



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** John Stufflebean

**SUBJECT:** SEE BELOW

**DATE:** 2-16-06

Approved

Date

2/17/06

**SUBJECT: ADOPTION OF A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SECOND AMENDMENT FOR THE SANTA CLARA VALLEY URBAN RUNOFF POLLUTION PREVENTION PROGRAM; AND CONTINUE THE AUTHORITY OF THE DIRECTOR OF ESD TO DESIGNATE A CITY REPRESENTATIVE TO SERVE ON THE PROGRAM MANAGEMENT COMMITTEE**

## RECOMMENDATION

Adoption of a resolution:

1. Authorizing the City Manager to execute a Second Amendment to the Memorandum of Agreement for the Santa Clara Valley Urban Runoff Pollution Prevention Program (Countywide Program) which will extend the term of the Memorandum of Agreement for one fiscal year beyond the termination date of the next National Pollutant Discharge Elimination System (NPDES) stormwater permit, including any administrative extensions of the next NPDES Permit's term, with no change in the cost allocation formula for participation in the Countywide Program; and
2. Continue the authority of the Director of Environmental Services to designate a City representative to serve on the Program Management Committee.

## EXECUTIVE SUMMARY

The Administration is proposing to continue the City's participation in the Countywide Program to support implementation of the stormwater permit. The City and 14 other cities or agencies in Santa Clara County have shared a common stormwater permit and collaborated on joint activities since 1990. The Countywide Program serves as a venue for area-wide implementation of permit requirements, such as those related to water quality monitoring, outreach and education, and program planning. The Program also provides a forum for strong regulatory advocacy and

linkage to regional and statewide stormwater agencies.

The current MOA for the Countywide Program will expire in March 2006. The proposed amendment will extend the City's participation through the term of the next permit at a cost-sharing allocation equal to the current terms, 30.01% for San José. Continued participation allows the City to leverage resources to meet permit requirements that can be most efficiently addressed at a countywide level.

Also included in the February 28, 2006, City Council agenda is a recommendation to submit FY 2006-2007 Work Plans to demonstrate the City's implementation of permit requirements at the local level. Participation in the Countywide Program also supports compliance with the permit, but addresses those requirements through collaboration with co-permittees in Santa Clara County.

## **BACKGROUND**

The Federal Clean Water Act requires the City to have a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of stormwater to surface waters via the City's storm sewer collection system (stormwater permit). San Jose is included in the current stormwater permit issued to 15 agencies in Santa Clara County whose land area drains to South San Francisco Bay. The City's co-permittees are 12 other municipalities, the County of Santa Clara and the Santa Clara Valley Water District (Water District). Since 1990, these agencies have collectively implemented stormwater permit requirements through an association now called the Santa Clara Valley Urban Runoff Pollution Prevention Program (Countywide Program).

A Memorandum of Agreement (MOA) Providing for Countywide Program implementation was approved by City Council on November 29, 1999. The Agreement establishes the Countywide Program for the purpose of complying with NPDES permit requirements, imposed on the City under the Federal Clean Water Act. The Agreement further provides for Program Management by a Program Management Committee (Committee) comprised of representatives of each agency, with one participant (or permittee) acting as the fiscal agent and a consulting firm hired by the fiscal agent on behalf of the Countywide Program serving as Program Administrator. The Countywide Program also provides for a joint application by all of the co-permittees for stormwater NPDES permit renewal. NPDES permits are generally issued for a term of five years, and the current Countywide Program permit is slated to expire on February 21, 2006, but will likely be administratively extended pending development of a Bay-wide Municipal Regional Permit (MRP) for stormwater.

The MOA originally provided for a five-year term, which was set to conclude on March 10, 2005. Following the unanimous recommendation of the Committee, Council adopted resolution 72557 on March 1, 2005, authorizing the City Manager to execute a first amendment to the

MOA for the Countywide Program which extended the term of the MOA to March 10, 2006, and provided for an independent review by the Countywide Program of the MOA cost allocation formula and the term, scope, and cost of the Countywide Program. The limited term of the first amendment and the independent review were spurred by the Water District's consideration of significant reductions in their cost allocation for the program. All other participants also approved the first amendment as recommended by the Committee.

The Countywide Program used an independent contractor to conduct the management and cost allocation review, which was completed in November 2005. The report generally concludes that the Countywide Program costs are within the observed range for other stormwater programs in California and is well managed. Following review and rigorous discussion amongst co-permittees, on December 15, 2005, the Committee unanimously recommended approval of a second amendment to the MOA, which (1) extends the term of the MOA through the term of the next permit plus one fiscal year; (2) maintains the current cost sharing allocations amongst the co-permittees; (3) provides additional information on how the Water District proposes to fund their allocation; and (4) identifies the City of Sunnyvale as the Contracting/Fiscal Agent for the Countywide Program. Each co-permittee of the Countywide Program has until March 10, 2006, to take this amendment to their respective decision-making bodies for adoption.

## ANALYSIS

The Countywide Program provides a venue for an area-wide approach to urban runoff control that benefits all co-permittees. Area-wide programs include consistent program planning, water quality monitoring, outreach and education programs. The Countywide Program also serves as a link to regional and statewide stormwater agencies. Program activities are directed by a Management Committee (Committee) with representatives from each agency. Voting from each agency is weighted according to the cost sharing distribution. The San José representative is designated by the Director of Environmental Services, and it is recommended this authority be continued.

Participating in the Countywide Program allows the City to leverage local resources. This second amendment to the Agreement maintains current cost sharing allocations for all co-permittees. San Jose's share of the Countywide Program is 30.01% of the annual budget. The Water District's share is 30.02% and the remaining co-permittees' shares are roughly commensurate with community size. With the second amendment, additional information is footnoted in the cost sharing allocation portion of the Agreement, stating that one-third of the District's 30.02% allocation is expected to be from the District's voter-adopted Clean Safe Creeks program and the remaining two-thirds is expected to be from funding derived by the District from property tax revenues. The Countywide Program's proposed FY 2006-2007 budget is \$3,287,000 and has remained very consistent over the last three years.

The current Agreement will terminate on March 10, 2006, unless it is extended. The proposed second amendment extends the term of the Agreement for one fiscal year beyond the termination date of the Countywide Program's next NPDES permit, including any administrative extensions of the next NPDES permit's term. This will allow continuation of the Countywide Program and facilitate the co-permittees' negotiation of a renewed NPDES permit, which will likely be a Bay-wide Municipal Regional Permit for municipal stormwater in 2006, issued in late 2006 early 2007. Additionally, the proposed Amendment identifies the City of Sunnyvale as the Contracting/Fiscal Agent for the Countywide Program. The City of Sunnyvale agreed to serve as the Contracting/Fiscal Agent following the Water District's withdrawal as such.

All other terms of the Agreement would remain the same. Termination by any co-permittee would be allowed under existing terms by the provision of at least thirty (30) days written notice.

### **OUTCOME**

Continued participation in the Countywide Program will facilitate the City's compliance with stormwater regulations in a manner that leverages local resources and facilitates negotiation of future regulatory permits.

### **PUBLIC OUTREACH**

The existing Agreement and Bylaws had been previously developed and discussed during the regularly scheduled monthly meetings of the Countywide Program Management Committee, which are public meetings. Public comment was taken during that period. Similarly, this amendment was also discussed during monthly meetings of the Management Committee.

Additionally, outreach is an integral part of the Urban Runoff program. San Jose's Management Plan includes components to conduct outreach to various sectors of the community on relevant stormwater issues, e.g., pesticide use, mercury, new development requirements, and ensuring that only rainwater enters the storm sewer system.

### **COORDINATION**

The MOA and the recommended amendment were developed in cooperation with the co-permittees of the Santa Clara Valley Urban Runoff Pollution Prevention Program. This recommendation has been coordinated with the City Attorney's Office and the Budget Office.

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**COST IMPLICATIONS**

This recommendation is consistent with the Mayor's Budget Strategy to protect vital core service delivery. Participation in the Countywide Program supports compliance with regulatory requirements and thus protects the City's vital core service of managing the storm sewer system.

The City's share of the Countywide Program costs for FY 2006-2007 is expected to be approximately \$968,000. The Environmental Services Department will identify the appropriate funding within the Storm Sewer Fund (446) during the normal annual budget process. Overall, Countywide Program costs are expected to increase with implementation of the next stormwater permit, wherein regulators and other stakeholders are likely to seek increased levels of activity. Over the course of the next year, as City staff receives feedback from the Water Board, staff will apprise Council of any potential new programs and costs. Costs associated with the implementation of the permit are also identified through the regular City budget process.

**BUDGET REFERENCE**

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. for Contract	2005-2006 Adopted Operating Budget	Last Budget Action (Date, Ord.No.)
446	0762	Non-Personal/Equipment		1,807,604	N/A	VIII-48	10/18/05, Ord. No. 27580

**CEQA**

Not a project.



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Director, Environmental Services