

CITY COUNCIL

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DENIED

Reso No. _____

File No. _____

Ord No. _____

Agenda Item No.: 9
Date: May 19, 2010

TO: Honorable Mayor and Members of the City Council

FROM: Cheryl Filar, Environmental Programs Manager

SUBJECT: First Amendment to the National Pollutant Discharge Elimination System (NPDES) San Diego Regional Copermitees' Memorandum of Understanding

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2010-82 to support a First Amendment to the National Discharge Elimination System (NPDES) San Diego Regional Copermitees' Memorandum of Understanding (MOU) dated November 16, 2007.

FISCAL ANALYSIS:

No direct fiscal impact to the General Fund is associated with the First Amendment to the Copermitees' November 2007 MOU.

PREVIOUS ACTION:

On January 9, 2008, the City Council adopted Resolution No. 2008-04 to approve the National Pollutant Discharge Elimination System (NPDES) San Diego Regional Copermitees' MOU to support the various regional programs and activities required by the Municipal Storm Water Permit, Order No. R9-2007-0001, issued on January 24, 2007.

BACKGROUND:

In 1987 Congress amended Section 402 of the Federal Water Pollution Control Act to require the United States Environmental Protection Agency (EPA) to promulgate regulations for storm water discharge permit applications. In response to this federal mandate, the State of California issued five-year permits through its nine regional boards, including the San Diego Regional Water Quality Control Board (SDRWQCB). In 1990 and again in 2001 the SDRWQCB issued five-year discharge permits that establish requirements for storm water discharges from various jurisdictions and agencies in the San Diego area. On January 24, 2007, the SDRWQCB issued another five-year discharge permit, which requires the County, the Port and Airport Authorities, as well as all of the San Diego area cities (Copermitees) to cooperate on a regional basis in the implementation of various urban runoff management plans.

The mandated regional programs are supported by a Memorandum of Understanding that specifies the responsibilities the Copermittees must assume in accordance with the Permit's requirements, including fiscal responsibilities that cover annual cost-sharing obligations. These regional programs include education and outreach, annual monitoring of the region's waters to identify pollutants of concern to assess the program's focus and progress, as well as various administrative workgroups (e.g., municipal, industrial and commercial work groups) that convene on a regular basis to establish regional standards and consistency in the development, implementation, assessment, and reporting of urban runoff activities and programs.

Although the management structure and procedures set forth by the Copermittees' MOU have worked well in facilitating compliance with the Storm Water Permit, the Copermittees recently agreed that the fiscal procedures should be revised to create more flexibility. To do so, the Copermittees recommend amending Section II.B.e of their MOU to authorize excess funds to be refunded that would otherwise be carried over from one fiscal year to another as a credit for a Copermittee's contribution of staff time. Moreover, the amendment will provide a refund to a Copermittee if their share of the next fiscal year's cost is less than the amount to be credited—an amount that is verified and approved through review processes described in the MOU.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cheryl Filar".

Cheryl Filar
Environmental Programs Manager

RESOLUTION NO. 2010-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A FIRST AMENDMENT TO THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM SAN DIEGO REGIONAL STORMWATER COPERMITTEES' MEMORANDUM OF UNDERSTANDING DATED NOVEMBER 16, 2007

WHEREAS, in 1987 Congress amended Section 402 of the Federal Pollution Control Act (33 USCA sec. 1342p) to require the United States Environmental Protection Agency ("EPA") to promulgate regulations for applications of stormwater discharge permits; and

WHEREAS, these permit regulations require the control of pollutants from stormwater discharges by requiring a National Pollutant Discharge Elimination System permit ("NPDES"), which would allow the lawful discharge of stormwater into waters of the United States; and

WHEREAS, the County, the Port, the Airport, and the Cities in the San Diego Region, including the City of Escondido, implement an integrated stormwater program with the objective of improving surface water quality in the County of San Diego; and

WHEREAS, the California State Water Resources Control Board ("CSWRCB") as designee of the EPA, has delegated authority to the San Diego Regional Water Quality Control Board ("Regional Board") for the administration of the NPDES stormwater permit within the boundaries of its region; and

WHEREAS, on January 24, 2007, the Regional Board issued NPDES permit Order No. R9-2007-0001 ("Permit") governing waste discharge requirements for

stormwater and urban runoff from the County, the Port, the Airport, and all the Cities in the San Diego Region, naming these entities as Copermittees; and

WHEREAS, said Permit requires that the Copermittees cooperate in the implementation of various Urban Runoff Management Plans and execute a Memorandum of Understanding ("MOU"); and

WHEREAS, the MOU sets forth procedures for the management of funds contributed by the Copermittees to fund programs implemented in order to facilitate compliance with the San Diego Regional Water Quality Control Board Order No. R9-2007-0001 (Permit); and

WHEREAS, the MOU at Section II.B.3 provides for the carryover of unused contributed funds from one fiscal year to another but does not otherwise provide any direction regarding the refund of excess funds; and

WHEREAS, the Copermittees desire to amend Section II.B.3 of the MOU to authorize the refund of funds that would otherwise only be authorized to be carried over from one fiscal year to another as a credit.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the Mayor and City Clerk are authorized to execute, on behalf of the City a First Amendment to the NPDES San Diego Regional Stormwater Copermittees MOU, attached as Attachment "A" and incorporated by this reference.

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

This First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding (MOU), dated November 16, 2007, 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, the MOU sets forth procedures for the management of funds contributed by the Copermittees to fund programs implemented in order to facilitate compliance with San Diego Regional Water Quality Control Board Order No. R9-2007-0001 (Permit); and

WHEREAS, the MOU at Section II.B.3 provides for the carry over of unused contributed funds from one fiscal year to another, but does not otherwise provide any direction regarding the refund of excess funds; and

WHEREAS, Copermittees desire to amend Section II.B.3. of the MOU to authorize the refund of funds that would otherwise only be authorized to be carried over from one fiscal year to another as a credit.

FIRST AMENDMENT

NOW THEREFORE, the Copermittees amend the MOU as follows:

1. Section II.B.3 of the MOU entitled "Management and Payment of Funds" is hereby amended and restated to read as follows:
 - a. For Regional General Programs, the Copermittees shall each pay a yearly assessment into a Regional General Program operations fund for their assigned portion of any Regional Shared Costs Budget approved pursuant to this MOU. The Regional General Program operations fund shall be managed by the Regional Principal Permittee, or any other Permittee on approval of the Copermittees.
 - b. For Watershed General Programs, the Watershed Copermittees for each WMA shall each pay a yearly assessment into a Watershed General Program operations fund for their assigned portion of any Watershed Shared Costs Budget approved pursuant to this MOU. Each Watershed General Program operations fund shall be managed by the Watershed Lead Permittee, or any other Watershed Permittee on approval of the Watershed Copermittees.
 - c. The Copermittee managing each General Program operations fund shall provide Budget Balance and Expenditure Status Reports quarterly and following the end of each fiscal year. This shall include a detailed accounting of all costs and expenses in accordance with the adopted Work Plan and Shared Costs Budget, including those incurred by Copermittees providing Working Body Support, contracting services, in-kind services, or other applicable costs.

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- d. Each Copermittee shall pay invoices within 60 days of receipt from the Copermittee managing the applicable General Program operations fund.
- e. Funds collected and not expended in any fiscal year shall be credited to the Copermittees' share of the next fiscal year's costs in accordance with the Copermittees' defined shared costs.
- f. Copermittees providing Working Body Support, Contract Administration, in-kind services, or incurring other budgeted costs on behalf of other Copermittees shall provide documentation of those expenses as requested by the Copermittee managing the applicable General Program operations fund. They shall only receive credit for those expenses if a detailed accounting of all costs and expenses meeting the minimum standards agreed upon by the Copermittees has been provided.
- g. Differences in the approved actual cost of expenses from those budgeted shall be either credited or added as appropriate to the amount of the Copermittee's share. In the event that any Copermittees' share of the next fiscal year's costs is less than the amount to be credited, the difference shall be refunded to the Copermittee. This provision shall be retroactive to include credits from FY 2008-09. Refunds shall be provided to Copermittees no later than 90 days after final accounting.
- h. At its discretion, a Copermittee managing a General Program operations fund may, prior to the completion of a fiscal year, make payment to any Copermittee providing Working Body Support, Contract Administration, in-kind services, or incurring other budgeted expenditures on behalf of other Copermittees so long as all of the conditions of Section II. B.3.f above have been satisfied and there are sufficient funds available to make a payment without requiring additional contributions or jeopardizing program objectives. If for some reason excess payment is made, the Copermittee receiving the payment agrees to return the additional payment without any recourse against the managing Copermittee.

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 First Amendment to MOU may be executed in counterparts and the signed counterparts shall constitute a single 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 Thereof, this First Amendment to MOU is executed as follows:

CITY OF ESCONDIDO

Dated: _____

By: _____
Lori Holt Pfeiler, Mayor

Dated: _____

By: _____
Marsha Whalen, City Clerk