

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT
AND RECORD OF ACTION**

February 27, 2024

FROM

NOEL CASTILLO, Chief Flood Control Engineer, Flood Control District

SUBJECT

Cooperative Agreement for Participation in the Southern California Stormwater Monitoring Coalition

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Flood Control District, approve the Cooperative **Agreement No. 24-163** for Participation in the Southern California Stormwater Monitoring Coalition (Cooperative Agreement No. SMC-2024-01), including non-standard terms, designating the San Bernardino County Flood Control District as a member for the purpose of continuing the implementation of the cooperative Stormwater Research Needs Program in Southern California, in compliance with the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Phase I Permit in an amount not to exceed \$500,000, \$100,000 per year, for a term commencing on the later of July 1, 2024 or the date of last signature on the Cooperative Agreement, through June 30, 2029.

(Presenter: Noel Castillo, Chief Flood Control Engineer, 387-7906)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Provide for the Safety, Health and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost) as all associated costs of this Cooperative Agreement for Participation in the Southern California Stormwater Monitoring Coalition (Cooperative Agreement No. SMC-2024-01) (Agreement) will be funded by the San Bernardino County Areawide Stormwater Program (Program) under Implementation Agreement No. 11-545, approved by the Board of Supervisors (Board) on June 28, 2011 (Item No. 94), of which San Bernardino County (County) and the San Bernardino County Flood Control District (District) are members. The District is funded by property taxes, fees, and other local, state, and federal funding. In accordance with the Agreement, future Southern California Stormwater Monitoring Coalition (SMC) budgets and expenditures are subject to member approval. Annually, a budget and a workplan must be developed by the SMC with a maximum obligation to each member of \$100,000 per year, \$500,000 over the term of the Agreement. Funding parties are not required to fund any project in which they choose not to participate. Sufficient appropriation and revenue have been included in the District's 2023-24 budget (1990002550-F01781) and will be included in future recommended budgets.

BACKGROUND INFORMATION

This item authorizes the District, acting on behalf of the Program, to continue to utilize the SMC to assist the Program in complying with its National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Phase 1 Permit (Permit) requirements. Achieving and maintaining compliance with the Permit will aid in the protection of the beneficial uses of the Santa Ana River and reduce the potential for incurring permit violations and significant fines and penalties.

On January 29, 2010, the California Regional Water Quality Control Board – Santa Ana Region (SARWQCB) adopted the NPDES MS4 Permit for urban stormwater discharges from the District, the County, and the 16 cities within the Santa Ana River Watershed. The MS4 Permit contains regional monitoring and reporting requirements, and specifically mandates participation and cooperation with municipal agencies on a regional level through the SMC.

The SMC is a cooperative partnership comprised of multiple municipal agencies formed to maximize the potential of available resources and conduct research necessary for the proper implementation of MS4 permit. Many of the scientific and technical tools for stormwater program implementation, assessment, and monitoring have not been fully developed, and the SMC develops methodologies and assessment tools needed to more effectively understand urban stormwater and non-stormwater impacts on receiving waters. Participation in the SMC is accomplished through a cooperative agreement, and individual projects are identified and funded on an annual basis, though each party to the agreement may elect to not participate nor fund individual projects.

The Board approved the following cooperative agreements to continue participation for additional five-year terms as an SMC member:

Board Date	Item No.	Agreement No.
October 24, 2000	12	00-1087
July 17, 2007	51	07-571
April 7, 2015	62	15-159
February 12, 2019	63	19-87

By working collaboratively on projects that have value for multiple MS4 operators in Southern California, the SMC provides a mechanism to share costs amongst multiple entities and maximize the return on investment for each participant.

The proposed Agreement establishes a process whereby the SMC members (the District, the County of Orange, the Los Angeles County Flood Control District, the County of San Diego, the Ventura County Watershed Protection District, the Riverside County Flood Control and Water Conservation District, the City of Long Beach, the City of Los Angeles, the City of San Diego, the California Regional Water Quality Control Board of the Los Angeles Region, the California Regional Water Quality Control Board of the Santa Ana Region, the California Regional Water Quality Control Board of the San Diego Region, the California State Water Resources Control Board, California Department of Transportation (Caltrans), and the Southern California Coastal Water Research Project) collaborate to determine the highest priority needs for scientific and technical tools for stormwater program implementation, assessment and monitoring, gather knowledge regarding the impact of urban stormwater and non-stormwater pollutant impacts on receiving waters, and, subsequently, develop and implement projects to address those needs.

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The term of this Agreement commences on the later of July 1, 2024, or the date of last signature on the Agreement, through June 30, 2029.

This Agreement provides for a budget approval process to fund the selected projects. The Agreement also allows each party the discretion to choose whether or not to participate in the funding of individual projects. The District's cost contribution will vary each year based on the number and type of projects in which it elects to participate. The District's maximum annual funding contribution will be \$100,000 per year, over the term of this Agreement. The District will fund only those projects that will assist in achieving and maintaining compliance with its NPDES MS4 Phase 1 Permit.

Approval of this item aligns with the County and the Chief Executive Officer's goals of improving County government operations, providing for the safety, health and social service needs of county residents and pursuing County goals and objectives by working with other agencies and stakeholders by utilizing the SMC to assist the Program in complying with its NPDES MS4 Permit requirements.

The Agreement contains non-standard contract terms or omits certain District standard contract terms as follows:

1. The Agreement does not include an indemnity clause.
 - The District standard contract general indemnity provision requires the other contracting party(s) to indemnify, defend, and hold the District and County harmless from third party claims arising out of the acts, errors or omissions of any person.
 - Potential Impact: In the event a third-party claim arises out of the acts, errors or omissions of any person under the Agreement, the District could be liable for the costs of defense and any resulting settlement/judgment.
2. The Agreement does not include any of the standard District insurance requirements.
 - The District's standard contract requires contractors to carry certain insurance coverage as determined by the County's Department of Risk Management, and for contractors to add the District and County as an insured in their policies and to waive the right to subrogation.
 - Potential Impact: The Agreement does not require the other parties to carry any of the standard District required insurance policies and do not include any of the standard District insurance provisions. This means that the District and County have no assurance that the other parties will be financially responsible for claims that may arise from the Agreement, which could result in expenses to the District and County that exceed the total amount in the Agreement.
3. The termination without cause provision in the Agreement requires more than 90 days advanced written notice.
 - The District's standard contract provides that either party may terminate the contract with 30 days' written notice.
 - Potential Impact: The District will need to be mindful of the additional notice period required to terminate the Agreement.

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The District recommends approval of the Agreement, including the non-standard terms, to continue the implementation of the cooperative Program in Southern California in compliance with the NPDES Permit.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Sophie A. Curtis, Deputy County Counsel, 387-5455) on January 23, 2024; Risk Management (Victor Tordesillas, Director, 386-8623) on February 15, 2024; (Finance (Carl Lofton, Administrative Analyst, 387-5404) on February 6, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on February 9, 2024.

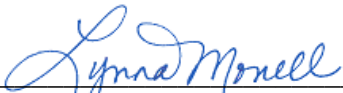
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Record of Action of the Board of Supervisors
San Bernardino County Flood Control District

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: February 27, 2024



cc: Flood - Bland w/ agrees for sign
 Contractor c/o Flood w/ agree
 File w/ agree
JLL 02/28/2024