

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS
 DATE: 6/29/16

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

146
(1739)



FROM: Executive Office

SUBMITTAL DATE:
6/29/2016

SUBJECT: Approve the 2016 NPDES Stormwater Discharge Permit Implementation Agreement for the Santa Margarita Watershed Management Area between the County of Riverside, the Riverside County Flood Control and Water Conservation District (District), County of San Diego, and Cities (listed below); 1st/3rd/5th Districts; Contract number of years: 2-1/2; [\$1,000,000] General Fund-NPDES 100%.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the 2016 Implementation Agreement between the County of Riverside, the District, the County of San Diego, and the Cities of Murrieta, Temecula, Wildomar, and Menifee (Co-Permittees); and,
2. Authorize the Chairman to sign the Agreement on behalf of the County.

BACKGROUND:

Summary

The 2016 Implementation Agreement is a requirement of the NPDES Municipal Stormwater Discharge Permit issued to the Co-Permittees by the San Diego Regional Water Quality Control Board on November 18, 2015 (2015 Permit), pursuant to Section 402(p) of the Federal Clean Water Act. The Agreement sets forth program cost-sharing provisions, and the terms and conditions by which the Co-Permittees perform and execute 2015 Permit compliance activities and responsibilities.

(continued on page 2)

STEVEN C. HORN
 Principal Management Analyst

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 400,000	\$ 400,000	\$ 1,000,000	\$ N/A	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 400,000	\$ 400,000	\$ 1,000,000	\$ N/A	

SOURCE OF FUNDS: General Fund - NPDES 11050
 Budget Adjustment: No
 For Fiscal Year: 16/17-18/19

C.E.O. RECOMMENDATION:

APPROVE
 BY:
George A. Johnson

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Benoit and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Washington, Benoit and Ashley
 Nays: None
 Absent: Tavaglione
 Date: July 12, 2016
 xc: E.O., Flood

Kecia Harper-Ihem
 Clerk of the Board
 By:
 Deputy

(Comp. Item 11-7)

Prev. Agn. Ref.: 3.4 of 12/6/2011 | District: 1,3,5 | Agenda Number:

3-2

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Departmental Concurrence

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM 11: Approve the 2016 NPDES Stormwater Discharge Permit Implementation Agreement for the Santa Margarita Watershed Management Area between the County of Riverside, the Riverside County Flood Control and Water Conservation District (District) , County of San Diego, and Cities (listed below); 1st/3rd/5th Districts; Contract number of years: 2-1/2; [\$1,000,000] General Fund - NPDES 100%.

DATE: 6/29/2016

PAGE: 2 of 2

BACKGROUND:

Summary (continued)

The 2015 Permit requires that Co-Permittees within the Santa Margarita Watershed Management Area (which includes portions of Menifee and unincorporated San Diego County) collaborate on the development and implementation of various plans to address water quality within the watershed, and designate a Principal Watershed Co-Permittee to facilitate and act as lead in plan development. Through the Agreement, the Co-Permittees concur that the District will serve as Principal Watershed Co-Permittee.

The attached agreement is included as reference only. In an effort toward efficiency and the reduction of waste, the agreement to be executed on the County's behalf is attached to the District's companion item on this same date. The agreement has been reviewed and approved by County Counsel as to legal form.

Impact on Residents and Businesses

The proposed action does not include any increases to taxes, fees, or indebtedness.

SUPPLEMENTAL:

Additional Fiscal Information

The Agreement specifies cost-sharing for certain permit compliance program components. The \$400,000 for FY 16/17 has been programmed into the budget during the current budget development cycle. Subsequent budget programming will occur during corresponding budget cycles for FY 17/18 (\$400,000) and 18/19 (partial FY \$200,000).

Contract History and Price Reasonableness

The 2016 Implementation Agreement renews MS4 Permit compliance program cost-sharing provisions and implementation terms and conditions for the Co-Permittees under the 2015 Permit; an agreement of this kind has been in place in the Santa Margarita Region since the 1998 Permit term. No changes to the funding formulas are recommended.

Attachments

1. Copy of Agreement

AGREEMENT

National Pollutant Discharge Elimination System
Stormwater Discharge Permit
Implementation Agreement
San Diego Region

(Santa Margarita Watershed Management Area)

This Implementation Agreement ("Agreement"), dated July 1, 2016, is entered into by and between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ("DISTRICT"), the COUNTY OF RIVERSIDE, the CITIES OF MURRIETA, TEMECULA, and WILDOMAR (all collectively referred to as "RIVERSIDE COUNTY CO-PERMITTEES"), the COUNTY OF SAN DIEGO, and the CITY OF MENIFEE (the parties to this Agreement will be referenced herein, individually, as a "PARTY" and, collectively, as "PARTIES") and establishes the PARTIES' respective rights and obligations with regard to compliance and where applicable, financial responsibilities in connection with certain requirements relating to stormwater quality, as established under the federal Clean Water Act, 33 U.S.C § 1342(p) (CWA) and California law, including the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit issued by the California Regional Water Quality Control Board – San Diego Region ("San Diego Water Board") pursuant to Order No. R9-2013-0001, as amended by Order Nos. R9-2015-0001 and R9-2015-0100 (the "2015 PERMIT"), with respect to the following:

RECITALS

WHEREAS, Congress in 1987 added Section 402(p) to the CWA, which requires certain MS4 operators to obtain NPDES Permits before discharging stormwater and urban runoff into navigable waters; and

WHEREAS, pursuant to the CWA, the United States Environmental Protection Agency has authorized California, through the California State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards ("Water Boards"), to administer the NPDES Permit program within the state; and

WHEREAS, the Water Boards are authorized to administer NPDES Permit programs within the boundaries of their respective regions; and

WHEREAS, the jurisdiction of the San Diego Water Board includes Hydrologic Unit 902.00, the Santa Margarita River Watershed Management Area (SMR WMA), which is located partially in Riverside County, including in the jurisdictions or rights-of-way of the RIVERSIDE COUNTY CO-PERMITTEES and the CITY OF MENIFEE and partially in San Diego County; and

WHEREAS, on May 8, 2013, the San Diego Water Board adopted Order No. R9-2013-0001, an NPDES permit regulating MS4 discharges from the COUNTY OF SAN DIEGO and other Co-Permittees in that county; and

WHEREAS, on November 18, 2015, the San Diego Water Board adopted the 2015 PERMIT (Order No. R9-2015-0100), which amended Order No. R9-2013-0001, as amended by Order No. R9-2015-0001, and regulated MS4 discharges from the RIVERSIDE COUNTY CO-PERMITTEES and, to a limited extent, from the CITY OF MENIFEE, as well as from the COUNTY OF SAN DIEGO and other CO-PERMITTEES in Orange and San Diego Counties; and

WHEREAS, the 2015 PERMIT requires the RIVERSIDE COUNTY CO-PERMITTEES, the CITY OF MENIFEE, and THE COUNTY OF SAN DIEGO to develop a Water Quality Improvement Plan (WQIP) for the SMR WMA and requires the RIVERSIDE COUNTY CO-PERMITTEES and the COUNTY OF SAN DIEGO to undertake other requirements pertaining to the SMR WMA; and

WHEREAS, while MS4 discharges from the CITY OF MENIFEE are regulated by the Santa Ana Water Board, the 2015 PERMIT requires the CITY to participate in the development and implementation of the WQIP as it pertains to CITY MS4 discharges in the SMR WMA; and

WHEREAS, the COUNTY OF SAN DIEGO has already created documents for the SMR WMA that comply or may comply in the future with requirements of the 2015 PERMIT; and

WHEREAS, the 2015 PERMIT requires the PARTIES to designate a "Principal Watershed Co-Permittee" and the PARTIES have agreed that the DISTRICT will serve as Principal Watershed Co-Permittee for the SMR WMA for the term of the 2015 Permit; and

WHEREAS, the 2015 PERMIT provides that the PARTIES must collaborate in the development and implementation of various requirements of the 2015 PERMIT pertaining to the SMR WMA, and the PARTIES believe that such collaboration is in the best interests of all PARTIES; and

WHEREAS, the PARTIES wish to develop a WQIP that addresses the diverse characteristics of the SMR WMA in two different Counties; and

WHEREAS, the RIVERSIDE COUNTY CO-PERMITTEES may opt to develop sections of the SMR WMA WQIP pertaining to their jurisdictions that meet the alternative compliance option requirements for obtaining compliance with receiving water limitations as set forth in 2015 PERMIT Provision B.3.c; and

WHEREAS, the DISTRICT is willing to utilize its staff to coordinate certain activities of the PARTIES to facilitate compliance with the 2015 PERMIT; and

WHEREAS, the District is willing to perform certain activities in compliance with the 2015 PERMIT as well as with other CWA requirements on behalf of the RIVERSIDE COUNTY CO-PERMITTEES and the CITY OF MENIFEE; and

WHEREAS, the DISTRICT established the Santa Margarita Watershed Benefit Assessment Area (the "BENEFIT ASSESSMENT") pursuant to DISTRICT Ordinance 14 on May 14, 1991, to offset the DISTRICT's program and administrative costs associated with the development, implementation, and management of the NPDES Program, and the DISTRICT is willing to use available BENEFIT ASSESSMENT funds as set forth in Section 4 of this Agreement; and

WHEREAS, the PARTIES agree that the timely performance and/or execution of the requirements set forth in this Agreement and in the 2015 PERMIT will benefit all PARTIES.

NOW, THEREFORE, the PARTIES mutually agree as follows:

1. Incorporation of the 2015 PERMIT. The 2015 PERMIT, and as it may be hereafter amended during the term of this Agreement, is hereby incorporated by reference in its entirety and made a part of this Agreement.

2. Incorporation of Federal and State Laws. All applicable Federal and State laws and regulations in effect as of July 1, 2016, and as may hereafter be amended during the term of this Agreement, shall govern this Agreement. In any conflict between the terms of this Agreement and the provisions of such laws and regulations or the 2015 PERMIT, the latter shall control.

3. Responsibility for 2015 PERMIT Requirements. The PARTIES agree that their respective responsibilities for meeting the requirements set forth in the 2015 PERMIT shall be as follows:

a. Except as otherwise set forth in this Agreement, each PARTY shall be solely responsible for full and timely compliance with the requirements of the 2015 PERMIT within the limits of its jurisdiction, or as otherwise required of that PARTY by the 2015 PERMIT. Additionally, the PARTIES agree that certain PARTIES shall have the responsibilities set forth below in subsections 3.b through 3.e.

b. The DISTRICT shall, at no cost to the COUNTY OF SAN DIEGO or the CITY OF MENIFEE:

(1) On behalf of all PARTIES, serve as Principal Watershed Co-Permittee for the SMR WMA and perform tasks as set forth in 2015 PERMIT Provision G.2.

(2) On behalf of the COUNTY OF SAN DIEGO:

(a) Conduct the Public Participation Process required under 2015 PERMIT Provisions F.1.a(1), F.1.a(2)(a)-(b), and F.1.a(3)(a), and provide to the COUNTY OF SAN DIEGO information or data obtained during the process.

- (b) Upon the COUNTY OF SAN DIEGO'S request, provide information regarding existing SMR WMA MS4 facilities within Riverside County and such other information or data maintained in the DISTRICT'S possession pursuant to its obligations under the 2015 PERMIT or this Agreement;
 - (c) Allow the COUNTY OF SAN DIEGO to participate in the development and review of, and to comment on, all deliverables relating to the SMR WMA WQIP prior to submittal of those deliverables to the San Diego Water Board.
- (3) On behalf of the RIVERSIDE COUNTY CO-PERMITTEES:
- (a) Coordinate the development of the SMR WMA WQIP and its elements as required under 2015 PERMIT Provision B, coordinate the development and incorporation of Non-Stormwater and Stormwater Action Levels as required under 2015 PERMIT Provision C, and coordinate the development of the Regional Monitoring and Assessment Report required under 2015 PERMIT Provision F.3.c.
 - (b) Coordinate the development and submittal of, and maintain as required, the deliverables required under 2015 PERMIT Provisions F.1 through F.5 (as applicable), including the SMR WMA WQIP, a model Jurisdictional Runoff Management Plan (JRMP) and model BMP Design Manual (BMPDM) and updates thereto, the Transitional JRMP and Monitoring and Assessment Program Annual Reports, the Regional Monitoring and Assessment Report, the Regional Clearinghouse, and the Report of Waste Discharge (ROWD) for the Riverside County portion of the SMR WMA. The

DISTRICT will allow the COUNTY OF RIVERSIDE and the CITIES OF MURRIETA, TEMECULA, and WILDOMAR to participate in the development and review of, and to comment on, all deliverables prior to submittal of those deliverables to the San Diego Water Board.

- (c) Perform assessment requirements and sampling of surface water and urban runoff in accordance with 2015 PERMIT Provisions D.1.a, D.2.a(3), D.3, D.4.a and D.4.b(2)(b). All samples will be analyzed by a lab chosen by the DISTRICT, located in proximity of or within Riverside County, and agreed to by the RIVERSIDE COUNTY CO-PERMITTEES. The location of sampling sites shall be determined by the RIVERSIDE COUNTY CO-PERMITTEES, subject to approval by the San Diego Water Board. The DISTRICT will coordinate with the COUNTY OF RIVERSIDE and the CITIES OF MURRIETA, TEMECULA, and WILDOMAR in developing a plan for identifying the list of outfalls to be sampled each year in accordance with Provision D.2.a(3). The COUNTY OF RIVERSIDE and the CITIES OF MURRIETA, TEMECULA, and WILDOMAR may request the DISTRICT to conduct outfall sampling within their jurisdictions required pursuant to Provisions D.2.a(1)-(2), the cost of which would be a SHARED COST, as defined in Section 4 of this Agreement.
- (d) The DISTRICT will conduct public education activities on a regional basis, as agreed upon by the RIVERSIDE COUNTY CO-PERMITTEES, in accordance with the strategies identified in the SMR WMA WQIP and pursuant to 2015

PERMIT Provision E.7. Responsibility for jurisdiction-wide public education programs, including without limitation the development and implementation of any supplemental public education programs identified in their JRMPs, or which may be necessary to address the highest priority water quality conditions identified in the WQIP to target communities or stakeholders within their respective jurisdictions, shall be the responsibility of the COUNTY OF RIVERSIDE and the CITIES OF MURRIETA, TEMECULA, and WILDOMAR.

- (e) As agreed upon by the RIVERSIDE COUNTY CO-PERMITTEES, the DISTRICT shall develop and conduct regional training sessions for RIVERSIDE COUNTY CO-PERMITTEE personnel, covering pertinent aspects of the JRMP and WQIP that are common among the RIVERSIDE COUNTY CO-PERMITTEES. The RIVERSIDE COUNTY CO-PERMITTEES shall be responsible for developing, implementing and reporting on any supplemental training as identified in their respective JRMPs, or which may be necessary to address the highest priority water quality conditions identified in the WQIP to target areas or activities which may be sources.
- (f) The DISTRICT shall perform and/or coordinate other programs related to municipal stormwater issues within the Riverside County portion of the SMR WMA, including, but not limited to the Riverside County Department of Waste Resource's Household Hazardous Waste and Antifreeze, Batteries, Oil and Paint collection program; the DISTRICT's membership in the California Stormwater Quality

Association on behalf of the RIVERSIDE COUNTY CO-PERMITTEES; development of a new MS4 permit; development of potential TMDL programs; development of the CWA 303(d) list of impaired waterbodies; and such other programs as the RIVERSIDE COUNTY CO-PERMITTEES shall agree. Where these programs are implemented County-wide, the DISTRICT shall, in determining the amount of SHARED COSTS (as defined in Section 4 of this Agreement), estimate the portion of the total cost of these regional programs that benefit the jurisdictions within the SMR WMA in Riverside County.

- (g) In the event that the DISTRICT retains a consultant or other professional ("CONSULTANT") to develop and/or implement programs set forth in this Agreement, including scientific, engineering, or legal services, the fees and expenses paid to such CONSULTANT shall be SHARED COSTS. The DISTRICT shall notify the COUNTY OF RIVERSIDE and the CITIES OF MURRIETA, TEMECULA, and WILDOMAR in advance of its intent to retain a CONSULTANT and, upon the request of the COUNTY or the CITIES, provide information regarding requests for proposals from consultants, proposed fees, timetables and payment schedules. The COUNTY and the CITIES shall have the opportunity to participate in decisions related to CONSULTANT'S services and costs associated therewith.
- (4) On behalf of the CITY OF MENIFEE, the DISTRICT shall coordinate the development of the SMR WMA WQIP as it relates

to the CITY. The DISTRICT shall allow the CITY to participate in the development and review of, and to comment on, the WQIP prior to its submittal to the San Diego Water Board.

c. The COUNTY OF RIVERSIDE and the CITIES OF MURRIETA, TEMECULA, AND WILDOMAR shall, at no cost to the DISTRICT, the COUNTY OF SAN DIEGO, or the CITY OF MENIFEE:

(1) Assign staff to represent their jurisdiction on the Water Quality Improvement Consultation Panel (WQICP) required by 2015 PERMIT Provision F.1.a(1)(b), and provide a staff representative to attend meetings and participate in the development of the WQIP, the JRMP, and the BMPDM. The name(s) of such staff representatives shall be provided in writing to the DISTRICT.

(2) Upon the DISTRICT'S request, timely provide to the DISTRICT information needed to satisfy document development and reporting requirements as described in 2015 PERMIT Provisions F.1.a(2)-F.6, or to respond to information requests from the San Diego Water Board. In this regard, the COUNTY OF RIVERSIDE and the CITIES OF MURRIETA, TEMECULA, and WILDOMAR shall:

(a) Compile and maintain an updated jurisdiction-specific JRMP pursuant to 2015 PERMIT Provision E, including the preparation of MS4 maps pursuant to Provision E.2.b(1) and priority development project, construction site and existing development inventories pursuant to Provisions E.3.e(2), E.4.b and E.5.a, respectively. All updated JRMPs must be received by the DISTRICT no later than 30 days prior to the San Diego Water Board submittal date specified in Provision F.2.a(2).

- (b) Provide one bound hard copy and one electronic copy of the completed individual Transitional JRMP Annual Report to the DISTRICT by no later than 30 days prior to the San Diego Water Board submittal date specified in Provision F.3.b(1)(a).
 - (c) Perform the assessments required by 2015 PERMIT Provisions D.4.b(1)(a)-(b) during each transitional monitoring and assessment reporting year (October 1st to September 30th) during the term of this Agreement, and provide one bound hard copy and one electronic copy of the results to the DISTRICT, along with any applicable monitoring and sampling data, by no later than 90 days prior to the San Diego Water Board submittal date specified in Provision F.3.b(2).
 - (d) Perform outfall inventory and screening within their respective jurisdictions pursuant to 2015 PERMIT Provisions D.2.a(1)-(2) and provide all outfall inventory, field screening, and any other monitoring and sampling data required to be collected pursuant to the 2015 PERMIT to the DISTRICT as requested by the DISTRICT. Any required source identification (including follow-up sampling) and resulting enforcement actions shall remain the individual responsibility of the COUNTY and CITIES.
 - (e) Provide information on existing MS4 facilities and/or other data as it pertains to facilities or programs of the COUNTY and CITIES when requested by DISTRICT.
- d. The COUNTY OF SAN DIEGO shall, at no cost to the RIVERSIDE COUNTY CO-PERMITTEES or the CITY OF MENIFEE:

- (1) Develop, implement, maintain and, as required, submit to the San Diego Water Board, SMR WMA WQIP deliverables required pursuant to 2015 PERMIT Provision B, Non-Stormwater and Stormwater Action Levels required pursuant to Provision C, a Monitoring and Assessment Program required pursuant to Provision D, a JRMP and BMPDM required pursuant to Provision E, a Regional Monitoring and Assessment Report required pursuant to Provision F.3.c, the Regional Clearinghouse required pursuant to Provision F.4, and a ROWD required pursuant to Provision F.5, in all cases where such requirements apply to the SMR WMA located within San Diego County.
- (2) Assign staff to represent the COUNTY OF SAN DIEGO at the WQICP, and provide a staff representative to attend other WQIP development meetings as appropriate. The name(s) of such staff shall be provided in writing to the DISTRICT.
- (3) Upon the DISTRICT'S request, timely provide to the DISTRICT information needed to satisfy document development, submittal and reporting requirements as described by 2015 PERMIT Provisions F.1.a(2)-F.1.b, F.3 and F.5, including:
 - (a) Timely submittal of WQIP deliverables to the DISTRICT for compilation into final reports for the SMR WMA and submittal to the San Diego Water Board.
 - (b) Provision of one bound hard copy and one electronic copy of the completed individual Transitional JRMP Annual Report to the DISTRICT by no later than October 15th of each year during the term of this Agreement.
 - (c) Provision of one bound hard copy and one electronic copy of the completed Transitional Monitoring and Assessment

Annual Report for the San Diego County portion of the SMR WMA required pursuant to 2015 PERMIT Provision F.3.b(2) by no later than January 15th of each year during the term of this Agreement for compilation into a final report for the SMR WMA and submittal to the San Diego Water Board.

- (d) Timely provision of information regarding existing SMR WMA MS4 facilities within San Diego County and such other information or data in the COUNTY OF SAN DIEGO'S possession pursuant to its obligations under the 2015 PERMIT or this Agreement, when requested by DISTRICT.
- e. The CITY OF MENIFEE shall, at no cost to the RIVERSIDE COUNTY CO-PERMITTEES or the COUNTY OF SAN DIEGO:
 - (1) Assign staff to represent the CITY OF MENIFEE at the WQICP, and provide a staff representative to attend meetings and participate in the development of the WQIP. The name(s) of such staff shall be provided in writing to the DISTRICT.
 - (2) Upon the DISTRICT'S request, timely provide to the DISTRICT information needed to satisfy document development, submittal and reporting requirements as described in 2015 PERMIT Provisions F.1.a-F.1.b, or to respond to information requests from the San Diego Water Board.
 - (3) Timely provide information on existing MS4 facilities and/or other data as it pertains to CITY facilities or programs when requested by the DISTRICT.
- f. The RIVERSIDE COUNTY CO-PERMITTEES and the CITY OF MENIFEE shall each be responsible for the regulation and enforcement of local ordinances and regulations within their respective jurisdictions

to ensure compliance with the applicable portions of the NPDES Permit, and to control the contribution of pollutants originating from their respective MS4s into the MS4 of another PARTY in a manner which could cause that PARTY to violate the NPDES Permit, as required by 2015 PERMIT Provision E.1a(4). Such effort includes the exercise of police powers and land use controls (if applicable) and the enforcement of ordinances that CO-PERMITTEES, to the extent applicable, presently have adopted or may adopt in the future.

4. Shared Costs for 2015 PERMIT and other Municipal Stormwater Requirements. The RIVERSIDE COUNTY CO-PERMITTEES agree that costs of the DISTRICT'S responsibilities identified in subsection 3.b. of this Agreement shall constitute "SHARED COSTS" to be divided and allocated among the RIVERSIDE COUNTY CO-PERMITTEES in accordance with the formulas and procedures set forth in subsections 4.a through 4.d below:

- a. Combined Cost. The Combined Cost for the COUNTY OF RIVERSIDE and the CITIES OF MURRIETA, TEMECULA, and WILDOMAR ("CC") for each upcoming fiscal year (July 1st through June 30th) during the term of this Agreement shall be calculated using the following formula, and shall not exceed \$2,200,000 (two million, two hundred thousand dollars) annually:

$$CC = \text{SHARED COSTS} - DC$$

Where,

"SHARED COSTS" = Fiscal year costs for services performed in accordance with Section 3.b of this Agreement, except that in no event shall SHARED COSTS include any costs arising from or associated with any act or failure to act by any RIVERSIDE COUNTY CO-PERMITTEE or its employees or agents during the performance of

activities required under this Agreement which result in death, personal injury or property damage.

"DC" = DISTRICT Contribution, which shall be calculated using the following formula:

$$DC = 80\% \text{ ASSESSMENT REVENUE }^1 - \text{INTERNAL COSTS}$$

Where,

"ASSESSMENT REVENUES" = Revenues from the BENEFIT ASSESSMENT program; and

"INTERNAL COSTS" = Internal costs for the DISTRICT to develop, implement, administer, and comply with the NPDES program in the SMR WMA.

If the DC calculation yields a negative value, the DISTRICT shall have no contribution for the fiscal year other than the INTERNAL COSTS that it incurs.

- b. Individual Contributions. The COUNTY OF RIVERSIDE, CITY OF MURRIETA, CITY OF TEMECULA, and CITY OF WILDOMAR's Individual Contribution ("IC") amounts for the fiscal year shall be calculated utilizing the following formula:

$$IC = \left(\frac{\left(\frac{\text{INDIV POP}}{\text{TOTAL SMR POP}} \right) + \left(\frac{\text{INDIV BAUs}}{\text{TOTAL SMR BAUs}} \right)}{2} \right) \times CC + \text{CREDITS} - \text{DEBITS}$$

Where,

"CC" = Combined Cost, as defined above;

"INDIV POP" = Individual populations of the COUNTY OF RIVERSIDE and the CITIES OF MURRIETA, TEMECULA, and WILDOMAR. The population of the CITIES shall be determined by the latest California State Department of Finance population figures

¹ The DISTRICT retains 20% of BENEFIT ASSESSMENT revenue as a reserve for the DISTRICT'S administrative and program costs associated with MS4 permits, pursuant to DISTRICT Ordinance No. 14.

issued in May of each year. The COUNTY'S population shall be based on the most current Tax Rate Area (TRA) information best fitting the SMR WMA land area within the jurisdiction of the COUNTY;

"INDIV BAUs" = Calculated number of Benefit Assessment Units (BAUs) for each of the COUNTY OF RIVERSIDE and the CITIES OF MURRIETA, TEMECULA, and WILDOMAR. The BAU calculation for the COUNTY and CITIES shall be estimated by comparing the most current TRA information best fitting the portion of the SMR WMA within the jurisdiction of the RIVERSIDE COUNTY CO-PERMITTEES with the Assessment Rolls from the current fiscal year's Benefit Assessment Area Engineer's Report;

"TOTAL SMR POP" = Total population of the RIVERSIDE COUNTY CO-PERMITTEES located within the SMR WMA;

"TOTAL SMR BAUs" = Total number of BAUs within the Santa Margarita Benefit Assessment Area;

"CREDITS" = Unexpended portion of IC paid by the COUNTY or a CITY for the previous fiscal year plus, if applicable, funds received from other sources, including new PARTIES not previously calculated in estimating CC for the current fiscal year;

"DEBITS" = Portion of actual CC for the previous fiscal year attributable to the COUNTY or a CITY that exceeded the estimated CC for the previous fiscal year.

- c. Administration. By February 1 of each year of this Agreement, the DISTRICT shall provide estimates of the SHARED COSTS, CC, and ICs based on the calculations set forth above, and the RIVERSIDE COUNTY CO-PERMITTEES shall approve, by majority vote (each COPERMITTEE having one co-equal vote), the SHARED COSTS,

CC, and ICs for the upcoming fiscal year. The DISTRICT shall invoice the RIVERSIDE COUNTY CO-PERMITTEES for their respective IC at the beginning of each fiscal year and said invoice shall be due and payable within 60 days of receipt.

5. Other Cost-Sharing Agreements. Nothing in this Agreement shall prevent a subset of fewer than all PARTIES from agreeing with the DISTRICT to share costs of other municipal stormwater programs concerning such PARTIES or of requiring such PARTIES to adopt the cost-sharing formula set forth in Section 4 of this Agreement.

6. Term of the Agreement. This Agreement becomes effective on July 1, 2016, and shall remain in effect until six (6) months after the effective date of an NPDES MS4 Permit applicable to the SMR WMA adopted by the San Diego Water Board to replace the 2015 PERMIT. The obligation to pay any IC set forth in Section 4 shall survive the termination of this Agreement as to any RIVERSIDE COUNTY CO-PERMITTEE which is delinquent in making such payments.

7. Additional Parties. Any City which incorporates after the effective date of this Agreement may file a written request with the DISTRICT to be added as a PARTY. Upon receipt of such a request, the DISTRICT shall ask the PARTIES whether they approve the request. If a majority of the PARTIES, each having one co-equal vote, approves the addition of the City, the DISTRICT, on behalf of the PARTIES, will ask the San Diego Water Board to add the City to the 2015 PERMIT as an additional CO-PERMITTEE. Once the City is made an additional CO-PERMITTEE, this Agreement shall be amended to reflect the addition and to allocate responsibilities and benefits to the City commensurate with those set forth for the existing PARTIES. Upon full execution of the amended Agreement, the City shall be responsible as a PARTY for all obligations set forth in this Agreement for the current and any subsequent budget year. If the requesting City is not added to the 2015 PERMIT, it shall not be made a PARTY.

8. Withdrawal from the Agreement. Any PARTY may withdraw from this Agreement after first giving sixty (60) days written notice to the DISTRICT and the San Diego

Water Board. Any PARTY which withdraws from this Agreement prior to its expiration shall not be entitled to any refund of monies already paid under this Agreement or any benefit from the ongoing performance of this Agreement, including with respect to Section 3. A withdrawing RIVERSIDE COUNTY CO-PERMITTEE shall also be responsible for the payment of any IC which had been invoiced prior to the date of the PARTY'S notice to withdraw. The allocation of ICs to the remaining RIVERSIDE COUNTY CO-PERMITTEES shall be recalculated in the following budget year.

9. Removal of PARTY. If any of the COUNTY OF RIVERSIDE or the CITIES OF MURRIETA, TEMECULA, and WILDOMAR (or any PARTY within the County of Riverside added to this Agreement pursuant to Section 7) are more than ninety (90) calendar days delinquent in the payment of any invoiced ICs under this Agreement, or if any PARTY is in material breach of any other requirement applicable to that PARTY under this Agreement (hereinafter, collectively, the "Delinquent PARTY"), such PARTY shall be subject to removal from this Agreement. The Delinquent PARTY shall be notified in writing by the DISTRICT of its delinquent status and shall be afforded an opportunity, not exceeding thirty (30) calendar days from the date of the notice, to cure such status. In the event the Delinquent PARTY fails or refuses to cure its delinquency, the remaining PARTIES shall vote to remove the Delinquent PARTY. (In the case of a PARTY which is delinquent due to its failure to pay ICs, only the RIVERSIDE COUNTY CO-PERMITTEES shall be entitled to vote to remove such PARTY.) If a majority of the remaining PARTIES (each PARTY having one co-equal vote) votes to remove the Delinquent PARTY, it shall be removed as a PARTY immediately upon the conclusion of such vote. The removed PARTY shall pay, within thirty (30) calendar days of receipt of a final invoice from DISTRICT, all ICs such PARTY was obligated under this Agreement to pay for the then-current fiscal year, as well as any funds owed for obligations incurred in previous fiscal years. Any unfilled obligations of the removed PARTY under this Agreement shall survive its removal. No removed PARTY shall be entitled to receive any refund of ICs already paid under this Agreement, or any benefit from the ongoing performance of this Agreement, including under Section 3.

10. Non-compliance with 2015 PERMIT Requirements. Any PARTY finally determined, in either an administrative or judicial forum, to be in non-compliance with its responsibilities pursuant to the 2015 PERMIT shall be solely responsible for any penalties, fees, damages or injunctive relief assessed in connection therewith. This Agreement is not intended to and does not create any joint and several liability of the other PARTIES for such penalties, fees, damages or injunctive relief, nor does it create any express or implied indemnity in favor of any PARTY. Any PARTY which fails to timely submit to the DISTRICT any information or document required by this Agreement or the 2015 PERMIT to be submitted to the San Diego Water Board shall be required to submit such report or document individually if the DISTRICT has already submitted such information or document to the Water Board. The DISTRICT shall be under no obligation to delay a timely submittal to the Water Board in event of a PARTY'S breach of this obligation.

11. Petitions to State Board. The entry by the PARTIES into this Agreement and their performance thereunder shall not constitute or be considered any waiver or release of positions and arguments set forth in any Petitions for Review filed with the SWRCB, including three Petitions for Review currently before the SWRCB, Numbers A-2254(h), A-2254(j) and A-2456(i).

12. Amendments to the Agreement. This Agreement may only be amended by consent of a majority of the PARTIES eligible to vote on such amendment. No amendment to this Agreement shall be effective unless it is in writing and signed by the duly authorized representatives of all such PARTIES.

13. Authorized Signatories. The PARTIES warrant and represent that the individuals signing this Agreement on their behalf can and do bind the PARTIES to the terms of this Agreement.

14. Notices. All notices shall be deemed duly given when delivered by hand, by email with receipt requested, or three (3) days after deposit in the U.S. Mail, postage prepaid. Notice to the PARTIES shall be sent to the publically advertised mailing address for the PARTY.

15. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of California. In any action brought to enforce this Agreement, venue shall be in the Riverside County Superior Court; provided, however, that this venue provision shall not affect the ability of any PARTY to seek a change of venue pursuant to Code of Civil Procedure Section 394.

16. Severability. If any provision or provisions of this Agreement 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 hereby.

17. Consent to Waiver and Breach. No term or provision hereof shall be deemed waived and no breach excused, unless the waiver or breach is consented to in writing, and signed by the PARTY or PARTIES affected. Consent by any PARTY to a waiver or breach by any other PARTY shall not constitute consent to any different or subsequent waiver or breach.

18. Applicability of Prior Agreements. This Agreement and the exhibits attached hereto constitute the entire Agreement between the PARTIES or any subset of them with respect to the subject matter thereof; all prior agreements, representations, custom, usage, statements, negotiations and undertakings concerning implementation of the 2015 PERMIT within the SMR WMA or implementation of the prior NPDES MS4 permit, Order. No. R9-2010-0016, oral or written, are superseded hereby, except to the extent that any PARTY shall still have an outstanding obligation under any such prior agreements.

19. Dispute Resolution. If a dispute arises under this Agreement, the disputing PARTIES agree to attempt to resolve the dispute internally. Absent resolution, the disputing PARTIES will retain a mutually agreed-upon mediator in Riverside County. Any cost and fees, apart from attorney fees (which shall be individually borne by the disputing PARTIES), shall be shared equally among the disputing PARTIES. If such dispute is not resolved within 60 days after referral to the mediator, or if the disputing PARTIES cannot agree on the appointment of a mediator within 90 days, either PARTY may bring an action in Riverside County Superior Court concerning such dispute.

20. Execution in Counterparts. This Agreement may be executed and delivered in any number of counterparts or copies ("Counterparts") by the PARTIES. When each PARTY has signed and delivered at least one Counterpart to the other PARTIES, each Counterpart shall be deemed an original and, taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the PARTIES.

21. No Partnership or Fiduciary Obligation. This Agreement does not create a partnership between the PARTIES or other similar relationship nor does it impose any fiduciary obligations upon any of the PARTIES, and does not bind any of the PARTIES beyond the furtherance of the intent of the fulfillment of the Agreement.

22. Effective Date. This Agreement shall take effect on July 1, 2016, and shall become binding on a PARTY upon the date that a duly authorized representative of that PARTY executes it. The PARTIES shall make all reasonable efforts to execute the Agreement prior to July 1, 2016.

///

IN WITNESS WHEREOF, each PARTY has executed this Agreement as of the date set forth below.

RECOMMENDED FOR APPROVAL:

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By _____
JASON E. UHLEY
General Manager-Chief Engineer

By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

Dated: _____

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk to the Board

By _____
AARON C. GETTIS,
Deputy County Counsel IV

By _____
Deputy

Dated: _____

(SEAL)

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By _____
JAY ORR
County Executive Officer

By _____
JOHN J. BENOIT, Chairman
Riverside County Board of Supervisors

Dated: _____

ATTEST:

KECIA HARPER-IHEM
Clerk to the Board

By _____
Deputy

(SEAL)

SEB:cw
P8/205094

APPROVED AS TO FORM:

CITY OF TEMECULA

By _____
PETER M. THORSON
City Attorney

By _____
MICHAEL S. NAGGAR
Mayor

ATTEST:

By _____
RANDI JOHL
City Clerk

Dated: _____

SAMPLE

APPROVED AS TO FORM:

CITY OF MURRIETA

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

SAMPLE

APPROVED AS TO FORM:

CITY OF WILDOMAR

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

SAMPLE

APPROVED AS TO FORM:

CITY OF MENIFEE

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

SAMPLE

APPROVED AS TO FORM:

COUNTY OF SAN DIEGO

By _____
THOMAS MONTGOMERY
County Counsel

By _____
Supervisor
San Diego County Board of Supervisors

ATTEST:

By _____
ERNEST J. DRONENBURG, JR.
County Clerk

Dated: _____

SAMPLE