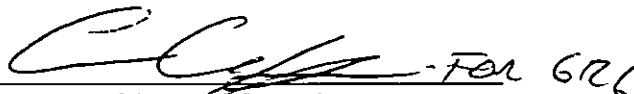


z THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL


Glen R. Googins
City Attorney

Dated: 4-28-14

SECOND AMENDMENT TO NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEM
SAN DIEGO REGIONAL STORMWATER COPERMITTEES
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COUNTY OF SAN DIEGO,
THE SAN DIEGO UNIFIED PORT DISTRICT,
THE SAN DIEGO REGIONAL AIRPORT AUTHORITY, AND
THE INCORPORATED CITIES OF CARLSBAD, CHULA VISTA,
CORONADO, DEL MAR, EL CAJON, ENCINITAS, ESCONDIDO,
IMPERIAL BEACH, LA MESA, LEMON GROVE, NATIONAL CITY,
POWAY, SAN DIEGO, SANTEE, SAN MARCOS, SOLANA BEACH,
AND VISTA, COLLECTIVELY CALLED COPERMITTEES

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

This Second Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding (MOU), dated March 21, 2014, is 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 Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, Santee, San Marcos, Solana Beach, and Vista (Cities), collectively called Copermittees.

RECITALS

WHEREAS, on May 7, 2007, the San Diego Regional Water Quality Control Board (SDRWQCB) issued NPDES Order No. R9-2013-0001, which includes requirements in addition to those that were imposed on the Copermittees in NPDES Permit No. R9-2007-0001; and

WHEREAS, the Copermittees entered into a National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding (MOU) on November 16, 2007 to comport with the NPDES Permit No. R9-2007-001 requirement that they cooperate in the implementation of activities and programs;

WHEREAS, the Copermittees entered into a First Amendment to National Pollution Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, dated November 16, 2007, (First Amendment) on June 15, 2010 in order to allow the refund of budgeted but unspent funds to the Parties at the conclusion of each fiscal year; and

WHEREAS, the Copermittees wish to amend the MOU to extend the termination date of the MOU through August 31, 2015, and expressly limit the sharing of Fiscal Year 2014-15 expenditures to those identified in this amendment.

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

1.1 Paragraph four under “RECITALS” is hereby amended and restated to read in its entirety as follows:

WHEREAS, the County, the Port, the Airport, and the Cities desire to implement an integrated stormwater management program with the objective of improving surface water quality in the County of San Diego. However, some Copermittees have appealed Order R9-2013-0001 to the State Water Resources Control Board pursuant to the Ca. Water Code. A stay of Order R9-2013-0001 has not been granted by the SWRCB of the provisions of that order. The fact that those Copermittees are moving forward simultaneously with this MOU while appealing the Order is not intended to constitute a waiver of those appeal rights by those entities pursuing the appeals; and

1.2 Section II.B.2 of the MOU entitled “Annual Shared Cost Budgets and Work Plans” is hereby amended to add sub-section e, which will read as follows:

e. The regional costs to be shared by the Copermittees during Fiscal Year 2014-15 shall not exceed \$4,051,589. These funds may only be used toward expenditures identified in the FY 2014-15 Consolidated Work Plan and Budget included as MOU Attachment 2, or as subsequently modified by unanimous consent of all Copermittees.

1.3 Exhibit A to this amendment is hereby added as Attachment 2 to the MOU.

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

1. This MOU shall become effective on the date the last party executes the MOU.
2. The life of the MOU shall run through August 31, 2015.

1.5 Section VII.C of the MOU, entitled "Non-Compliance with MOU Requirements", is hereby amended and restated to read in its entirety as follows:

1. Any participant to this MOU found to be in non-compliance with the conditions of this MOU shall be solely liable for any lawfully assessed penalties resulting from such non-compliance. Failure to comply with MOU conditions within specified or agreed upon timelines shall constitute non-compliance with the MOU.
2. 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 Airport 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."

2. EFFECT OF AMENDMENT

2.1 This Second 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 Second 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. In the event that any Copermittee is unable to execute this amendment prior to May 8, 2014, execution of this amendment after that date shall constitute ratification of this amendment, and the MOU and extensions shall be in effect once all signatures are obtained.

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