

Appendix 6-A: RWMG Memorandum of Understanding

Fiscal Years 2012-2016



**MEMORANDUM OF UNDERSTANDING
BETWEEN CITY OF SAN DIEGO
COUNTY OF SAN DIEGO, and SAN DIEGO COUNTY WATER AUTHORITY
for the
INTEGRATED REGIONAL WATER MANAGEMENT PROGRAM
For Fiscal Years 2012-2016**

This Memorandum of Understanding (MOU) between the San Diego County Water Authority (Water Authority); the City of San Diego, a municipal agency (City); and the County of San Diego, a political subdivision of the State of California (County), sets forth the respective roles of Water Authority, City and County in regard to the Integrated Regional Water Management (IRWM) Plan and Program. Water Authority, City and County are sometimes referred to in this MOU collectively as the "Parties" and individually as "Party."

This MOU replaces the Memorandum of Understanding (March 25, 2009), as amended, between City, County, and Water Authority for Fiscal Years 2009-2013 for the IRWM Grant Program.

RECITALS:

1. The California Legislature enacted SBX2 1 (Perata, Chapter 1 Statutes of 2008), the Integrated Regional Water Management Planning Act, which repealed and re-enacted Part 2.2 of Division 6 of the Water Code relating to integrated regional water management plans. SBX2 1 provides that a regional water management group may prepare and adopt an integrated regional water management (IRWM) plan.
2. In November 2002, Proposition 50, the Water Security, Clean Drinking Water, Coastal and Beach Protection Act, authorized the Legislature to appropriate funding for competitive grants for IRWM projects.
3. In November 2006, Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act, authorized the Legislature to appropriate funding for competitive grants for IRWM projects.
4. The intent of the IRWM Grant Program (Program) established in accordance with Proposition 50 and SBX2 1, is to encourage integrated regional strategies for management of water resources and to provide funding, through competitive grants, for projects that protect communities from drought, protect and improve water quality, promote environmental stewardship, and improve local water security by reducing dependence on imported water.
5. To qualify as a regional water management group (RWMG) and comply with the Program Guidelines (Guidelines) established under Proposition 50 and SBX2 1, at least three agencies must participate in the group; two of the agencies must have statutory authority over

water management that may include water supply, water quality, flood control, or stormwater management.

6. In 2005, the Parties established an RWMG that consists of Water Authority, which has statutory authority over water management; City, which has statutory authority over water management, water quality, wastewater, flood management and stormwater; and County, which has statutory authority over water quality, stormwater and flood control in the unincorporated area.

7. The Parties understand that only through a collaborative effort with the many stakeholders involved in water management planning can the IRWM Plan process be successful in the San Diego region.

8. As part of the public outreach and stakeholder involvement effort, the Parties established the Regional Advisory Committee (RAC), which comprises up to 32 representatives appointed by the Parties from the water management areas of water supply, water quality and natural resources/watersheds management; and representatives of businesses, academia and tribes, as well as other interested members of the public. The purpose of the RAC is to make recommendations to the Parties on key issues related to IRWM planning and grant applications.

9. The Parties, acting with positive recommendations from the RAC, completed the first San Diego IRWM Plan (Plan) in 2007. Subsequently, the Parties have received funding for planning and implementation of projects from the California Department of Water Resources (DWR). Additional funding is available to the San Diego IRWM Program from Proposition 84, approved by California voters in 2006.

10. To qualify for Proposition 84 IRWM funding, a planning region must have an IRWM Plan that complies with the requirements of California Water Code Section 83002(b)(3)(B), or must have committed to bringing its plan into compliance within two years of receiving such funding.

11. A Local Project Sponsor (LPS) is a proponent of an individual project that will be funded as part of an IRWM Program grant from the State or other future funding agencies. An LPS may be Water Authority, County, City, a Water Authority member agency, a municipality, a local agency or a non-profit organization.

12. This MOU consists of five major components: general grant obligations, San Diego IRWM Plan update, IRWM grant administration, the role of the RAC, and funding for IRWM Program management.

Now, therefore, in consideration of the above incorporated recitals and mutual obligations of the Parties herein expressed, the Parties agree as follows:

1. General Grant Obligations

- a. The Parties are equal partners in the development and submission of IRWM grant applications. All Parties shall provide timely reviews and approvals before grant

applications are submitted.

- b. Water Authority shall submit the grant applications to the funding agency on behalf of the Parties.
- c. To expedite the grant application process, Water Authority shall provide initial funding for a consultant to develop the applications. The total cost of the consultant and applications shall be shared by the parties consistent with Section 5 of this MOU.
- d. The funding commitment by the Parties under Section 5 of this MOU assumes that the Parties will continue to pay or provide in-kind services as allowed for the entire cost of grant applications for the IRWM Program. As part of the IRWM Plan Update described in Section 2 of this MOU, the Parties agree to study the concept of obtaining funding from other sources to fully or partially defray the cost of grant applications.
- e. Water Authority shall be responsible for administering funding for projects that are receiving IRWM Program grant funding with respect to submitting invoices and quarterly reports to the funding agency, distributing funding to LPS, and processing contract amendments as applicable.
- f. The Parties shall share equally in any and all contractual liability, regardless of nature or type, which arises out of or results from a LPS's performance of services under its agreement with the Water Authority. The Parties shall share equally in any of the default provisions listed in the grant agreements received by the Parties. The Water Authority also agrees to pursue contractual remedies.
- g. Each Party shall procure and maintain during the period of this MOU insurance from insurance companies admitted to do business in the State of California or shall self-insure to cover any contractual liability resulting from the conditions referenced in Section 1f.

2. San Diego IRWM Plan Update

- a. The Parties are equal partners in the update of the Plan. Water Authority shall contract with a consultant to update the Plan in compliance with the Guidelines and schedule established by DWR, and submit the updated Plan to DWR.
- b. The update of the Plan shall be contingent upon receipt of grant funding for this purpose.

3. IRWM Grant Contracts Administration

- a. The Water Authority shall administer and manage IRWM grant agreements, administer the LPS contracts, develop and maintain a reporting and invoicing program, and communicate project and agreement progress to the RWMG, RAC, and the funding agency.

- b. An LPS that has satisfied all invoicing requirements for a grant shall invoice the Water Authority, which shall in turn invoice the funding agency. The Water Authority shall, within 45 days of receipt of funds from the funding agency, disburse the funds to the LPS.
- c. The Water Authority shall appropriate a percentage of the grant money allocated to each LPS project to fund administration of the IRWM grants. The Parties shall agree mutually to the percentage of the grant money that is to be appropriated for this purpose. To the extent that costs exceed the amount in this fund, and that the Parties mutually agree to the additional cost, the Parties shall equally share the additional costs in accordance with Section 5a.
- d. Where a labor compliance requirement has been established by the granting agency, Authority shall report to the granting agency the compliance status of LPS, as reported by LPS, with applicable public works laws.

4. Role of Regional Advisory Committee (RAC)

The RAC shall be considered the project advisory committee. The Parties are committed to a cooperative relationship with the RAC and will incorporate the RAC's consensus recommendations in documents prepared for presentations to the Parties' governing bodies. The Parties' governing bodies will give primary consideration to the recommendations of the RAC as part of any decision related to the following:

- a. Adoption of updates to the IRWM Plan for the San Diego Region.
- b. Criteria for prioritizing projects to be submitted for IRWM grant programs.
- c. Reevaluation of all projects submitted for grant funding if a funding agency funds the Program at a level lower than the requested grant amount and does not provide direction on which projects to fund. Parties shall fund the projects based on consultation with the RAC and the criteria for project prioritization (Section 4b).
- d. Approval and submittal of grant applications.
- e. Transition of responsibility for implementation of the IRWM Plan to a new institutional structure.

5. Funding

- a. Funding for FY 2012-2016 shall not exceed \$1,470,000. Each Party shall provide an equal share of this funding in an amount not to exceed \$490,000. If a Party's contribution was not totally expended in the MOU (March 25, 2009), as amended, that Party shall be credited for the unexpended amount in this MOU.

- b. In-kind services provided by the Parties shall be considered in excess of the above funding amounts and are not reimbursable. The Parties' staff shall separately document time spent on in-kind services for IRWM planning, administration and grant applications.
- c. The funding commitment described in 5a shall not include expenditures to administer the IRWM Grant Program.
- d. Water Authority shall invoice City and County on a quarterly basis along with supporting documentation of expenses. City and County shall remit payment within 60 days of receipt of invoice.

6. Assignment

Parties shall not assign or transfer this MOU or any rights under or interest in this MOU without written consent of all other Parties, which may be withheld for any reason.

7. Defense and Indemnity

Water Authority, City, and County each agree to mutually indemnify, defend at its own expense, including attorneys' fees, and hold each other harmless from and against all claims, costs, penalties, causes of action, demands, losses and liability of any nature whatsoever, including but not limited to liability for bodily injury, sickness, disease or death, property damage (including loss of use) or violation of law, caused by or arising out of or related to any negligent act, error or omission of that party, its officers or employees, or any other agent acting pursuant to its control and performing under this Agreement.

Nothing in the foregoing shall be construed to require any Party to indemnify another for any claim arising from the sole negligence or willful act of the Party to be indemnified.

8. Document Review

Water Authority, City and County each shall make available for inspection to the other Parties, upon reasonable advance notice, all records, books and other documents relating to the Plan and the Program, unless privileged.

9. Term

The term of this MOU shall begin on the date of execution by all Parties and expire on June 30, 2016 expressly contingent upon funding by Water Authority, City and County. The term may be extended by written agreement of all Parties. The Parties shall continue to participate in the planning, development and coordination of the Plan and Grants to the maximum extent possible. The Parties agree to notify one another in the event that their agency's future budget appropriations impact Program funding continuity. If appropriations are different than anticipated, the MOU and Program funding shall be adjusted based on actual funding.

10. Notice

Any notice, payment, credit or instrument required or permitted to be given hereunder will be deemed received upon personal delivery or 24 hours after deposit in any United States mail depository, first class postage prepaid, and addressed to the Party for whom intended as follows:

If to the Water Authority:

San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123
Attn: Mark Stadler

If to City:

City of San Diego Water Department
600 B Street, Suite 600
San Diego, CA 92101
Attn: Cathy Pieroni

If to County

County of San Diego
5201 Ruffin Road, Suite P
San Diego, CA 92123
Attn: Sheri McPherson

Any Party may change such address or contact by notice given to the other Parties as provided herein.

11. Amendments

The MOU may be amended by written agreement of all Parties.

12. Severability

The partial invalidity of one or more parts of this MOU will not affect the intent or validity of this MOU.

13. Governing Law

This MOU shall be deemed a contract under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. Any action brought shall be in San Diego County, California.

14. Obligations

Nothing in this agreement shall create additional obligations with respect to the Plan or Program.

15. Termination of MOU

This MOU may be terminated by any Party with or without cause 30 days after notice in writing to the other Parties.

16. Signatures

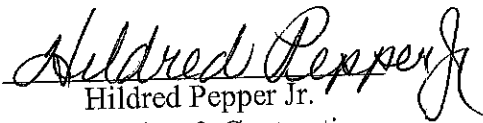
The individuals executing this MOU represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date below.

San Diego County
Water Authority

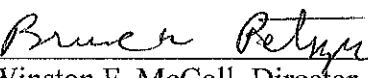
City of San Diego

By: 
Ken Weinberg
Director of Water Resources

By: 
Hildred Pepper Jr.
Purchasing & Contracting
Director

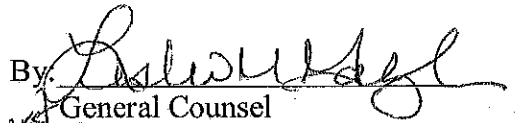
County of San Diego

By: 
Richard Crompton, Director
Department of Public Works

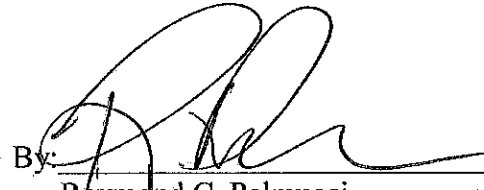
By:  **RISKY**
Winston F. McColl, Director
Department of Purchasing and Contracting

APPROVED AS TO FORM:

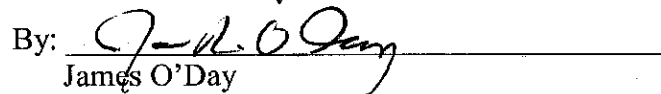
San Diego County
Water Authority

By: 
General Counsel
San Diego County Water Authority

City of San Diego

By: 
Raymond C. Palmucci
Deputy City Attorney

County of San Diego

By: 
James O'Day
County Counsel, Senior Deputy

Date: 9/21/11