



CITY COUNCIL STAFF REPORT



June 11, 2024

ITEM TITLE

MOU Amendment: Approve a Fifth Amendment to the National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding

Report Number: 24-0158

Location: No specific geographic location.

Department: Engineering and Capital Projects

G.C. § 84308: No

Environmental Notice: The activity is not a “Project” as defined under Section 15378 of the California Environmental Quality Act State Guidelines. Therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

Recommended Action

Adopt a resolution approving the Fifth Amendment to the National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding.

SUMMARY

On December 11, 2007, City Council adopted Resolution No. 2007-293, which approved the original Memorandum of Understanding (“MOU”) among the Copermittees of the San Diego County National Pollutant Discharge Elimination System (“NPDES”) Municipal Permit (the “Municipal Permit”) dated November 16, 2007. Council has approved subsequent amendments on March 18, 2010 (First Amendment), July 9, 2014 (Second Amendment), September 15, 2015 (Third Amendment), and June 4, 2019 (Fourth Amendment) (Attachment 1). The MOU Fourth amendment will expire on August 31, 2024, and it has become necessary to amend the MOU a fifth time to extend its term through August 31, 2029, (or the life of current NPDES Municipal Permit plus twelve months, whichever is longer), to complete ongoing regional activities required by the Municipal Permit. The proposed Fifth Amendment to the MOU is included as Attachment 2. The proposed action would adopt the Resolution approving the MOU’s Fifth Amendment.

ENVIRONMENTAL REVIEW

The Director of Development Services has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a “Project” as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change in the environment. Therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable

DISCUSSION

The NPDES stormwater permit regulations are administered by the United States Environmental Protection Agency under the authority granted by the Federal Water Pollution Control Act 33 USCA 1251 et seq. as amended. Municipal Permit Order No. R9-2013-0001 requires the Copermittees of San Diego County to coordinate in the implementation of regional programs. The copermittees of San Diego County (the “Copermittees”) include the County of San Diego, the San Diego Unified Port District, the San Diego County Regional Airport Authority , 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 (the “Cities”). This coordination necessitates a MOU among the Copermittees to address specific regional permit requirements, and to define associated Copermittees’ shared regional responsibilities and financial obligations.

The San Diego Regional Water Quality Control Board adopted the Municipal Permit on May 8, 2013. The Municipal Permit allowed for a two-year transitional period, during which time the Copermittees were required to develop or update their regional, watershed, and local plans and programs. The City Council approved updates to Chula Vista Municipal Code Section 14.20, Storm Water Management and Discharge Control, on July 14, 2015, as part of this process. The MOU provides a means for Copermittees to share costs of Municipal Permit requirements and program elements. An extension of the MOU is necessary to continue programmatic activities and compliance with the Municipal Permit.

The main changes proposed in this MOU Fifth Amendment are that the MOU will run through August 2029 (or the life of the current permit plus twelve months, whichever is longer), and clarifications and additions were made to the Definitions section.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the real property holdings of the City Council members do not create a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov’t Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

CURRENT-YEAR FISCAL IMPACT

The MOU is an agreement among the Copermittees, which describes how Regional and Watershed Management Area costs are shared. While the MOU itself does not directly impact the City’s budget for the current fiscal year, the City is obligated to incur expenses annually in compliance with the Municipal Permit. For fiscal year 2023-24, the City’s authorized cost share under this MOU is set to \$48,444 for the Regional General Program and \$90,013 for the San Diego Bay Watershed Management Area Program. These programs are funded through the Storm Drain Revenue Fund, which serves as a depository for storm drain fees collected by the City.

ONGOING FISCAL IMPACT

The requested action by itself will not result in any ongoing fiscal impact to the City. However, compliance with the Municipal Permit demands ongoing program expenditures which are budgeted annually in the Storm Drain Revenue Fund. Based on experience, with each re-issuance of the Municipal Permit, more stringent and costly requirements can be expected.

The total Shared Cost Budget authorized under this MOU may not exceed the Cumulative Limits specified for each budgeted category in Table 1 below. These values represent the maximum amount that may be cost-shared for each budgeted category for the duration of this MOU. Once a Cumulative Limit has been reached, the Copermittees must establish separate agreements for sharing additional costs for that budget category.

The estimated annual limits shown for each fiscal year are for planning purposes only. The City’s cumulative cost share expenditure over five years is estimated to total approximately \$345,000 for the Regional General Program and \$988,000 for the San Diego Bay WMA program. Where an estimated annual limit is not reached in any fiscal year, the surplus amount may be carried over into subsequent fiscal years, so long as the Cumulative Limit is not exceeded.

Table 1: Regional and Watershed Not-To-Exceed Limits (Estimated Annual Spending Limits)

Budget Category	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29	Cumulative Limit
1. Regional Programs	\$1,082,501	\$1,114,976	\$1,148,425	\$1,182,878	\$1,218,364	\$5,747,144
2. San Diego Bay WMA	\$952,200	\$855,500	\$910,800	\$936,100	\$836,050	\$4,490,650

ATTACHMENTS

1. Current MOU dated October 22, 2019
2. Fifth Amendment to the Original MOU

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