

**COST-SHARING AGREEMENT  
WATER QUALITY IMPROVEMENT PLAN DEVELOPMENT AND TMDL  
MONITORING  
IN THE  
SAN DIEGO RIVER WATERSHED**

This Cost Sharing Agreement (AGREEMENT), entered into September 4, 2013 by and between the County of San Diego, the City of El Cajon, City of La Mesa, the City of San Diego, the City of Santee, and Caltrans (hereinafter collectively called PARTIES and individually called PARTY) establishes the responsibilities of each PARTY with respect to 1) developing the Water Quality Improvement Plan (WQIP) for the San Diego River Watershed Management Area (WMA) as required by San Diego Regional Water Quality Control Board (SDRWQCB) Order No. R9-2013-0001, (hereinafter called the MS4 PERMIT), and 2) performing the water quality monitoring required to comply with SDRWQCB Order No. R9-2010-0001 (hereinafter called the BACTERIA TMDL).

WHEREAS, the SDRWQCB adopted the MS4 PERMIT on May 8, 2013; and

WHEREAS, the SDRWQCB adopted the BACTERIA TMDL on February 10, 2010, requiring compliance with Total Maximum Daily Loads (TMDLs) for indicator bacteria at various beaches and creeks in the San Diego region; and

WHEREAS, the responsible Copermitttees for the San Diego River WMA under the MS4 PERMIT are the Cities of El Cajon, La Mesa, San Diego, Santee, and the County of San Diego (WATERSHED COPERMITTEES); and,

WHEREAS, the MS4 PERMIT requires the WATERSHED COPERMITTEES to develop a WQIP for the San Diego River WMA; and

WHEREAS, the MS4 PERMIT requires the WQIP to, among other things, assess priority receiving water quality conditions associated with MS4 discharges, develop strategies to improve receiving water quality conditions associated with MS4 discharges, develop a monitoring and assessment program (MAP), and implement adaptive management; and

WHEREAS, Attachment E to the MS4 PERMIT incorporates requirements of the BACTERIA TMDL, including water quality monitoring requirements to assess compliance with the BACTERIA TMDL; and

WHEREAS, the PARTIES recognize that Caltrans is named as a Responsible Party in the BACTERIA TMDL but not the WQIP, and will therefore only be responsible for

contributing to that portion of the WQIP that pertains to its responsibility in the BACTERIA TMDL; and,

WHEREAS, the PARTIES have agreed to work together to fulfill the water quality monitoring requirements of the BACTERIA TMDL and Caltrans has agreed to participate in the WQIP development requirements of the MS4 PERMIT; and

WHEREAS, the PARTIES recognize that expenditures will be needed to develop the WQIP for the San Diego River WMA and perform water quality monitoring required by the BACTERIA TMDL over the term of the AGREEMENT; and

WHEREAS, the PARTIES have agreed upon the scopes of work, and cost estimates as described in EXHIBITS A – Scope of Work, B – AMEC Task Order for TMDL Monitoring, C – Cost Share Breakdown Tables and D – Dry Weather Analytical Cost Table; and

WHEREAS, the PARTIES have agreed to recognize the County of San Diego as the PARTY LEAD under this AGREEMENT, and the County of San Diego agrees to provide project management and contract administration services for the PARTIES, including hiring mutually agreed upon consultants to perform the identified scopes of work in EXHIBITS A, B, C and D ; and,

NOW, THEREFORE, in consideration of the foregoing, the PARTIES hereto mutually agree as follows:

**(1) PURPOSE:** This AGREEMENT is entered into for the purpose of outlining the responsibilities of the PARTIES and funding collaborative activities during County Fiscal Years 2013-14, 2014-15, 2015-16 in the San Diego River WMA to develop a WQIP that complies with the requirements of the MS4 PERMIT and to fulfill the water quality monitoring requirements of the BACTERIA TMDL. Collaborative activities for all Fiscal Years are described in detail in EXHIBITS A, B, C and D.

**(2) TERM:** The term of this AGREEMENT shall commence upon its approval and execution by each and all of the duly authorized representatives of the PARTIES, and shall continue until June 30, 2016, or until the scope of services is completed, whichever is earlier. If a PARTY terminates its participation in this AGREEMENT, the AGREEMENT remains in effect for all other PARTIES until such remaining PARTIES give notice of termination.

**(3) PARTY RESPONSIBILITIES AND PARTICIPATION:**

A. RESPONSIBILITIES OF PARTY LEAD: The County of San Diego is hereby designated PARTY LEAD. As such, the County of San Diego incurs the responsibility of overall project management, solicitation and administration of Cost Sharing Agreement: WQIP Development and TMDL Monitoring in the San Diego River Watershed

consultant contracts, and submittal of required work products on behalf of the PARTIES.

- B. RESPONSIBILITIES OF ALL PARTIES: Each PARTY agrees to participate in collaborative efforts by assigning one (1) person to serve as the PARTY representative to participate in meetings (at least 80% of all meetings), collaborate on developing strategies, participate in decision making, and review work products and submittals. Further, each PARTY agrees to supply the PARTY LEAD or contracted consultants with data associated with its jurisdiction as needed, in a timely manner.

**(4) PROGRAM BUDGET AND COSTS:**

A. WQIP Development, TMDL Monitoring and Party Specific Cost totals: The cost of developing the Water Quality Improvement Plan (including Party Specific Costs) and performing TMDL Monitoring will not exceed:

- \$345,342 for County Fiscal Year 2013-14,
- \$270,372 for County Fiscal Year 2014-15, and
- \$112,957 for County Fiscal Year 2015-16.

B. Total Cost breakdown for each Party: The following represents the total costs for each Party, including WQIP Development, TMDL Monitoring and Party Specific Costs, for County FY13-14, FY14-15 and FY15-16:

- County of San Diego – \$248,577
- City of El Cajon – \$102,553
- City of La Mesa – \$47,795
- City of San Diego – \$223,489
- City of Santee - \$82,558
- Caltrans – \$23,699

Total Shared and Party Specific Costs for County Fiscal Year 2013-14 shall be allocated among the PARTIES in an amount not to exceed the amount shown below:

- County of San Diego - \$126,265
- City of El Cajon - \$47,464
- City of La Mesa - \$21,249
- City of San Diego - \$102,671
- City of Santee - \$37,641
- Caltrans - \$10,053

Total Shared and Party Specific Costs for County Fiscal Year 2014-15 shall be allocated among the PARTIES in an amount not to exceed the amount as shown below.

County of San Diego - \$86,185  
City of El Cajon - \$39,593  
City of La Mesa - \$19,904  
City of San Diego - \$81,239  
City of Santee - \$32,526  
Caltrans - \$10,924

Total Shared and Party Specific Costs for County Fiscal Year 2015-16 shall be allocated among the PARTIES in an amount not to exceed the amount as shown below.

County of San Diego - \$36,126  
City of El Cajon - \$15,496  
City of La Mesa - \$6,643  
City of San Diego - \$39,579  
City of Santee - \$12,391  
Caltrans - \$2,722

For specific breakdown of WQIP Development, TMDL Monitoring and Party Specific Costs see Exhibits A, B and C. For specific breakdown of TMDL Monitoring costs see Exhibits B, C and D.

**(5) PAYMENTS:** Within 30 calendar days of the effective date of this AGREEMENT, the PARTY LEAD shall send the PARTIES an invoice for a deposit which constitutes their share of the budgeted costs for County Fiscal Year 13-14 and will send subsequent invoices following the beginning of each new Fiscal Year. Each PARTY shall pay the deposit within 60 calendar days of its respective receipt of the invoice. Each PARTY shall pay its share of expenses within 60 days of receipt of an invoice from the PARTY lead. Funds collected and not expended at the end of the project shall be refunded in full to each PARTY, in proportions that are consistent with the allocations identified in this agreement. Alternatively, funds collected and not expended may be credited to reduce next year's invoiced amount.

**(6) NON-COMPLIANCE WITH AGREEMENT REQUIREMENTS:** Any participant to this AGREEMENT that fails to comply with the terms and conditions of this AGREEMENT shall be solely liable for, and indemnify the other parties for, any lawfully assessed penalties resulting from such non-compliance. Failure to comply with AGREEMENT conditions within specified or agreed upon timelines shall constitute non-compliance with the AGREEMENT.

**(7) AMENDMENTS TO THE AGREEMENT:** This AGREEMENT may be amended only by consent of all the PARTIES. Amendment shall be effective when authorized in writing and signed by the duly authorized representatives of the PARTIES.

**(8) GOVERNING LAW:** This AGREEMENT 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. In addition, each PARTY agrees to comply with all federal, state and local laws and ordinances applicable to the work to be performed under the terms of this AGREEMENT.

**(9) CONSENT AND BREACH NOT WAIVER:** No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the PARTIES to have waived or consented. Any consent by any PARTY to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

**(10) DISPUTES:** The PARTIES agree to mediate any dispute prior to filing suit or prosecuting suit against the other parties. At least one mediation session of one day duration with an agreed-upon mediator shall be held prior to any party filing any suit or other action with regard to this Agreement; the cost shall be shared by the Parties equally. In the event suit is brought upon this AGREEMENT to enforce its terms, each PARTY shall be responsible for its own attorneys' fees and costs.

**(11) INDEMNIFICATION:** Each PARTY to this AGREEMENT (1) acknowledges its responsibility to comply with the development of the WQIP, as outlined in EXHIBIT A, EXHIBIT B, EXHIBIT C, and EXHIBIT D, and (2) shall pay all fines, penalties, and costs which may arise out of such PARTY's non-compliance with the MS4 PERMIT or BACTERIA TMDL.

**(12) APPLICATION OF PRIOR AGREEMENTS:** This AGREEMENT constitutes the entire Agreement between the parties with respect to the subject matter; all prior agreements, representations, statements, negotiations, and undertakings are superseded hereby.

**(13) TERMINATION:** Any PARTY may terminate this AGREEMENT by giving written notice to the other parties no less than 30 days prior to the effective date of termination. Termination of this agreement does not release any PARTY for obligations of the

development of the WQIP or their share of the MAP, as outlined in EXHIBIT A, nor does it release the PARTY from its financial responsibilities as outlined in Section 4 of this AGREEMENT. Upon termination, the terminating PARTY shall pay its cost share in full.

**(14) AVAILABILITY OF FUNDS:** The financial obligation of each PARTY is limited to the amount appropriated for this agreement as set forth in Paragraph 4 above. Entering into this agreement shall not be construed as obligating the PARTIES to future payment of money in excess of appropriations authorized by law.

**(15) EXECUTION OF AGREEMENT:** This AGREEMENT may be executed in counterpart and the signed counterparts shall constitute a single instrument.

**(16) ENCUMBRANCE:** By reason of constraints in California law and the California Constitution, Caltrans encumbers an amount not to exceed \$23,699 as its portion of the shared cost and no further funding will be available to address the Caltrans obligations assumed under this AGREEMENT 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.

**(17) RIGHT TO AUDIT:** The City of San Diego and other parties to this agreement retain the right to review and audit, and the reasonable right of access to PARTIES' respective premises to review and audit the PARTIES' compliance with the provisions of this AGREEMENT [ Right to Audit]. The Right to Audit 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 AGREEMENT with appropriate safeguards, if such retention is deemed necessary by the auditing entity in its sole discretion. This information shall be kept by any auditing entity in the strictest confidence allowed by law.

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

For the County of San Diego

Date: 5/30/2014

Signature James W Brozoning  
For Thomas J. Pastuszka  
Clerk of the Board of Supervisors

Approved as to Form  
County Counsel

Approved and/or authorized pursuant to  
County of San Diego Administrative Code §123.  
By: S. H. [Signature] Date: 5/30/14 88  
Deputy Clerk of the Board Supervisors

Date 10/9/13

Signature James O'Day  
Printed Name: James O'Day  
Title: Senior Deputy County Counsel

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

STATE OF CALIFORNIA

Department of Transportation

Date: 10/8/13

  
\_\_\_\_\_

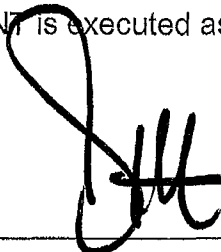
Bruce April

Deputy District Director, Environmental Division




IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date: 18 OCT 13

  
\_\_\_\_\_  
City of San Diego, Responsible Party

Approved as to Form  
JAN I. GOLDSMITH, City Attorney

By

Date October 22, 2013 Signature 


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

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date 10-8-13 Signature *Keith Lul*

City of Santee, Responsible Party

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

Date 10/10/13 Signature 

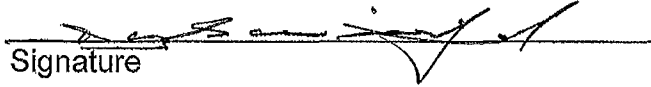
David E. Witt  
City Manager  
City of La Mesa

Date 10/13/13 Signature 

Glenn Sabine  
City Attorney  
City of La Mesa

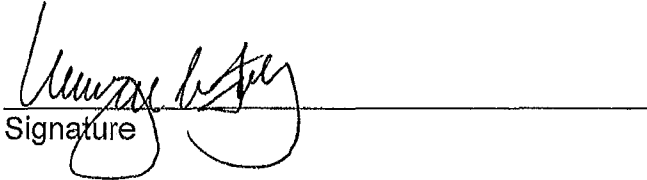
IN WITNESS THEREOF, this Agreement is executed as follows:

Date: 12-29-13

  
Signature

Douglas Williford  
City Manager  
City of El Cajon, Copermitttee

APPROVED AS TO FORM:

  
Signature

Morgan L. Foley  
City Attorney  
City of El Cajon