

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Dave Klotzle, Interim City Engineer/Public Works Director
Prepared By: Shaun Kroes, Senior Management Analyst 

DATE: September 15, 2010 (CC Meeting of 10/06/10)

SUBJECT: Consider Approval of Implementation Agreement for Countywide Stormwater Program

SUMMARY

The proposed agreement (Attachment 1) establishes a new Stormwater Program Implementation Agreement (Implementation Agreement) that delineates responsibilities and creates a formula for each agency's share of administrative expenses. The proposed agreement is between the Ventura County Watershed Protection District (District), the ten Ventura County cities and Ventura County (Co-permittees).

BACKGROUND

The Ventura Countywide Co-permittees have established a working relationship with each other through the Countywide Stormwater Program (Program). Since its inception in 1992, the Program has been partially funded by a benefit assessment (BA) collected by the District under a National Pollutant Discharge Elimination System (NPDES) Implementation Agreement – Stormwater Regulation Program (1992 Implementation Agreement) between the District and Co-permittees.

The BA is collected by the District and is based on a Basic Assessment Unit (BAU) benchmark. All Cities and the County have a designated number of BAUs. Moorpark's BAU is 13,280. The BAU is based on the number of property parcels in the City and the proportion of stormwater a parcel of land contributes to the overall stormwater runoff. The City's overall number of BAU parcels changes year-to-year. The County and the cities within the County, with the exception of Moorpark, receive BA funds through the District tax assessment for their individual stormwater programs. The 1992 Implementation Agreement delineates the responsibilities and funding mechanism for all Co-permittees and the Principal Permittee under the NPDES Stormwater Permit (Permit). There were

four separate 1992 Implementation Agreements that were divided by watershed zones. Moorpark approved the 1992 Implementation Agreement.

The District is designated as the "Principal Permittee" in the current Permit, the 1992 Implementation Agreement, and the proposed Implementation Agreement. The Principal Permittee is responsible for the administration of the Permit and other duties which include, but are not limited to, coordinate required management and subcommittee meetings, serve as liaison between the Co-permittees and Regional Water Quality Control Board, prepare annual reports and monitoring reports, conduct water quality monitoring and conduct public outreach on behalf of the Program.

DISCUSSION

Under the previous Permit, Principal Permittee costs were approximately \$1.4 million annually. In Fiscal Year 2007/08, the District stated that due to funding constraints, it could no longer shoulder the entire Principal Permittee budget without assistance from the Co-permittees. The Co-permittees agreed to a requested amendment to the 1992 Implementation Agreements, which was approved by the Moorpark City Council on February 6, 2008 with a City cost share of \$21,635 funded by the General Fund (1000). The amendment was only for FY 2007/08. The District then again requested a second amendment for FY 2008/09. Council approved the second amendment on December 3, 2008 with a City cost share of \$22,898 funded by the General Fund (1000). The 1992 Agreement was amended a third time on December 16, 2009 with a City cost share of \$58,336 funded by the General Fund (1000).

The proposed Implementation Agreement reflects the new Permit adopted July 8, 2010. It defines the fiscal responsibilities (expenditures and contributions) of all collective parties with respect to the current Permit. It formalizes the Principal Permittee's and Co-permittees' commitment to cooperate and to mutually fund an integrated Program of protecting and improving water quality in Ventura County. The Implementation Agreement allows for sharing of Principal Permittee costs among all the Co-permittees. The Implementation Agreement will remain in place until the current Permit expires. Although the current Permit is technically a five-year permit, past permits have lasted longer due to delays in the Regional Water Quality Control Board's adopting a new permit.

The new Permit mandates increased Program responsibilities, such as additional monitoring locations, constituents and frequency; greater public outreach; new reporting formats and data base development; increased inspections; developing guidance manuals and other activities. These added activities substantially increase Program costs specific to the Principal Permittee. Under the proposed Implementation Agreement the cost sharing for the Program is such that the District pays 50 percent of the Principal Permittee costs and the remaining 50 percent is shared among the other Co-permittees. This cost share is different than the previous amendments. The amendments called for the District to pay with 50 percent of its NPDES BA (revenue). The change to a 50 percent cost

distribution creates an incentive for the District to keep costs down. Cost sharing by the Co-permittees will be divided proportionally by BAU ratios and the BAU ratios will be updated annually based on the County Assessor's records. The District's cost share is limited to \$1 million for fiscal year 2010-2011 and 50 percent of the Principal Permittee costs in subsequent years during the term of the agreement.

It is in the City's best interest to remain in a cooperative agreement with the Co-permittees and the District to work towards complying with the Permit. It would be more expensive for the City to separate from the Program and attempt to comply with the Permit's requirements on its own.

FISCAL IMPACT

The estimated cost of the Agreement for the City is \$48,677 for FY 2010/11. There are sufficient funds budgeted in the City's adopted budget for FY 2010/11 for the expenditure from the City's General Fund (1000).

STAFF RECOMMENDATION

1. Authorize the Mayor to sign the Agreement subject to final language approval by City Manager and City Attorney.

Attachment: 1. Implementation Agreement.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
IMPLEMENTATION AGREEMENT
VENTURA COUNTYWIDE STORMWATER QUALITY MANAGEMENT PROGRAM

This AGREEMENT is between the County of Ventura hereinafter referred to as COUNTY, the Ventura County Watershed Protection District hereinafter referred to as DISTRICT and the Cities of Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, San Buenaventura, Santa Paula, Simi Valley and Thousand Oaks, hereinafter collectively referred to as CITIES, with respect to the following matters:

RECITALS

Whereas, Congress in 1987 amended Section 402 of the Federal Clean Water Act [33 U.S.C.A. 1342(p)] to require the federal Environmental Protection Agency (EPA) to promulgate regulations for stormwater discharges; and

Whereas, these regulations require the control of pollutants for stormwater discharges by requiring a National Pollutant Discharge Elimination System ("NPDES") permit for the discharge of stormwater into waters of the United States; and

Whereas, the CITIES, the COUNTY and the DISTRICT entered into a series of agreements beginning in 1992 ("Implementation Agreements") to fund and develop an integrated stormwater discharge management program with the objective of protecting and improving water quality in Ventura County; and

Whereas, pursuant to the Implementation Agreements, the CITIES, the COUNTY, and the DISTRICT jointly filed an application with the Los Angeles Regional Water Quality Control Board (Regional Board) for a NPDES permit; and

Whereas, the Regional Board in 1994 adopted Order No. 94-082 which regulated stormwater discharges in Ventura County; and

Whereas, the Regional Board in 2000 replaced Order No. 94-082 with Order No. 00-108; and

Whereas, the Regional Board on May 7, 2009 replaced Order No. 00-108 with Order No. 09-0057; and

Whereas, the Regional Board on July 8, 2010 adopted Order No. 2010-0108 (PERMIT), which designates the CITIES, the COUNTY and the DISTRICT as "Co-Permittees" and designates the DISTRICT as the "Principal Permittee;" and

Whereas, the Implementation Agreements provide, among other things, for the funding of NPDES program requirements through the DISTRICT's Benefit Assessment Program; and

Whereas, the CITIES, the COUNTY, and the DISTRICT have approved annual extensions of the Implementation Agreements in order to provide annual funding for NPDES program requirements; and

Whereas, the latest extension of the Implementation Agreements will expire on June 30, 2010; and

Whereas, the CITIES, the COUNTY, and the DISTRICT mutually desire to modify, among other things, the cost share provisions under the Implementation Agreement in accordance with changes to the NPDES Program while preserving the Benefit Assessment Program as a source of funding for the program; and

Whereas, cooperation among the CITIES, the COUNTY and the DISTRICT to jointly implement a Countywide NPDES Stormwater Program is in the best interests of the CITIES, the COUNTY and the DISTRICT; and

Whereas, the CITIES, COUNTY and DISTRICT also operate municipal storm drain systems and discharge stormwater and urban runoff pursuant to the PERMIT; and

Whereas, the CITIES, COUNTY and DISTRICT as Co-Permittees have obtained, renewed and complied with the PERMIT; and

Whereas, the PERMIT requires the Co-Permittees to coordinate the development and implementation of a stormwater quality management program.

NOW, THEREFORE, the parties do mutually agree as follows:

1. **PURPOSE**: This AGREEMENT establishes the rights and responsibilities of each party with respect to funding and compliance with the PERMIT.
2. **CONDUCT OF VENTURE**: The responsibilities of the CITIES, COUNTY and DISTRICT are as described in the PERMIT and as described below:
 - A. Each Co-Permittee is independently responsible for complying with the requirements of the PERMIT within its own jurisdiction and complying with any individual enforcement actions pertaining to permit violations issued by the Regional Board.
 - B. The Ventura Countywide Stormwater Quality Management Program (PROGRAM) will be managed by a Management Committee (COMMITTEE). The COMMITTEE will be composed of twelve (12) members; one representative of each of the CITIES, COUNTY, and the DISTRICT. The COMMITTEE will be the principal forum for directing the activities of PROGRAM. The COMMITTEE will be chaired by the representative of the Principal Permittee named in the PERMIT.
 - C. Each member of the COMMITTEE will have one vote for any motion. Any budgetary motion must be approved by a 2/3 majority vote of the

COMMITTEE (8 of 12), and any non-budgetary motion must be approved by majority vote.

- D. Rules governing the efficient operation of the PROGRAM (Appendix A) and COMMITTEE (Appendix B), including the definition of Co-permittee activities, Principal Permittee activities (Administration, Reporting, Monitoring, Countywide Outreach), as defined by the COMMITTEE are incorporated herein and attached as appendices. The Public Works Directors Committee (DIRECTORS) will be composed of 12 members; the Public Works Director of each of the ten CITIES, the County's Public Works Director, and the District's Director, or their designees.
- E. The DISTRICT, in addition to being a Co-Permittee, performs the services of the Principal Permittee. If there should be a transition of any Principal Permittee service(s) to another service provider, it is the intent of the Co-Permittees that a reasonable time period be required to enable a smooth transition of those services that minimizes the DISTRICT's loss in either infrastructure or staff levels. For external expenses of tasks over \$50,000, Co-Permittees have the option of directing the Principal Permittee to go through a competitive process for choosing the method of delivery of services.
- F. DISPUTE RESOLUTION: Any COMMITTEE member may appeal any formal decision of the COMMITTEE to the DIRECTORS.

All appeals brought to the DIRECTORS must be decided by a 2/3 majority vote of the DIRECTORS.

- 3. FINANCIAL RESPONSIBILITIES: COMMITTEE-approved activities performed by the Principal Permittee benefit all of the Co-Permittees. By pooling resources, the Co-Permittees benefit from cost sharing and better coordination of permit-required activities. Each of the Co-Permittees has a responsibility to fund a portion of the budget for services performed by the Principal Permittee. Principal Permittee activities, in general, consist of the following: program administration/coordination, reporting, monitoring and public outreach. In addition, those activities not included in the annually approved Principal Permittee budget (for instance, those activities specific to one party) are not the responsibility of the Co-Permittees.

- A. Principal Permittee Costs – The DISTRICT will pay 50% of the Principal Permittee cost, annually, with one exception: for Fiscal Year (July 1 through June 30; FY) 2010-2011, the DISTRICT will contribute 50% up to, but not exceeding, one million dollars (\$1,000,000). If the Principal Permittee costs for FY 2010-2011 exceed two million dollars (\$2,000,000), those excess costs will be shared among the CITIES and COUNTY, as described in subsection 3.B.i.

- B. Co-Permittee Costs

- i. CITIES and COUNTY will pay the cost for approved Principal Permittee expenses, less the DISTRICT's cost share, per subsection 3.A., proportional to the current Benefit Assessment Unit (BAU) ratios. The BAU ratios are updated annually according to the County Assessor's records.
- ii. All Co-Permittees will pay their own costs for Co-Permittee activities not assigned to the Principal Permittee.
- iii. The CITIES and COUNTY will investigate alternatives to the BAU cost-sharing method and, in good faith, discuss and try to reach consensus, on maintaining the current method for cost-sharing, or amending this AGREEMENT to initiate an alternative cost-sharing method. The investigation and discussion will take place in FY 2010-2011 with the goal to reach a consensus by April 1, 2011, so an amendment, if necessary, can be prepared to be approved by all the Co-Permittees and implemented on July 1, 2011, for FY 2011-2012 and beyond.

4. FUNDING SOURCES:

- A. Co-Permittees may continue to fund requirements described in Section 3 through the DISTRICT's Benefit Assessment Program in accordance with annual requests submitted to the DISTRICT. Each annual request must be supported by a program description, budget, and such other information reasonably requested by the DISTRICT. The Co-Permittees' share of the Principal Permittee budget may be deducted from the proceeds of the Benefit Assessment Program or by payment to DISTRICT. Co-permittees must notify DISTRICT by February 1 of each year of their preferred method.
- B. The Co-Permittees will collaborate with the DISTRICT, and invite them to participate in additional funding source(s) for activities to comply with Order No. 2010-0108.

5. RECORDS AND ACCOUNTING: By February 1st of each year, the Principal Permittee must prepare a projected detailed annual budget by activity, including but not limited to, labor and fixed costs for COMMITTEE review and approval for the following fiscal year.

- A. The Principal Permittee must implement accounting tracking mechanisms in order to report and describe contributions and expenditures annually.
- B. Each year Principal Permittee expenditures will be reconciled against the approved budget. Any unexpended Principal Permittee funds will be refunded to the Co-Permittees in the subsequent year.
- C. The Principal Permittee will retain all permit-required documents and fiscal records for five years, and make available for review by any Co-Permittee, the Regional Board and/or the USEPA.

6. FINANCIAL IMPLEMENTATION DATE: The financial aspects of this AGREEMENT will take effect on July 1, 2010.
7. AMENDMENTS TO AGREEMENT: This AGREEMENT will be re-evaluated with each new NPDES permit and prior to the finalization of any new major PROGRAM funding source. This AGREEMENT may be amended by written consent of the Co-Permittees, signed and approved by the governing body of each Co-permittee. Any amendment must comply with the requirements and regulations set forth by the Regional Board. Should, during the AGREEMENT term, Order No. 2010-0108 be revised, the parties will have the right to call for renegotiating the financial terms described in this AGREEMENT. Revision of Order No. 2010-0108 through a TMDL reopener process (incorporation of newly adopted TMDLs into the Order) are not considered for these purposes a call for renegotiation.
8. NON-COMPLIANCE WITH PERMIT: Any Co-permittee or Principal Permittee not in compliance with the PERMIT within its jurisdiction or scope of responsibility will be solely responsible for any lawfully assessed penalties.
9. APPENDAGE OF AGREEMENT: Any Co-permittee may negotiate a separate AGREEMENT with other Co-Permittees or with all Co-Permittees regarding stormwater/urban runoff discharge management issues. Such agreements will not be appended to this AGREEMENT however, they may reference this AGREEMENT.
10. WITHDRAWAL FROM THE AGREEMENT: A Co-Permittee may withdraw from this AGREEMENT after giving at least 180 days' written notice of withdrawal to the Principal Permittee and the Regional Board. The Principal Permittee must notify the remaining Co-Permittees within ten (10) business days of receipt of such notice.
 - A. The withdrawing Co-Permittee must obtain a separate Stormwater NPDES permit prior to withdrawal and comply with all permit requirements established by the Regional Board. Any withdrawing Co-permittee will be responsible for its share of Principal Permittee and shared costs for the remainder of the budget year of withdrawal.
 - B. The withdrawing Co-Permittee will be solely responsible for all lawfully assessed penalties as a consequence of withdrawal. The cost allocations to the remaining Co-Permittees will be recalculated in the following budget year.
12. EXECUTION IN COUNTERPARTS: This AGREEMENT may be executed and delivered in any number of counterparts or copies by the parties. When each party has signed and delivered at least one counterpart to the other parties, each counterpart will be deemed an original, and taken together, will constitute one and the same AGREEMENT, which will be binding and effective as to all the parties.

13. FEDERAL AND STATE GUIDELINES: This AGREEMENT is meant to be consistent with the terms of all applicable Federal and State permit regulations or guidelines as presently written and as may be amended during the term of this AGREEMENT. If any provision of this AGREEMENT conflicts with any Federal or State permit regulation or guideline, the guideline will take precedence. All provisions, which remain consistent, will remain in force and effect.
14. TERM: This AGREEMENT will become effective upon approval of all 12 Co-Permittees and will continue in effect until the term of the Permit issued by the Board on July 8, 2010 (Order No. 2010-0108) expires, or until terminated in the manner provided for in this AGREEMENT.
15. TERMINATION OF AGREEMENT: A 2/3 majority (8 of 12) of the Co-Permittees may terminate this AGREEMENT by mutual written consent.
16. NOTICES: All notices and correspondence will be deemed duly given, if (a) sent by certified U.S. mail; (b) delivered by hand; (c) deposited in the U.S. mail, postage prepaid and notice to the addresses of such mailing by phone immediately after deposit in the U.S. mail; (d) emailed and notice to the recipient by phone immediately after sending the email; or (e) faxed to the Principal Permittee and confirmation by phone immediately after sending the fax. All notices and correspondence must be sent or delivered to the following respective addresses or phone numbers of the parties:

Ventura County Watershed Protection District
800 South Victoria Avenue
Ventura, CA 93009
Attn: Director of Watershed Protection District
Phone: (805) 654-2040; Fax (805) 654-3350

County of Ventura
800 South Victoria Avenue
Ventura, CA 93009
Attn: Director of Public Works
Phone: (805) 654-2073; Fax (805) 654-3952

City of Camarillo
601 Carmen Drive
Camarillo, CA 93010
Attn: Director of Public Works
Phone: (805) 388-5307; Fax (805) 388-5318

City of Fillmore
250 Central Avenue
Fillmore, CA 93015
Attn: Director of Public Works
Phone: (805) 524-3701; Fax (805) 524-5707

City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
Attn: City Engineer/Public Works Director
Phone: (805) 517-6255; Fax (805) 532-2555

City of Ojai
401 South Ventura Street
Ojai, CA 93023
Attn: Director of Public Works
Phone: (805) 640-2560; Fax (805) 640-2571

City of Oxnard
305 West Third Street
Oxnard, CA 93030
Attn: Director of Public Works
Phone: (805) 385-8280; Fax (805) 385-7907

City of Port Hueneme
250 North Ventura Road
Port Hueneme, CA 93041
Attn: Director of Public Works
Phone: (805) 986-6568; Fax (805) 986-6660

City San Buenaventura
501 Poli Street
Ventura, CA 93001
Attn: Director of Public Works
Phone: (805) 654-7800; Fax: (805) 652-0865

City of Santa Paula
P.O. Box 569
Santa Paula, CA 93061-0569
Attn: Director of Public Works
Phone: (805) 933-4212; Fax (805) 525-3742

City of Simi Valley
2929 Tapo Canyon Road
Simi Valley, CA 93063
Attn: Director of Public Works
Phone: (805) 583-6786; Fax (805) 583-6300

City of Thousand Oaks
2100 Thousand Oaks Blvd.
Thousand Oaks, CA 91362
Attn: Director of Public Works
Phone: (805) 449-2457; Fax (805) 449-2475

17. ENTIRE AGREEMENT: This AGREEMENT contains the entire understanding of the Co-Permittees with respect to the matters contained herein, and supersedes any prior agreement or understanding, oral or written.
18. ASSIGNMENT: Each Co-Permittee has the right to assign its rights and obligations under this AGREEMENT only with the written consent of every other Co-Permittee, which consent may not be unreasonably withheld.
19. SUCCESSORS IN INTEREST: Except as otherwise provided, this AGREEMENT will inure to the benefit of and be binding upon the successors and assigns of the parties. Except as expressly set forth herein, this AGREEMENT is not intended to benefit any person or entity not a party to this AGREEMENT.
20. SECTION HEADINGS: Headings at the beginning of each numbered section of this AGREEMENT are solely for the convenience of the parties and are not a part of this AGREEMENT.
21. SEVERABILITY: The invalidity in whole or in part of any provision of this AGREEMENT will not void or affect the validity of the other provisions of this AGREEMENT.
22. INTERPRETATION: The language in all parts of this AGREEMENT will be construed under the laws of the State of California according to its normal and usual meaning, and not strictly for or against any party. Exclusive venue for any action involving this AGREEMENT is in Ventura County. In the event of litigation in a United States District Court, exclusive venue is the Central District of California.
23. NO AGENCY CREATED: Nothing in this AGREEMENT is intended to create a separate entity or agency and no party to this AGREEMENT is the agent of any other party and nothing in this AGREEMENT will be construed as permitting or authorizing any party to this AGREEMENT to act in any capacity as an agent of the other except as expressly provided herein. Notwithstanding the foregoing, the parties acknowledge that they are entering into this AGREEMENT for their mutual benefit, and the parties agree to execute such further agreements and documents and take such further actions as may be reasonably necessary to implement this AGREEMENT.
24. AUTHORITY TO EXECUTE AGREEMENT: Each party covenants that each individual executing this AGREEMENT on behalf of such party is a person duly authorized and empowered to execute agreements for such party.

[An executed signature page must be provided by each signatory.]

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
IMPLEMENTATION AGREEMENT
VENTURA COUNTYWIDE
STORMWATER QUALITY MANAGEMENT PROGRAM**

City of Moorpark Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day and date first above written.

CITY OF MOORPARK

Janice S. Parvin, Mayor
City of Moorpark, California

Date

ATTEST:

Deborah S. Traffenstedt, City Clerk

**APPENDIX A:
GUIDELINES FOR DETERMINING PRINCIPAL PERMITTEE ACTIVITIES**

Definition of Program Activities: Program Activities are permit required activities.

Administration

Principal Permittee Activities
Convene, chair, provide agenda & minutes at Management and Sub-committee meetings
Provide technical and administrative support necessary to implement the Permit.
Prepare and track annual budget
Serve as liaison between the Co-permittees and the RWQCB; <ul style="list-style-type: none"> • Set time schedules for the performance of activities; • Forward Co-permittee information to the RWQCB; • Arrange for public review, when needed; • Update Co-permittees on RWQCB and EPA regulations
Distribute common information
Membership and participation in SCCWRP and CASQA
Secure services of consultants
Benefit Assessment Program coordination
Provide technical leadership
Prepare regulatory response/comment letters
Prepare and update special agreements

Reporting

Principal Permittee Activities
Prepare annual and monitoring reports
File annual Co-permittee self-audits
Prepare ROWD
Seek Co-permittee review
Prepare regulatory response letters for annual reports

Monitoring

Principal Permittee Activities
Implement county-wide monitoring

Countywide Public Outreach

Principal Permittee Activities
Meet minimum Permit required PO elements

**APPENDIX B:
COUNTYWIDE STORMWATER PROGRAM
MANAGEMENT COMMITTEE**

The NPDES Management Committee (COMMITTEE) is the principal forum for directing the countywide stormwater quality management program (PROGRAM) and is composed of twelve (12) members, one representative for each of the CITIES, COUNTY, and the DISTRICT.

1. The COMMITTEE is chaired by the Principal Co-permittee and meets as needed (at least quarterly) to achieve permit requirements and assure PROGRAM continuity.
2. COMMITTEE members and designated alternates shall be senior level and appointed by their Agency.
3. The COMMITTEE shall direct and guide the Program and review and approve the Program budget, comment letters, and report submittals to various agencies (i.e., monitoring reports, annual reports and comment letters sent to Los Angeles Regional Water Quality Control Board. The COMMITTEE shall consider permit compliance, including benefit as a primary objective in approving program tasks and corresponding budgets.
4. The COMMITTEE will review materials developed by the subcommittees, provide comments, and approve or reject program activities.
5. The LARWQCB may appoint a non-voting representative and alternate to the Management Committee.