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STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 94-56

AUTHORIZING EXECUTION OF THE FIRST AMENDMENT OF THE MEMORANDUM OF AGREEMENT REGARDING DESIGN OF THE TIJUANA INTERNATIONAL TREATMENT PLANT AND SAN DIEGO/TIJUANA OCEAN OUTFALL TO INCLUDE CONSTRUCTION OF THE OCEAN OUTFALL.

WHEREAS:

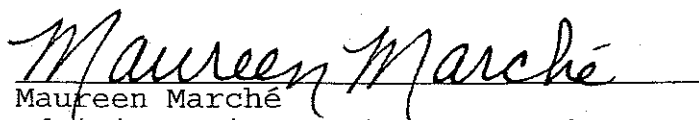
1. At its January 19, 1989 meeting, the Board authorized the Chairman to sign a Memorandum of Agreement with the City of San Diego, the Environmental Protection Agency, and the International Boundary and Water Commission;
2. At its October 18, 1990 meeting, the Board authorized the Chairman to sign a Memorandum of Agreement with the City of San Diego, the U.S. Environmental Protection Agency and the International Boundary and Water Commission for design of International Wastewater Treatment Projects for Tijuana.
3. The Memorandums of Agreement between the aforementioned agencies sets forth each agency's role in the planning, design, construction, financing, and operation of a land outfall to protect the San Diego area from transborder sewage flows.
4. An additional Memorandum of Agreement has been proposed which clarifies each agencies role in construction of the San Diego/Tijuana ocean outfall, a key element of the International Wastewater Treatment Project, and includes a revised San Diego cost sharing agreement.
5. The role of the State Board will be unchanged from previous Memorandum of Agreement.

THEREFORE BE IT RESOLVED:

That the State Board authorizes the Vice Chairman to sign a Memorandum of Agreement with the City of San Diego, the International Boundary and Water Commission, and the U.S. Environmental Protection Agency for the purpose of working cooperatively to resolve the problems associated with transborder sewage flows from Tijuana, Mexico.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 21, 1994.


Maureen Marché
Administrative Assistant to the Board

**FIRST AMENDMENT TO THE MEMORANDUM OF AGREEMENT
AMONG THE CITY OF SAN DIEGO, CALIFORNIA, THE CALIFORNIA STATE
WATER RESOURCES CONTROL BOARD, THE UNITED STATES SECTION
OF THE INTERNATIONAL BOUNDARY AND WATER COMMISSION AND THE
ENVIRONMENTAL PROTECTION AGENCY RELATING TO THE DESIGN OF
THE INTERNATIONAL TREATMENT PLANT, THE LAND OUTFALL EXTENSION
AND OCEAN OUTFALL IN SOUTH SAN DIEGO, CALIFORNIA**

This FIRST AMENDMENT is made and entered into this _____ day of _____, 1994, among the CITY OF SAN DIEGO, CALIFORNIA, a municipal corporation, hereinafter referred to as the "City", acting by and through its City Manager, there unto duly authorized by Resolution No. _____, dated _____; the STATE OF CALIFORNIA WATER RESOURCES CONTROL BOARD, hereinafter referred to as "SWRCB", represented by the Chairperson of the Board; the UNITED STATES SECTION OF THE INTERNATIONAL BOUNDARY AND WATER COMMISSION (IBWC), hereinafter referred to as the "U.S. Section", represented by the U.S. Commissioner of said Commission; and the ENVIRONMENTAL PROTECTION AGENCY, hereinafter referred to as "EPA", represented by the Regional Administrator of the said Agency's Region IX.

RECITAL:

WHEREAS, the parties have previously entered into a Memorandum of Agreement (MOA), Document No. RR-276645, dated October 2, 1990, for the design of the International Treatment Plant (ITP) and the Land Outfall Extension and the Ocean Outfall, herein after referred to as the South Bay Ocean Outfall (SBOO); and

WHEREAS, the City on May 26, 1992, Resolution No. RR-280022, adopted modifications to the City's recommended wastewater treatment system and recommended elimination of the South Bay Treatment Plants; and

WHEREAS, the City wishes to reduce its level of participation in the SBOO, but retain flexibility to accommodate the future needs of the citizens of the South Bay area; and

WHEREAS, the City wishes to handle the acquisition of land for a future City South Bay treatment plant separate from the acquisition for the ITP; and

WHEREAS, the parties intend to enter into subsequent agreements specifying their roles in construction, operations and maintenance and ownership and liability of the SBOO and that such agreements are intended to be consistent with this MOA; and

WHEREAS, all parties are committed to construct the SBOO;

NOW THEREFORE, the parties hereto mutually agree to amend the Memorandum of Agreement of October 9, 1990 as follows:

1. Section I.r. is added as follows:

"Provide funds for the U.S. Section's share of construction and construction management of the SBOO. The formula used to determine the costs for each agency shall be as shown in Exhibit A."

2. Section II.a. of the agreement is hereby amended to read as follows:

"Reimburse the U.S. Section for the City's share of the costs for the design of the SBOO, mitigation planning, and administrative costs, as defined in Exhibits "B" and "C", and in accordance with Exhibit "A", all attached hereto. The cost of the City's share of this work shall not exceed \$6,320,401 without written approval by the San Diego City Council."

3. Section II.h. of the agreement is hereby amended to read as follows:

"Reimburse the EPA for the City's share of the costs associated with the acquisition of right-of-way/entry for the SBOO in accordance with the formula in Exhibit "A" or any subsequent cost-sharing arrangement mutually agreed upon in writing by the City, U.S. Section, SWRCB and the EPA."

4. Section II.i. is added as follows:

"Provide funds for the City's share of construction and construction management of the SBOO. The formula used to determine the costs for each agency shall be as shown in Exhibit A."

5. Section II.j. is added as follows:

"Accept joint ownership with the U.S. Section of the SBOO and enter into a separate agreement with the U.S. Section dealing with operations and maintenance and related liability, including costs associated with those flows in the SBOO that originate in Mexico."

6. Section III.a. of the agreement is hereby amended to read as follows:

"Manage any state financial assistance as may be available for the design and construction of the SBOO and/or ITP."
7. Section IV.b. of the agreement is hereby amended to read as follows:

"Subject to applicable laws, administer the appropriated federal funding to design and construct the SBOO and ITP."
8. Section IV.c. of the agreement is hereby amended to read as follows:

"Enter into an interagency agreement with the U.S. Army Corps of Engineers (Corps) to conduct activities consistent with Congressional authorization, including but not limited to appraisals, negotiations and acquisitions, which are necessary to obtain all land and right-of-way/entry for construction to proceed in a timely manner. Reimbursement for the Corps' services, land acquisition and right-of-way/entry for the proposed SBOO will be in accordance with the formula shown in Exhibit "A" or any subsequent cost-sharing arrangement mutually agreed upon in writing by the City, U.S. Section, SWRCB and EPA."
9. Section IX is added as follows:

"The parties shall have the opportunity to purchase unused capacity from each other, provided that such capacity is available, and it is mutually agreed upon by the signatory agencies."
10. Section X is added as follows:

"The parties shall enter into a subsequent agreement specifying each agencies role during construction of the SBOO and designating a Construction Manager."
11. Exhibits "A" and "B" to the agreement are hereby amended as attached.

The First Amendment to the Memorandum of Agreement for the design of the International Treatment Plant and SBOO shall affect only the paragraphs referred to and all other terms and conditions of the Memorandum of Agreement entered into on October 2, 1990, among the City, U.S. Section, SWRCB, and the EPA shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed, and each of the undersigned warrants that he/she has the authority to so execute this instrument on behalf of the agency he/she represents. The execution of this agreement may be done in counterparts without the need for execution of a single original.

THE CITY OF SAN DIEGO, CALIFORNIA

BY _____
Metropolitan Wastewater Department Director

DATE _____

STATE WATER RESOURCES CONTROL BOARD

BY _____
Board Chairman

DATE _____

INTERNATIONAL BOUNDARY AND WATER COMMISSION

BY _____
Commissioner, U.S. Section

DATE _____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY _____
Regional Administrator, Region IX

DATE _____

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 1994.

JOHN W. WITT, City Attorney

By _____
Ted Bromfield
Chief Deputy City Attorney

EXHIBIT A
Cost Sharing Basis

This exhibit establishes the basis for cost sharing for the design and construction of the SBOO and the acquisition of the right-of-way for the SBOO. The allocation of costs are to be based on the capacity (expressed as peak wet weather flow) in the outfall for the City of San Diego and City of Tijuana flows.

For work completed prior to July 27, 1992

The City of San Diego flows are based on an assumed average capacity need of 81 million gallons per day (mgd) and a peaking factor of 1.8 and the City of Tijuana flows are based on an assumed ultimate capacity of 100 mgd and a peaking factor of 2. The peak wet weather flows are as follows:

1. City of San Diego flows = 146 million gallons per day (mgd)
2. City of Tijuana flows = 200 " "
- TOTAL CAPACITY = 346

The COST SHARES are as follows:

1. City Share = $146/346 = 0.4220$
2. Federal Share = $200/346 = 0.5780$

For work completed after July 27, 1992

The City of San Diego flows are based on an assumed average capacity need of 74 million gallons per day (mgd) and a peaking factor of 1.8 and the City of Tijuana flows are based on an assumed ultimate capacity of 100 mgd and a peaking factor of 2. The peak wet weather flows are as follows:

1. City of San Diego flows = 133 million gallons per day (mgd)
2. City of Tijuana flows = 200 " "
- TOTAL CAPACITY = 333

The COST SHARES are as follows:

1. City Share = $133/333 = 0.3994$
2. Federal Share = $200/333 = 0.6006$

Should the flow ratios change in the future, the party requesting the change shall inform the other parties to this agreement in writing, and subject to the mutual consent of the parties to this agreement this agreement shall be amended to revise the cost sharing formula to reflect the changes in flow.

EXHIBIT B
Estimated Costs

The total estimated design cost of the SBOO is as follows and is distributed to each of the following tasks:

Task	Estimated Cost	City Share
1. General Administration - U.S. Section		
a. Conceptual Design	\$ 223,957	\$ 94,510
b. Final Design	\$ 362,209	\$ 144,666
2. Design Contract - SBOO		
a. Conceptual Design	\$ 1,387,177	\$ 585,389
b. Modifications to conceptual design due to City's decreased participation	\$ 19,463	\$ 19,463
c. Final Design	\$11,661,111	\$ 4,657,448
3. Right-of-Way Acquisition (SBOO)	\$ 2,000	\$ 799
4. Contingency (15% of the total)	<u>\$ 2,048,388</u>	<u>\$ 818,126</u>
Total Cost	\$15,704,305	\$ 6,320,401

The City's estimated share of the project cost for Conceptual Design and General Administration during Conceptual Design, is based on the original cost sharing formula and is 42.2% of the total cost, per Exhibit A.

The City's estimated share of the project cost for modifications to the Conceptual Design due to the City's decrease in participation is 100%.

The City's estimated share of the project cost for Final Design, General Administration during Final Design, Right-of-Way Acquisition and Contingencies is 39.94% of the total cost, per Exhibit A.