieve the goals of Provision B of the Municipal Permit for the San Diego Bay Watershed Management Area. The following responsibilities apply to all Copermittees and to Caltrans only for the portions of the WQIP relating to the Chollas Creek TMDLs:

1. Each Party shall designate a representative to participate in meetings and functions, as follows:
 - i. Regularly attend Watershed Management Committee meetings and other special group meetings for which they have been nominated,
 - ii. Provide input to annual WQIP development budget.
 - iii. Participate in agenda items and exercise voting representation for budget and non-budgetary-related items at Watershed Management Committee meetings

- iv. Identify the respective jurisdiction's watershed point of contact, as applicable.
 - v. Review and provide input to the WQIP Coordinator on the WQIP Scope of Work
 - vi. Collect information regarding jurisdictional activities as needed; respond promptly to requests from the Principal Copermittee(s), WQIP Coordinator, Monitoring Coordinator, and/or Public Participation Coordinator to provide data, information, and other input.
 - vii. Assist the WQIP Consultant to identify the jurisdiction-specific strategies and/or activities, and monitoring efforts that are to be considered, and are consistent with WQIP priorities and all minimum standards
 - viii. Attend stakeholder outreach events and other public workshops as required by the Municipal Permit as part of the WQIP development process, and where applicable, provide Copermittee-specific information as requested by the Public Participation Coordinator for use at public meetings.
 - ix. Attend individual jurisdiction-specific meetings with the WQIP Consultant intended to identify the jurisdictional elements specific to each Party.
 - x. Review and comment on WQIP-related documents, monitoring reports, meeting materials and other required work products (draft and final), and approve final work products.
 - xi. Review public comments to determine how they will be used in the WQIP development.
 - xii. Participate in the selection of the Water Quality Improvement Consultation Panel representatives.
2. Copermittees, or a subset thereof, shall agree to participate in the selection of one or more consultants to perform the work identified in the WQIP Scope of Work. The participation shall include but not be limited to review of submitted proposals, interviews with consultants, and determination of final consultant selection.
3. The following provisions relate to the Party General Responsibilities with respect to the deliverables and activities:
 - i. Each Party understands that it is the Watershed Management Committee's responsibility jointly to approve the WQIP Consultant work plan and timeline, and ensure that deliverables progress according to schedule.
 - ii. Each Party acknowledges and accepts responsibility for its own jurisdictional assessment, activities/strategies implementation and schedule.
 - iii. Each Party will be able to individually meet with the WQIP Consultant to develop jurisdiction-specific assessments, strategies, and schedules using the structure defined in the WQIP Scope of Work, not to exceed the number of hours for jurisdiction-specific WQIP Consultant assistance allocated to the Party in the WQIP Scope of Work. Each Party further acknowledges that they are solely responsible for the review and accuracy of the jurisdiction-specific deliverables.
4. Parties shall not be liable for costs incurred by any other Party pursuant to this MOU, including, but not limited to, staff time or consultants retained by any other Party in the fulfillment of Party General Responsibilities.

V. COPERMITTEE SPECIAL RESPONSIBILITIES AND ROLES:

The Copermittees have agreed upon a division of management, designated as Copermittee Special Responsibilities and Roles, to balance the management of WQIP-development related tasks. The roles designated herein shall define the responsibilities for each role and serve as the management structure from which a comprehensive WQIP and Monitoring Plan will be developed, meeting all requirements of the Municipal Permit, including public participation and will remain in place for the duration of this MOU. The identification of Copermittee Special Responsibilities and Roles are as follows:

1. Principal Watershed Copermittees. The City of Chula Vista is designated as the Principal Copermittee for the Otay sub-watershed. The Cities of Lemon Grove and National City are jointly designated as Principal Watershed Copermittees for the San Diego Bay Watershed Management Area. These Copermittees shall provide the following functions for the Watershed:
 - i. Serve as liaison between Parties in the San Diego Bay Watershed Management Area and the Regional Board on general permit issues.
 - ii. Finalize an MOU for a two-year WQIP development period
 - iii. Serve as a point of contact to external entities such as stakeholders and the public.
 - iv. Ensure publicly available and noticed opportunities for public involvement in the WQIP (with Public Participation Coordinator).
 - v. Submit deliverables as required by Section F.1 of the Municipal Permit with help from other Coordinators. Deliverables specifically include:
 1. Water Quality Conditions Section
 2. Water Quality Improvement Goals, Strategies, and Schedules Section
 3. Final WQIP
 - vi. Coordinate and develop, together with other Principal Watershed Copermittees in the San Diego region, the Regional Clearinghouse required by the Municipal Permit (F.4).
 - vii. Coordinate progress report presentations to the Regional Board as requested by Municipal Permit (F.3.a).
 - viii. Regularly maintain contact with other Coordinators and Parties regarding deliverables, schedules, deadlines, etc.
 - ix. Develop meeting content and agendas; solicit group input.
 - x. Facilitate/chair Watershed Management Committee meetings.
 - xi. Attend Water Quality Improvement Consultation Panel meetings and Public Workshops, as needed.
2. WQIP Coordinator(s). The Port is hereby designated the lead WQIP Coordinator, with the City of Coronado providing support in carrying out the responsibilities of this role. This role shall provide the following functions for the Watershed:
 - i. Coordinate / Finalize WQIP Scope of Work for all three deliverables.
 - ii. Issue RFP, participate in consultant selection panel, and conduct interviews for WQIP development consultant.
 - iii. Execute and administer consultant contract.
 - iv. Serve as WQIP Consultant point of contact with regards to WQIP development.
 - v. Maintain a regularly updated timeline of WQIP development.
 - vi. Direct WQIP Consultant to prepare technical responses to the public comments as the Copermittees deem necessary.

- vii. Following the Watershed Management Committee analysis of public input and direction received from Principal Watershed Copermittees, direct WQIP Consultant to modify the WQIP, as applicable.
 - viii. Coordinate submittal of alternative compliance project sites from jurisdictions.
 - ix. Coordinate the preparation of deliverables as required by the Municipal Permit (F.1). Deliverables specifically include:
 - 1. Water Quality Conditions Section
 - 2. Water Quality Improvement Goals, Strategies, and Schedules Section
 - 3. Final WQIP
 - x. Provide regular updates to Parties on contract administration, costs, budget status, expenditures, etc.
 - xi. Issue invoices to Parties for their share of the costs, maintain an account for shared costs, provide accounting/budget/cost for Watershed Management Committee approval.
3. Monitoring Coordinator(s) .The County is hereby designated the lead Monitoring Coordinator, with the City of La Mesa providing support in carrying out the responsibilities of this role. This role shall provide the following functions for the Watershed:
- i. Coordinate and conduct the Transitional Monitoring and Assessment Program, including sampling, analysis and reporting.
 - ii. Serve as monitoring point of contact for WQIP Consultant; collect monitoring information from Parties as needed.
 - iii. Act as watershed liaison with San Diego Regional Monitoring group.
 - iv. Assist WQIP Consultant in the development of the WQIP watershed monitoring program.
 - v. Issue and oversee monitoring contract(s), if applicable during the two-year transition period.
 - vi. Coordinate and finalize Transitional Monitoring and Assessment Reports per Municipal Permit Section F.3.b.(2).
 - vii. Represent Copermittees on regional monitoring issues in front of the Regional Board.
 - viii. Participate in public workshops and Consultation Panel meetings to provide information and answer questions regarding regional monitoring issues.
4. Public Participation Coordinator(s). The City of San Diego is hereby designated the lead Public Participation Coordinator, with the City of Imperial Beach providing support in carrying out the responsibilities of this role. This role shall provide the following functions for the Watershed:
- i. Ensure publicly available and noticed opportunities for public involvement in the WQIP.
 - ii. Ensure comments from the public are solicited, recorded, and acknowledged.
 - iii. Prepare agendas and take notes for Water Quality Improvement Consultation Panel and other public meetings.
 - iv. Send out notices pertaining to requests for watershed-related data and participation on the Water Quality Improvement Consultation Panel to the public via the interested persons distribution list with input from the Copermittees and postings on the Project Clean Water website.
 - v. Update Project Clean Water website with information pertaining to WQIP development, including reports and program documents.

- vi. Maintain a current contact list of interested persons with input from the Copermittees.
 - vii. Receive information from the public and route to appropriate Parties (City of Imperial Beach only).
5. Secretary. The Airport Authority is hereby designated Secretary. This role shall provide the following functions for the Watershed:
- i. Schedule Watershed Management Committee meetings; arrange for meeting rooms and equipment.
 - ii. Send Watershed Management Committee meeting notifications and agendas upon authorization from Principal Watershed Copermittee(s).
 - iii. Take notes during Watershed Management Committee meetings and distribute notes to the Parties in a timely manner.
 - iv. Maintain a current contact list of Parties.
 - v. Keep records, correspondence, minutes or notes of meetings, and related affairs of the Watershed Management Committee.
6. No Copermittee shall be liable for staff time of other Copermittees in the fulfillment of the above Copermittee Special Responsibilities and Roles. Consultants or other persons representing any Copermittee to fulfill the Copermittee Special Responsibilities and Roles shall be considered as staff of that Copermittee.
7. The Copermittee Special Responsibilities and Roles shall remain effective for the term of the MOU. A change in the assignment or responsibilities of any of the Copermittee Special Responsibilities and Roles designations during the above period requires the unanimous approval of all Copermittees.
8. No later than six months prior to the expiration of this MOU, the Copermittees shall convene to initiate nomination of Principal Watershed Copermittee(s) and Coordinators. Nomination of new Principal Watershed Copermittee(s) or Coordinators shall require the unanimous approval of all Copermittees.

VI. TMDL EXCEPTIONS AND ADDITIONS

The following provisions define exceptions and additions to the above provisions that only apply to the TMDL Participants for each TMDL described in Attachment E of the Municipal Permit.

1. TMDL Implementation. TMDL Participants are directly responsible for the timely implementation of the TMDL requirements. The Watershed Management Committee or any other Copermittee shall not be responsible for any delays or other issues regarding TMDLs.
2. Fiscal Responsibilities. With the exception of the shared costs for the WQIP development discussed in Section VII, all other costs associated with any TMDL, including but not limited to implementation, special studies, and monitoring, shall be shared by the TMDL Participants through a separate cost-share agreement mutually executed by those participants in a way that will not create fiscal liability to other Copermittees named in this MOU.
3. Voting Requirements. In matters relating to TMDLs, TMDL Participants shall use the voting structure described in Section VIII.3 of this MOU.

VII. FISCAL RESPONSIBILITIES

1. Division of Costs for Work Directly Benefitting All Parties

- i. Prior to the allocation of shared costs, each proposed or approved budget element or sub-element shall be identified. The associated costs shall be divided among participating Parties as described below.
- ii. Shared costs shall be divided according to a default formula of 45% Urbanized Land Area, 45% Population, and 10% Equal Division unless a different formula is unanimously approved by the Parties to which the cost applies.
 - a. Population costs shall be divided among the Parties 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, shall each pay a fixed 0.5% of total Population costs. The remaining percentage of the population costs shall be shared proportionally among Parties by dividing the total population of each Party by the combined total Party population within the geographic area applicable to the shared program or activity.
 - b. Urbanized Land Area costs shall be shared proportionally among Parties by dividing the total Urbanized Land Area of each Party by the combined total Urbanized Land Area of all participating Parties within the geographic area applicable to the shared program or activity. 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 Parties.

2. Division of Costs for Additional Work for Chollas TMDLs

- i. The costs of each budget element or sub-element that only relates to one or more of the Chollas Creek TMDLs shall be shared proportionally among the TMDL Participants only. Prior to the allocation of shared costs, each proposed or approved budget element or sub-element shall be identified. The associated costs shall be divided among participating Parties as described below.
- ii. Shared costs shall be divided according to a default formula of 45% Urbanized Land Area, 45% Population, and 10% Equal Division unless a different formula is unanimously approved by the Parties to which the cost applies.
 - a. Population costs shall be shared proportionally among the Parties by dividing the total population of each Party by the combined total Party population within the geographic area of the Chollas Creek Watershed applicable to the shared program or activity.
 - b. Urbanized Land Area costs shall be shared proportionally among Parties by dividing the total Urbanized Land Area of each Party by the combined total Urbanized Land Area of all participating Parties within the

geographic area of the Chollas Creek Watershed applicable to the shared program or activity.

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

3. Jurisdictional Support for Individual Parties

- i. Each Party shall be solely responsible for the costs of jurisdictional support provided to the Party, as defined in the WQIP Scope of Work, not to exceed the maximum amount of jurisdictional support defined for each Party in Exhibit 1.

4. Annual Shared Cost Budgets and Work Plans

- i. The Parties shall provide funding for the costs incurred under this MOU, subject to appropriations, based upon the terms and conditions of this MOU. Costs for Fiscal Year 2014-2015 is indicated in Exhibit 1 using the cost-share formulas identified above.
- ii. The total budget for work done under this MOU in Fiscal Year 2014-2015 shall not exceed the Fiscal Year 2014-2015 total for all Parties indicated in Exhibit 1.
- iii. Each Party shall secure sufficient funding to pay for its assigned share of the costs incurred under this MOU.
- iv. Each Party shall pay invoices within 60 days of receipt from the WQIP Coordinator.
- v. Funds collected and not expended in any Fiscal Year shall be refunded to the Parties' in accordance with the Parties' defined shared costs.

5. Performance and Reimbursement of Tasks

- i. The WQIP Coordinator 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 Parties if each Party has not contributed the funds that it is obliged to contribute toward the activity or program, or if the WQIP Coordinator has not received adequate assurances that such funds will be received before payments become due. The WQIP Coordinator shall have sole discretion to determine whether assurances that require funds will be timely received or adequate.
6. ENCUMBRANCE: By reason of constraints in California law and the California Constitution, Caltrans encumbers an amount not to exceed \$5,885 as its portion of the shared cost and no further funding will be available to address the Caltrans obligations assumed under this MOU unless this Section is amended by Caltrans to reflect a new enhanced funding limit. Caltrans funds are to be invoiced once work is complete as required by California Law. Caltrans funds are subject to legislative appropriation and availability of funds.

VIII. VOTING REQUIREMENTS

1. Watershed Management Committee voting on matters shall not be conducted outside of meetings. Notice of any meeting at which a vote will be held will be provided via email to the designated contact person for each Party, based on the most recent contact list maintained by the Secretary, at least one week (seven calendar days) before the meeting.

2. WQIP deliverables: the Principal Watershed Copermittees will make a good faith effort to facilitate consensus among the Parties before finalizing WQIP deliverables under this MOU. If consensus cannot be reached, a vote will be held.
 - i. The voting membership of the Watershed Management Committee shall consist of one designated voting representative for each Party.
 - ii. For a vote to be held, a Quorum must be present.
 - iii. For a vote to pass, an affirmative vote of at least a Simple Majority of the voting membership in attendance at the Watershed Management Committee is needed. In the event of a tie, the vote will pass based on the affirmative votes of greater than fifty percent (50%) of the Principal Watershed Copermittees (cities of Chula Vista, Lemon Grove, and National City).
3. Items affecting a portion of the San Diego Bay Watershed Management Area, including but not limited to Chollas Creek TMDLs: if consensus among the Parties located within the affected portion of the watershed cannot be reached, a vote will be held.
 - i. The voting membership shall consist of one representative for each Party that is located within the affected portion of the watershed. For voting on Chollas Creek TMDLs, the voting membership will be defined as presented below:
 - a. Chollas Creek TMDLs: the cities of La Mesa, Lemon Grove, and San Diego; the San Diego Unified Port District; the County of San Diego; and Caltrans.
 - ii. For a vote to be held, a Quorum must be present.
 - iii. For a vote to pass, an affirmative vote of at least a Two-Thirds Majority of the voting membership, as defined in Section VIII.3.i, in attendance at the Watershed Management Committee is needed.
4. Voting may not be used to affect WQIP content that presents direct commitments by a Party to implement strategies or studies that would require funding from that Party to implement. Each Party assumes full authority over its own jurisdictional commitments to implement projects or studies and to show associated costs and descriptions as part of the WQIP deliverables.
5. Highest priority water quality conditions have already been established and will not be subject to voting under this MOU.
6. A modification to any Copermittee Special Responsibilities and Roles requires a unanimous approval from all Copermittees.

IX. LIMITS TO LIABILITY

1. Each Party individually shall review and comment on the deliverables developed by the WQIP Consultant.

2. Each Party understands that the WQIP Consultant works on behalf of the Watershed Management Committee under a single contract administered by the WQIP Coordinator. Decisions on draft and final deliverables will be determined using the voting structure identified in Section VIII of this MOU, which will convey a single affirmative or negative vote that represents the Watershed Management Committee's decision.

X. INDEMNIFICATION

1. The following provisions apply to all Parties:
 - i. Each Party shall have the sole responsibility to comply with the Municipal Permit and TMDLs in which they are named.
 - ii. Each Party shall pay all fines, penalties, and costs which may arise out of such Party's non-compliance with the Municipal Permit and TMDLs in which they are named.
 - iii. No Party shall be liable for claims or actions arising out of the performance of any work or actions or omissions, by any other Party, its agents, officers, and employees under this MOU.
 - iv. Each Party agrees to defend itself from any claim, action or proceeding arising out of its acts or omissions and shall retain its own legal counsel, and bear its own defense costs.

XI. DISPUTE RESOLUTION

1. If a dispute arises out of or relates to this MOU, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed-upon, and if such dispute is not otherwise time barred, the Parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the Parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other Party within a reasonable time after the dispute has arisen. Any resulting agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
2. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both Parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the Parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resulting agreement between the Parties shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any Party to this MOU, sub-contractor and all Parties bound by this arbitration provision agree to participate in the arbitration proceeding.
3. Any agreements resulting from mediation or arbitration shall be documented in writing. All mediation and arbitration 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 all Parties to the mediation or arbitration proceeding. Mediators and arbitrators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

XII. GENERAL PROVISIONS

1. Withdrawal of Party

- i. Participation in this MOU may be withdrawn by any Party for any reason only after the Party complies with all of the following conditions of withdrawal:
 - a. The Party shall notify all of the other Parties in writing 90 days prior to its intended date of withdrawal.
 - b. The withdrawing Party shall have its name deleted as a Party to the MOU prior to or on the withdrawal date.
- ii. The withdrawing Party 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 XII.1.i has been met.
- iii. Any monies paid by withdrawing Party in excess of the amount due under the terms of the MOU shall be refunded to the Party at the time the withdrawal becomes final as set forth in Section XII.1.i.
- iv. The withdrawing Party shall not be entitled to participate in the division of proceeds in any reserve fund account when the MOU is dissolved.

2. Non-Compliance with MOU Requirements

Any Party participating in 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.

3. Amendments to the Memorandum of Understanding

This MOU 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 each Party.

4. 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.

5. Headings

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.

6. 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.

7. Execution of Agreement

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

8. Right to Audit

Each Party retains the right to review and audit, and the reasonable right of access to other Parties' respective premises to review and audit the other Parties' compliance with the provisions of this MOU (Party's Right). The Party's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Parties' premises, of any and all records, including any and all books, records, and documents, related to this MOU with appropriate safeguards, if such retention is deemed necessary by the auditing Party in its sole discretion. This information shall be kept by the auditing Party in the strictest confidence allowed by law.

9. Federal Limitations on Use of Airport Revenue

Notwithstanding the rights and obligations of the Parties created by this MOU, no Party may be found in breach of this MOU where compliance would require that Party to violate any law or grant assurance, including but not limited to provisions of the Federal Aviation Administration 1999 Policy and Procedure Concerning the Use of Airport Revenue [64 Fed. Reg. 7696, dated Feb. 16, 1999]; the Airport and Airway Improvement Act of 1982 codified at 49 U.S.C. § 47107(b); the Federal Aviation Administration Authorization Act of 1994, P.L. 103-305 (Aug. 23, 1994); the Airport Revenue Protection Act of 1996, Title VIII of the Federal Aviation Administration Act of 1996, P.L. 104-264 (Oct. 9, 1996), 110 Stat. 3269 (Oct. 9, 1996); 49 U.S.C. § 46301(n)(5); and 49 U.S.C. § 47133. The Parties recognize that the Authority has received federal Airport Improvement Project ("AIP") grants containing grant assurance 25, which provides: "All revenues generated by the airport...will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport."

IN WITNESS THEREOF, this Agreement is executed as follows:

Date:

San Diego Unified Port District, Copermittee

IN WITNESS THEREOF, this Agreement is executed as follows:

Date:

San Diego County Regional Airport Authority, Copermittee

IN WITNESS THEREOF, this Agreement is executed as follows:

Date:

County of San Diego, Copermittee

IN WITNESS THEREOF, this Agreement is executed as follows:

Date:

City of San Diego, Copermitee

Printed Name

ATTEST:

City Clerk

Title _____

Title _____

APPROVED AS TO FORM:

JAN I. GOLDSMITH, City Attorney

By

Date _____ Signature _____

Printed Name: Heather L. Stroud
Title: Deputy City Attorney

IN WITNESS THEREOF, this Agreement is executed as follows:

Date:

City of Chula Vista, Copermittee

IN WITNESS THEREOF, this Agreement is executed as follows:

Date:

City of Coronado, Copermittee

IN WITNESS THEREOF, this Agreement is executed as follows:

Date:

City of Imperial Beach, Copermittee

IN WITNESS THEREOF, this Agreement is executed as follows:

Date:

City of La Mesa, Copermittee

IN WITNESS THEREOF, this Agreement is executed as follows:

Date:

City of Lemon Grove, Copermittee

IN WITNESS THEREOF, this Agreement is executed as follows:

Date:

City of National City, Copermittee

IN WITNESS THEREOF, this Agreement is executed as follows:

Date:

Caltrans, Party

Exhibit 1

**Responsible Party Shared and Party Specific Costs Budget
San Diego Bay Watershed**

Copermittee	FY 2014/2015 WQIP	Agency Specific Costs*	FY 2014/2015 Total
AIRPORT AUTHORITY	\$4,987	\$1,451	\$6,438
CHULA VISTA	\$75,552	\$1,451	\$77,003
CORONADO	\$10,149	\$1,451	\$11,600
IMPERIAL BEACH	\$6,007	\$1,451	\$7,459
LA MESA	\$11,011	\$1,451	\$12,463
LEMON GROVE	\$10,531	\$1,451	\$11,982
NATIONAL CITY	\$18,042	\$1,451	\$19,493
PORT DISTRICT	\$6,484	\$1,451	\$7,935
S. D. COUNTY	\$92,315	\$7,256	\$99,572
SAN DIEGO	\$124,221	\$14,513	\$138,734
CALTRANS	\$4,433	\$1,451	\$5,885
TOTALS	\$363,733	\$34,831	\$398,564

*Each agency specified number of hours for Agency-specific support to develop jurisdictional strategies. Cumulative total hours Agency-specific support = 192 hours.