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November 15, 2010

Paula Higashi, Executive Director Commission on State Mandates 980 Ninth Street, Suite 300 Sacramento, CA 95814

Re: Claimants' Reply to State Agency Comments on Proposed Parameters and Guidelines for Discharge of Storm Water Runoff Permit Order No. R9-2007-0001, Commission's Test Claim No. 07-TC-09

Dear Ms. Higashi:

On March 30, 2010, the Commission on State Mandates (Commission) determined that numerous provisions of the San Diego's Water Board's municipal separate storm sewer system (MS4) discharge permit (Order No. R9-2007-0001 (Permit No. CAS0108758)) (the "2007 Permit") are State mandates subject to reimbursement under article XIII B, section 6 of the California Constitution.

To date, Claimants¹ have received comments from the State Department of Finance ("Finance") and comments jointly filed by the State Water Resources Control Board ("State Water Board") and the San Diego Regional Water Quality Control Board ("San Diego Board"). (Collectively referred to as the "Water Boards.")

Claimants' reply to the comments received from Finance and the Water Boards are detailed below. Following this review of State agency comments is a revised set of Ps&Gs which incorporate changes arising from this collaborative effort.

¹ The claimants are the County of San Diego and the cities of Carlsbad, Del Mar, Imperial Beach Lemon Grove, Poway, San Marcos, Santee, Solana Beach, Chula Vista, Coronado, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, National City, Oceanside, San Diego and Vista.

Reply to Comments by Finance

Finance's comments were filed with the Commission on September 3, 2010 by Ms. Nona Martinez, Assistant Program Budget Manager. Ms. Martinez provides three specific comments regarding the costs of proposed activities. The first is that:

"The Ps & Gs should clearly indicate that the costs associated with implementing the higher level of service or new program are specifically those costs imposed by the test claim permit as opposed to those costs incurred under the previous permit. For example, the costs incurred for purchasing street sweeping equipment under the prior permit are not reimbursable under the test claim permit. Finance, however, notes that some costs associated with the street sweeping equipment may be attributable to the test claim permit (e.g., maintenance of the equipment)."

The parties agree that equipment maintenance costs attributable to the test claim permit are reimbursable. However, Claimants disagree with Finance's assertion that "..., the costs incurred for purchasing street sweeping equipment under the prior permit are not reimbursable under the test claim permit." In this circumstance, a portion of the prior period equipment purchase costs may be reimbursable under the present period as depreciation costs or as use allowance costs. This is permitted under the State Controller's Office (SCO)² Mandated Cost Manual for Local Agencies (revised 01/09, Chapter 961/92), on page 3. Claimants have revised Section V.A.4. of the Ps&Gs governing claiming reimbursement for fixed assets and equipment to include SCO's rules for claiming depreciation costs and use allowance costs.

Finance's second comment is that:

"The Ps & Gs should distinguish the costs of activities (e.g., the purchase of parking signs used to enforce activities related to various programs within a local agency) alleged to be reimbursable from the costs of activities associated with programs not required by the test claim permit. The costs of the alleged activities must be required by the approved mandate program to be reimbursable. Those costs related to purchasing the parking signs, for example, should be prorated for the approved mandated program."

Claimants acknowledge that if a capital asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed. However, in this case, parking signs typically provide notification of the day and time when street sweeping will occur and when parked vehicles must be moved in order to perform the mandated sweeping, so no proration of costs may be necessary. Nevertheless, the pro-rata rule was included in Claimants' original Ps&Gs and remains in the revised Ps&Gs as follows:

If the capital asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

² SCO is the cognizant State agency for reviewing and auditing State mandated cost claims.

Finance's third and final comment is that:

"The Ps & Gs should clearly identify the three categories of fees referenced as offsetting revenues in the statement of decision (see pages 132-133). Each applicable fee and its statutory authority should be listed in the boilerplate language of, "Section VII. Offsetting Saving and Reimbursements" on page 29, of the proposed Ps & Gs."

Claimants have revised Section VIII (formerly Section VII) of their Ps&Gs (Offsetting Savings and Reimbursements) to include Commission's offsetting fee language, cited by Finance.

Reply to General Comments by Water Boards

On September 13, 2010, the Water Boards filed joint comments. Their commentary addresses Claimants' costs in performing State mandated activities found to be reimbursable by the Commission.

A. Higher Level of Service

The Water Boards' first general comment is:

"The Water Boards generally are concerned that the Claimants have not made it clear that they will limit their requests for reimbursement to only that level of activities required to implement reimbursable permit provisions[fn] that exceeds the level of activities required to comply with the prior permit the San Diego Water Board issued to the Claimants (2001 Permit or Prior Permit"

Claimants acknowledge that their claims for reimbursement are limited to those activities required to implement reimbursable permit provisions which were not included in the prior permit issued in 2001 (the "2001 Permit). To avoid confusion, Claimants have incorporated the portions of the Commission's Statement of Decision setting forth those activities found not to be reimbursable into their revised Ps&Gs immediately after the reference to the related activity that was found to be reimbursable.

B. Personnel Costs

The Water Boards' second general comment is:

"The Claimants identify personnel costs as those costs associated with carrying out various reimbursable functions and note that '[u]nless otherwise stated in these Parameters and Guidelines, 'Personnel Costs' will be determined using the claimant's loaded hourly rates; all other costs will be actual and will include only that part of the cost that is related to the reimbursable mandate.' (Proposed Parameters and Guidelines, p. 15, fn. 12.) First, this phrase fails to adequately describe what is meant by the term 'loaded personnel costs.' Under section V, Claim Preparation and Submission (Proposed Parameters and Guidelines, p. 26), it appears that Claimants intend to factor only salary and benefits into Personnel Costs. The Claimants should clarify whether 'loaded hourly rates' is limited to a calculation of salaries and benefits or whether instead Claimants are factoring in

some amount of overhead and administrative costs. Second, Claimants must clarify the reference in footnote 12, mentioned above, so that it is clear that in addition to pro-rating 'all other costs' to carry out reimbursable provisions, they will also similarly pro-rate 'loaded personnel costs.' The adopted Parameters and Guidelines must be clear that to the extent an employee or vendor is performing work associated with non-permit related activities, or unreimbursable permit-related provisions, those costs are not reimbursable and must be excluded in a transparent manner."

Claimants' term "loaded hourly rate" refers to reimbursable personnel costs including salary, employee benefit and indirect (overhead and administrative) costs, as defined in the State Controller's Office (SCO) Mandated Cost Manual for Local Agencies(revised 01/09). Claimants have revised the Ps&Gs to now expressly refer to SCO's personnel cost components. Hereinafter, the term "Personnel Costs" refers to "salary, employee benefit, and indirect costs" as those terms are defined in SCO's Mandated Cost Manual for Local Agencies."

C. Unspecified Activities and Costs

The Water Boards' third general comment is:

"Throughout their discussion of reimbursable activities, the Claimants identify general categories of activities but qualify the general descriptions with phrases such as 'including but not limited to' or 'costs, *including* personnel costs.' (See Proposed Parameters and Guidelines, e.g., Street Sweeping Operations and Reporting, pp. 15-16, Conveyance System Cleaning and Reporting , pp. 17-18, Education Component, p. 18, and Watershed Urban Runoff Management Programs, pp. 19-22 (emphasis added).) The Claimants make these vague references in an apparent effort to retain flexibility to later claim as yet unidentified activities for reimbursement.

"The Water Boards are not able to comment on unspecified activities and their related costs, and as a result, are not able to evaluate whether the Claimants have indeed identified the most reasonable method of complying with reimbursable permit provisions. Instead of reliance upon phrases such as 'including but not limited to,' or 'costs, including Personnel Costs,' without further specifying these costs, the Claimants must be required to describe those actual activities or categories of costs necessary to carry out the reimbursable provisions for which they expect to be reimbursed.

....

"Despite the underlying purpose of the Adopted Parameters and Guidelines, the Claimants have not adequately described the specific costs or categories of costs for which they will seek reimbursement to allow the Water Boards to comment fully on the Proposed Parameters and Guidelines. The State should not be expected to reimburse the Claimants for unspecified or vague activities that the Claimants will later claim were necessary and represent the most reasonable method of implementing the reimbursable permit provisions. The Commission should require the Claimants to provide greater specificity in the activities they propose for reimbursement."

Claimants have reformatted and modified their Ps&Gs to address the Water Boards' concerns that the costs of activities which are not identified in the Ps&Gs will be reimbursed. Pertinent revisions in the revised Ps&Gs submitted herewith are:

1. The specific mandated activities found to be reimbursable by the Commission are moved from Section I. Summary of the Mandate to Section IV. Reimbursable Activities.
2. The specific related activities which were found not to be reimbursable by the Commission are now included under their appropriate reimbursable activity category to prevent claiming costs which are not reimbursable.
3. Reasonably necessary activity descriptions and their associated costs in Section IV. of Claimants' Ps&Gs filed with the Commission on June 25, 2010, which are not explicitly specified in the 2007 Permit, are now more specific, in accordance with the Water Boards' comments.
4. The costs of reasonably necessary activities in Section IV. of Claimants' Ps&Gs filed with the Commission on June 25, 2010 have been rephrased to utilize cost descriptions found in SCO's Mandated Cost Manual for Local Agencies.
5. The reimbursable activities and associated costs found under Section IV. of Claimants' Ps&Gs are no longer qualified by phrases such as "including but not limited to" or "costs, *including* personnel costs."

Claimants' revised language for Section IV. Reimbursable Activities of their Ps&Gs is discussed further in this Review of State Agency Comments when considering the Water Boards' specific comments.

Regarding the Water Boards' request that Claimants now provide anticipated changes to those activities which may become reasonably necessary in completing the term of the 2007 Permit, Claimants believe that they will be ready to do so when the Long Term Effectiveness Assessment ("LTEA") is submitted, no later than 210 days in advance of the expiration of the current Order.

D. Vendor Costs

The Water Boards' fourth general comment addresses vendor costs:

".... To the extent contractors bid on and are successfully selected to perform reimbursable, permit-related work, the Claimants should expect that the vendors are sufficiently well-versed, and perhaps even more expert than the Claimants in some cases, in what is required to carry out the services they were hired to provide. Unless Claimants demonstrate otherwise, the Commission should assume that the vendors' costs to perform reimbursable activities already include the vendors' costs to educate themselves so that they are meeting the Claimants' needs and expectations. Similarly, to the extent that a vendor's costs include costs such as for fuel, vehicles or materials storage, for example, the Claimants must accurately account for and pro-rate those costs in their reimbursement requests."

The parties agree that "... to the extent a vendor is carrying out a reimbursable activity, the associated costs are appropriately recoverable." Claimants further acknowledge that to the extent that a vendor's costs includes costs such as for fuel, vehicles or materials storage, for example, the vendors must accurately account for those costs in their reimbursement requests as limited by the specific language for claiming vendor costs, found in SCO's Mandated Cost Manual for Local Agencies, on pages 10-11, which has been incorporated in the revised Ps&Gs.

While vendors' employees do not generally require additional training to meet the Claimants' needs, if this is not the case, Claimants may recover such additional training costs as may be necessary in utilizing new types of equipment and/or protocols.

E. Computer Costs

The Water Boards' fifth general comment addresses reimbursement for "computer, hardware and software purchases and upgrades":

"... Adopted Parameters and Guidelines must limit Claimants to reimbursement for costs of equipment, hardware and software purchased after January 24, 2007. And Claimants must be required to demonstrate why the purchases and upgrades are necessary to comply with the reimbursable provisions but were not necessary to comply with the prior permit. Claimants must also be required to demonstrate how they intend to exclude, in a transparent manner, the percentage of costs of equipment and upgrades used for unreimbursable purposes. It is insufficient for the Claimants merely to promise they will only include reimbursable costs in their reimbursement requests: they must establish how they will demonstrate this commitment to the Commission and the State in a verifiable manner."

The reimbursement requirements for computer, hardware and software purchases and upgrades which are "capital outlays" are found in SCO's Mandated Cost Manual for Local Agencies, on pages 10-11. These requirements have been incorporated in Claimants' revised Ps&Gs.

If computer, hardware and software purchases and upgrades are obtained through a vendor contract, the Water Boards' concern that only the costs of reimbursable activities will be paid is accommodated, as SCO's reimbursement rules for vendor contract costs requires that an "itemized list of (reimbursable) activities performed" under the contract be provided before payment is made.

If computer, hardware and software purchases and upgrade costs are obtained without using a vendor contract, only the pro rata portion of the purchase price used to implement the reimbursable activities may be claimed.

Reply to Specific Comments by the Water Boards

A. Street Sweeping

The Water Boards provide an extensive commentary on the Street Sweeping reimbursement components by activity as set forth in the Ps&Gs. Claimants have tailored their reply to conform to this format.

1. Street Sweeping Operations

Comment: "See General Comment B."

Reply: See Reply to General Comment B.

2. Street Sweeping Equipment and Maintenance

Comments:

"To the extent copermitttees contract with vendors to perform street sweeping, the Water Boards would expect equipment and equipment maintenance costs to be included in the contract costs."

".... [T]o the extent Claimants already owned street sweeping equipment prior to issuance of the San Diego Permit, any cost to purchase that equipment is not reimbursable. (See General Comment A.) "

and

".... Claimants are not entitled to reimbursement for unspecified 'related' functions and must identify what those functions are so that the Water Boards may evaluate whether the related functions are necessary to carry out the mandated provisions in the permit. (See General Comment C.)"

Reply:

Claimants disagree with the Water Boards' assumption that equipment and equipment maintenance costs are always included in street sweeping contract costs. Claimants agree that, where this is the case, it will be disclosed. As indicated in Claimants' reply to the Water Boards' General Comment D, Claimants' revised Ps&Gs now incorporate language found on pages 10-11 of SCO's Mandated Cost Manual which provides, in pertinent part, that the Claimant must provide SCO with contractors' invoices which include an "an itemized list of costs for activities performed." SCO can then compare these contract costs with those claimed elsewhere to ensure that duplicate payments for street sweeping equipment and equipment maintenance are not made.

See Reply to General Comment A and the Reply to Finance's first comment.

In response to the Water Boards' comment that reimbursement for equipment and maintenance costs incurred "to perform street sweeping *and related functions*" is not appropriate, Claimants have deleted the phrase "*and related functions*" from the revised Ps&Gs. In its place,

Claimants have now included the phrase "reasonably necessary" to identify reimbursable activities which are not explicitly identified in the Commission's decision. This change is based on the use of "reasonably necessary" activities in proposing reimbursable activities permitted in Government Code Section 17557(a), as recently amended by the Statutes of 2010, Chapter 719, on October 19, 2010.

Section 17757(a) now provides, in pertinent part, that:

"If the commission determines there are costs mandated by the state pursuant to Section 17551, it shall determine the amount to be subvned to local agencies and school districts for reimbursement. In so doing it shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive order. The successful test claimants shall submit proposed parameters and guidelines within 30 days of adoption of a statement of decision on a test claim. The proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program." (Emphasis added.)

In accordance with Commission's regulations, Claimants also proposed reimbursable activities which are the most reasonable methods of complying with the mandate. These methods are necessary to carry out the mandated program and are not specified in statute or executive order. (See Cal Code Regs, tit. 2, § 1183.1 (a)(4).)

Moreover, Claimants' proposed reimbursable activities are specific and reasonably necessary in carrying out the newly State-mandated portions of the 2007 Permit. Consider the street sweeping component. The Commission examined the street sweeping requirements in the 2007 Permit and found them to be reimbursable. Commission's list of reimbursable activities found in the 2007 Permit is a short one:

"Each Copermittee shall implement a program to sweep improved (possessing a curb and gutter) municipal roads, streets, highways, and parking facilities. The program shall include the following measures:

(a) Roads, streets, highways, and parking facilities identified as consistently generating the highest volumes of trash and/or debris shall be swept at least two times per month.

(b) Roads, streets, highways, and parking facilities identified as consistently generating moderate volumes of trash and/or debris shall be swept at least monthly.

(c) Roads, streets, highways, and parking facilities identified as generating low volumes of trash and/or debris shall be swept as necessary, but no less than once per year."

Claimants examined Commission's list and proposed additional reimbursable activities, which are detailed in the Ps&Gs, and which are 'reasonably necessary' in performing the street sweeping component. The Water Boards do not contest that the claimed activities and costs are reimbursable. Rather, the Water Boards question how the costs will be accounted for.

Claimants' "reasonably necessary" activities are grouped by program component under Section IV. Reimbursable Activities of Claimants' revised Ps&Gs.

3. Street Sweeping Materials Disposal

Comment:

"... To the extent copermittees contract with vendors to perform street sweeping, the Water Boards would expect materials disposal costs to be included in the contract costs. Claimants may not recover duplicate costs for materials disposal or storage. (See General Comment D.)"

Reply: Claimants disagree with the Water Boards' assumption that street sweeping materials disposal costs are always included in street sweeping contract costs. Claimants maintain that contract costs may not always include disposal costs. The principal requirement here is that disposal costs need to be sufficiently disclosed to permit SCO to compare itemized contract costs with those claimed elsewhere and thus avoid duplicate payments.

4. Street Sweeping Fuel

Comment:

"... To the extent copermittees contract with vendors to perform street sweeping, the Water Boards would expect fuel costs to be included in the contract cost. (See General Comment D.)"

Reply: Claimants disagree with the Water Boards' assumption that street sweeping fuel costs are always included in street sweeping contract costs. As previously discussed, Claimants maintain that contract costs need to be sufficiently disclosed to permit SCO to compare contract costs with those claimed elsewhere and thus avoid duplicate payments.

5. Street Sweeping Program Development

Comment:

"It is unclear what the Claimants mean by 'the costs, *including* Personnel Costs, to develop and update the claimant's *internal* street sweeping program, including specific criteria, policies, procedures, manuals, and forms.' (Proposed Parameters and Guidelines, p. 15, (emphasis added).) In addition, the Water Boards do not understand what the Claimants mean by 'internal' street sweeping program and so cannot evaluate whether it is a necessary activity in order to carry out mandated permit provisions. (See General Comment C.)"

Reply: Claimants understand the difficulty the Water Boards have in accepting the term "*internal* street sweeping program." Claimants' revised Ps&Gs now use the phrase "street sweeping program" in its place.

See Reply to General Comment C.

6. Street Sweeping Employee and Vendor Training

Comment:

“As previously mentioned, (see General Comment D, above) the Commission should assume that vendors are adequately trained prior to bidding for the contracted work. In addition, the Claimants assert it is reasonable to recover costs including ‘training of all claimant and vendor employees who perform tasks necessary to implement street sweeping and related functions during the life of the permit.’ As with equipment/equipment maintenance categories, the Claimants should clarify what they mean by ‘related functions’ before such terminology is incorporated into Adopted Parameters and Guidelines.”

Reply: See Reply to General Comment D. In addition, Claimants eliminated the term “related function” in their revised Ps&Gs. Instead, as previously discussed, Claimants specify reimbursable activities which are not explicitly expressed in Commission’s decision but are ‘reasonably necessary’ in carrying out the reimbursable activities which are explicitly stated in Commission’s decision.

7. Street Sweeping Parking Signage and Enforcement

Comment:

“It is unclear what Claimants mean by ‘costs,’ where they say ‘costs, including Personnel Costs, to purchase and install street sweeping signage and to enforce parking prohibitions in areas where street sweeping is scheduled. This includes the purchase, installation, or replacement of signage to inform the public of applicable parking restrictions, as well as their surveillance and enforcement.’ (Proposed Parameters and Guidelines, p. 16.) The Water Boards are left to guess what the costs in addition to personnel costs and costs for purchase, installation or replacement of signs the Claimants believe they may incur and for which they expect to be reimbursed. (See General Comment C.) The Water Boards also would expect the Claimants to specify costs for the number of signs that have been purchased and installed to date in order to comply with the requirements of the San Diego Permit beyond what was purchased or replaced in compliance with the prior permit. The State should not be expected to reimburse the Claimants for previously purchased signs or to replace signs that may have been inadequately maintained under the prior permit. (See General Comment A.) Moreover, to the extent that a portion of the street sweeping signage and enforcement is not directly associated with storm water pollution prevention but is instead performed for health and safety or aesthetic reasons, the Claimants should not receive reimbursement for those costs.

It is equally important that the Claimants make clear how they will keep track of and exclude costs for parking enforcement related to the street sweeping requirements to ensure that the State is not reimbursing them for unrelated parking enforcement such as for illegal parking in construction zones or violations of time-restricted parking: It is unlikely, although possible, that the Claimants would have personnel monitoring and surveilling [sic] only cars parked in violation of street sweeping restrictions while ignoring all other types of parking

violations. Allowing personnel to perform multiple functions is likely the more efficient use of the Claimants', and thereby the State's funds, than to have personnel devoted exclusively to enforcement of street sweeping parking restrictions, but it remains unclear how the costs will be accounted for and segregated so that it is transparent that the Claimants are only reimbursed for permit-related, mandated, functions."

Finally, Claimants should be required to offset any reimbursement for street sweeping parking signage enforcement with revenues received from that enforcement.

Reply: Claimants address the Water Boards' concerns about reimbursement for parking signage and enforcement costs in the order presented.

1. Claimants no longer refer to "the costs, including Personnel Costs" to address the Water Boards' concerns about "unspecified costs" expressed in General Comment C, as previously discussed.
2. Claimants will specify costs for the number of signs that have been purchased and installed to date in order to comply with the requirements of the 2007 Permit beyond what was purchased or replaced in compliance with the 2001 Permit but do so when their reimbursement claims are submitted to SCO for payment. This occurs after Ps&Gs have been adopted.
3. The Water Boards are speculating that the Claimants would attempt to claim street sweeping activities that are not required by the 2007 Permit but rather performed for health and safety or aesthetic reasons. Such speculation is unwarranted and should not be addressed in the Ps&Gs. The Commission found that street sweeping activities required to comply with the 2007 Permit were reimbursable and the presumption should be that street sweeping activities carried out by the Claimants are reasonably necessary to comply with the 2007 Permit. Claimants cannot claim reimbursement for additional street sweeping activities over and above what is required by the 2007 Permit. If the State believes that Claimants have claimed reimbursement for activities not required by the 2007 Permit, the remedy is to audit the Claimants' street sweeping activities and disallow costs for activities that exceed what was reasonably necessary to comply with the 2007 Permit.
4. Claimants acknowledge that reimbursement for street sweeping parking enforcement costs should only be for parking enforcement related to the street sweeping requirements and that unrelated parking enforcement costs such as those incurred for enforcement of illegal parking in construction zones or violations of time-restricted parking should not be claimed.
5. Revenues generated from parking enforcement by public safety officers cannot be used to offset the costs of street sweeping activities and costs. On November 2, 2010, voters approved Proposition 26. Proposition 26 amended sections of the California Constitution and added new provisions relating to the ability of the state and local agencies to assess a fee. Specifically, Proposition 26 amended Section 1 of Article XIII C of the California Constitution, which now defines a "tax" as "any levy, charge, or exaction of any kind imposed by a local government, except the following:

“....

(5) A fine, penalty or other monetary charge imposed by the judicial branch of governments or a local government, as a result of a violation of law.”

But Article XIIC Section 1 now also includes the following language:

“The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.”

The cost of signage to enforce the street sweeping requirements mandated by the 2007 Permit is not a cost that bears “a fair or reasonable relationship to the payor’s burdens on, or benefits received from the government activity,” i.e. parking enforcement, and the revenue generated from parking enforcement cannot be used to offset the costs of signage required by the 2007 Permit.

8. Street Sweeping Employee Supervision and Management

Comment:

“The Water Boards do not dispute that supervisory and management time spent overseeing personnel directly responsible for performing mandated work is appropriately recoverable. The Water Boards do, however, think the Commission should require the Claimants to clearly demonstrate how their supervisors’ and managers’ time is spent supervising employees’ work on only mandated provisions. To the extent the supervisors’ or managers’ work is not directly related to overseeing mandated work, or serves dual or multiple purposes, the Claimants must make transparent how they will determine the amount of supervisors’ and managers’ time directly related to mandated work.”

Reply: The parties agree that supervisory and management time spent overseeing personnel directly responsible for performing mandated work is appropriately recoverable. Claimants intend to follow SCO’s guidance in their Mandated Cost Manual for Local Agencies in identifying only the time spent on employee supervision and management of mandated street sweeping activities. Also, care will be taken to ensure that if supervisory and management costs are claimed as indirect costs, that the same costs will not be claimed as direct costs.

9. Street Sweeping Contracted Services

Comment:

See General Comment D, above. Further, Claimants should only be allowed to include costs of preparing requests for bids, negotiating and drafting third party contracts, and subsequently administering the service contracts if the Claimants can demonstrate that these costs, together with the costs for the contracted services, are the most cost-effective and reasonable manner of complying with the street sweeping requirements in lieu of performing the services with employees. The proposed parameters and guidelines fail to mention any cost-benefit analysis on the part of the Claimants in deciding whether to contract for or perform services in-house.” 9

Reply: See Reply to General Comment D. In addition, Claimants disagree with the Water Boards’ assertion that the Claimants should be required to conduct cost-benefit analyses “... in deciding whether to contract for or perform services in-house” before “... costs of preparing requests for bids, negotiating and drafting third party contracts, and subsequently administering the service contracts” are allowed. Instead Claimants follow SCO’s requirements, found in their Mandated Cost Manual for Local Agencies, on pages 10-11, which provides that:

“The cost of contract services is allowable if the local agency lacks the staff resources or necessary expertise, or it is economically feasible to hire a contractor to perform the mandated activity.”

Claimants further disagree with the Water Boards’ contract cost reimbursement requirement that Claimants demonstrate that contracting for street sweeping services is “... the most cost-effective and reasonable manner of complying with the street sweeping requirements in lieu of performing the services with employees.” The Water Boards do not reference any authority to support this standard. Instead Claimants intend to use SCO’s criteria in deciding on whether to contract for mandated activities or provide them directly. This criteria is that “[t]he costs of contract services is allowable if the local agency lacks the staff resources and necessary expertise, or is it economically feasible to hire a contractor to perform the mandated activity.”

B. Street Sweeping Reporting

Reporting and Tracking Policies and Procedures.

Comment: See General Comment C, discussing insufficient detail provided for types of costs other than Personnel Costs.

Reply: See Reply to General Comment C. In addition, Claimants have addressed the Water Boards’ concerns that street sweeping reporting and tracking policies and procedures are not sufficiently detailed by eliminating broad phrases like “costs other than personnel costs” and by including a identifying specific reimbursable activities, which are “reasonably necessary” in carrying out Commission’s street sweeping reporting reimbursable activities, in their revised Ps&Gs. These reasonably necessary activities and their associated costs are:

- Reporting and Tracking Policies and Procedures. Claimant's personnel costs and/or contracted services costs, to develop, update, and implement street sweeping reporting and tracking policies and procedures.
- Data Tracking and Analysis. Claimant's costs and/or contracted services costs, to update, and implement data tracking and analysis methods and procedures. This includes the cost of employees developing or maintaining data tracking methods or systems, and performing data tracking and analysis for reports to the Regional Water Quality Control Board. Also included are the costs of purchases and upgrades to equipment, hardware, and software necessary to support data tracking, analysis, and reporting in compliance with the Permit and subject to the reimbursable mandate.
- Report Writing. The costs, including employee salary, benefit and indirect costs and/or contracted services costs, to develop and write reports to the Regional Water Quality Control Board.
- Employee Supervision and Management. Personnel costs for time spent by supervisory and management personnel supervising personnel directly responsible for performing the mandated activities. (Hereinafter referred to as "Employee Supervision and Management.")
- Contracted Services. Where specified above, costs may be incurred through the use of vendors, contractors, consultants, or other service providers. In such case, only actual costs to the claimant will be claimed, and will only include that portion of the cost that is related to the reimbursable mandate. Claimants may also include the costs of preparing requests for proposals or requests for bids, negotiating and drafting third party contracts, and subsequently administering service contracts for the time they are performing these tasks. (Hereinafter referred to as "Contracted Services.")

Data Tracking and Analysis

Comment: See General Comment C, discussing insufficient detail provided for types of costs other than Personnel Costs. See also General Comment E, above, expressing the Water Boards' concern that the costs of purchases and upgrades of equipment, hardware and software must be limited to that necessary to comply with the San Diego Permit, and must be transparently segregated into use for reimbursable and unreimbursable activities.

Reply: See Reply to General Comments C and E. Claimants have addressed the Water Boards' concerns that the street sweeping data tracking and analysis costs are not sufficiently detailed when referring to "costs other than Personnel Costs" by eliminating the phrase "costs other than personnel costs" and by identifying specific reimbursable activities and costs which are 'reasonably necessary' in carrying out its newly mandated provisions in the revised Ps&Gs. In response to the Water Boards' concerns that the costs of purchases and upgrades of equipment, hardware and software be limited to that necessary to comply with the 2007 Permit and be transparently segregated into use for reimbursable and unreimbursable activities the Claimants have revised their Ps&Gs to incorporate reference to those sections of the SCO's Mandated Cost Manual relating to "capital outlays"

Report Writing

Comment: See General Comments B and E.

Reply: See Reply to General Comments B and E. Claimants have addressed the Water Boards' concerns relating to Report Writing General Comment B by eliminating the term "loaded hourly rate" and instead using the term "personnel costs" which includes salary, employee benefit and indirect (overhead and administrative) costs, as defined in the SCO's Mandated Cost Manual. Claimants have addressed the Water Boards' concerns relating to Report Writing General Comment E and the need to demonstrate proper cost allocations of computer, hardware and software purchases and upgrades by incorporating reference to the SCO's Mandated Cost Manual which requires that an itemized list of reimbursable costs be disclosed in the reimbursement claim. If these costs are not included in a vendor contract, SCO requires that Claimants pro rate claimed costs.

Employee Supervision and Management

Comment: See Specific Comment, III.A.

Reply: See Reply to Specific Comment, III.A.

Contracted Services

Comment: See Specific Comment, III.A.

Reply: See Reply to Specific Comment III.A.

C. Conveyance System Cleaning

Comment:

"... To the extent costs are incurred to comply with the 2001 permit standard, those costs are not reimbursable and must not be included in the Proposed Parameters and Guidelines. Only to the extent that the Copermittees incur costs beyond those they incurred to comply with the 2001 permit should they be reimbursed by the State."

Reply: Claimants acknowledge that they may not claim reimbursement for conveyance system cleaning activities that were required by the 2001 Permit. Claimants have revised the Ps&Gs to include a list of the nonreimbursible conveyance system cleaning activities to ensure that erroneous claims are not filed with SCO. Specifically, the parts of the 2007 Permit's conveyance system cleaning requirements that the Commission found are not reimbursable, are:

Part D.3.a.(3)(a) of the 2007 Permit is the same as part F.3.a.(5)(b) and (c) of the 2001 Permit, both of which permits require maintenance and inspection activities.

Part D.3.a.(3)(b)(i),(iv)-(vi) of the 2007 Permit is the same as part 3.a.(5)(c)(i)(iii) - (v) in the 2001 Permit, both of which require:

1. Annual inspection of MS4 facilities (D.3.a.(3)(b)(i));
2. Record keeping of the maintenance and cleaning activities including the overall quantity of waste removed (D.3.a.(3)(b)(iv));
3. Proper disposal of waste removed pursuant to applicable laws (D.3.a.(3)(b)(v));
4. Measures to eliminate waste discharges during MS4 maintenance and cleaning activities (D.3.a.(3)(b)(vi)).

Part D.3.a.(3)(b)(ii) of the 2007 Permit gives claimants the flexibility, after two years of inspections, to inspect MS4 facilities that require inspection and cleaning less than annually, but not less than every other year. Part F.3.a.(5)(c)(i), imposes potentially less frequent inspections than those imposed under part F.3.a.(5)(b) and (c) of the 2001 Permit, which requires that the "... maintenance activities must, at a minimum, include: i. inspection and removal of accumulated waste (e.g., sediment, trash, debris and other pollutants) between May 1 and September 30 of each year. The 2007 Permit requires less frequent inspections than those required under the 2001 Permit and therefore does not impose a new program or higher level of service.

1. Conveyance System Inspection

Comment:

"Claimants were already required to inspect conveyance systems annually under the prior permit. To the extent Claimants inspect MS4 facilities only annually under the San Diego Permit, the costs of the annual inspection, personnel and associated costs, are not reimbursable. Similarly, for facilities that are inspected more frequently than annually, the costs of one inspection of each facility occurring within each 12 month period are not reimbursable. See also General Comment C, regarding lack of specificity in identification of costs in addition to Personnel Costs."

Reply: Claimants acknowledge that costs related to annual inspections of MS4 facilities are not reimbursable. See also, Reply to General Comment C.

2. Conveyance System Cleaning Operations

Comment: "See General Comment C"

Reply: See Reply to General Comment C.

3. Vehicles and Equipment

Comment:

“To the extent that vehicles or other equipment is purchased for materials disposal, these costs are not reimbursable because materials disposal in compliance with applicable laws was required by the prior permit. See discussion under “Materials Disposal,” below. In addition, see General Comment A, above, indicating that any allowed costs must clearly be incurred in this permit term and not already included in the cost of contracts to the extent conveyance system cleaning and inspection operations are contracted out. It is unclear what types of equipment (for example, shovels, rakes or power washers) the Claimants would need to purchase to clean their conveyance systems that they did not already own prior to adoption of the San Diego Permit. Moreover, the Claimants have not made clear that the cost of vehicles, equipment and maintenance and storage thereof will be transparently pro-rated to the extent some or all of it is used for dual or multiple purposes. It is questionable how the Claimants will be able to specify the exact amount of maintenance of a piece of equipment attributable to compliance with reimbursable permit provisions as opposed to maintenance costs for unreimbursable uses. Yet, to be reimbursed, the Claimants must make this demonstration or forfeit reimbursement for equipment maintenance. If the equipment vehicles and supplies are solely dedicated to conveyance system cleaning, it is likewise questionable whether this single purpose use is the most reasonable method of complying with the mandate. (See Cal Code Regs, tit. 2, § 1183.1 (a)(4).)”

Reply: Claimants disagree with the Water Boards’ comments on vehicles and equipment necessary to carry out reimbursable conveyance system cleaning activities.

Regarding the “most reasonable methods of complying with the mandate”, Claimants’ revised Ps&Gs closely follow Commission’s regulations:

“Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and a description of the most reasonable methods of complying with the mandate. ‘The most reasonable methods of complying with the mandate’ are those methods not specified in statute or executive order that are necessary to carry out the mandated program.” (Cal Code Regs, tit. 2, § 1183.1 (a)(4).)

Simply put, Claimants’ “most reasonable methods” are not specified in the 2007 Permit and “are necessary to carry out the mandated program.” The Water Boards have not claimed otherwise. Accordingly, Claimants’ activities are, by definition, reimbursable.

Claimants acknowledge the Water Boards’ comments on the need to prorate the costs of vehicles and equipment as well as maintenance and storage costs for vehicles and equipment used for dual or multiple purposes and Claimants understand that these pro-rations need to be computed in accordance with SCO’s Mandated Cost Manual for Local Agencies.

Claimants acknowledge that claims for reimbursement for items such as shovels, rakes, power washers, etc. must be made in accordance with the SCO’s Mandated Cost Manual for

Local Agencies and be limited to costs incurred during in the term of the 2007 Permit with the proviso that Claimants can claim depreciation and use allowance costs are also allowable even if the initial purchase was made in a prior period and accounting requirements found in SCO's Mandated Cost Manual for Local Agencies are met.

Claimants acknowledge that material disposal costs incurred in conveyance system cleaning are not reimbursable. Claimants note that material disposal costs incurred in street sweeping are reimbursable, as previously discussed.

4. Vehicle and Equipment Maintenance

Comment: "See immediately preceding comment."

Reply: Claimants incorporate their Reply to the Water Boards' comments in Section C.3 above.

5. Materials Disposal

Comment:

"Claimants were required to properly dispose of wastes removed from conveyance systems under the 2001 permit. Therefore, costs for materials disposal identified in the Proposed Parameters and Guidelines are not reimbursable. (See General Comment A.) In the event that the Commission disagrees and allows some portion of materials removal to be reimbursable, the Claimants must describe these costs with greater specificity. (See General Comment C.) In addition, if costs of operating, renting, leasing, or contracting for facilities to store or dispose of collected materials are claimed, the Water Boards question whether the rented facilities to store material from the Conveyance System Cleaning Operations also serve a unreimbursable purpose or serve a duplicative purpose (i.e., it is possible that materials from street sweeping operations also are stored in these same facilities.) If so, the Claimants must ensure they avoid seeking duplicate reimbursement if the Commission allows some or all of these costs."

Reply: Claimants acknowledge that material disposal costs incurred in conveyance system cleaning are not reimbursable. Claimants note that material disposal costs incurred in street sweeping are reimbursable, as previously discussed.

The Water Boards' comment to the effect that the costs of operating, renting, leasing, or contracting for facilities to store or dispose of collected materials should be prorated if a duplicative purpose and/or a nonreimbursable purpose is not relevant as the costs of material disposal are not reimbursable.

6. Fuel

Comment:

"To the extent copermittees contract with vendors to perform conveyance system inspections and cleaning and those costs are allowed by the Commission, the

Water Boards would expect fuel costs to be included in the contract cost. (See General Comment D.)”

Reply: See Reply to General Comment D.

7. Program Development

Comment:

“In this category, Claimants identify ‘[t]he costs, including Personnel Costs, to develop and update the claimant’s internal conveyance system cleaning program . . .’ See General Comment C, above, regarding lack of specificity in identification of what costs, other than personnel costs, Claimants may seek to recover to comply with this permit requirement. Second, it is unclear what ‘internal conveyance system cleaning program’ means. The Claimants should be required to provide specificity to this term to allow meaningful evaluation by the Water Boards.”

Reply: Claimants acknowledge the Water Boards’ difficulty in accepting the term “internal conveyance system cleaning program.” Claimants have eliminated “internal” and now use the term “conveyance system cleaning program” in its place.

8. Employee and Vendor Training

Comment:

“See General Comment C, above, regarding lack of specificity in identification of what costs, other than Personnel costs, Claimants may seek to recover to comply with this activity. See also General Comment D in which the Water Boards believe vendor training costs are not recoverable.”

Reply: See Reply to General Comments C and D.

9. Parking Signage and Enforcement

Comment:

“ If one sign communicates two messages, the cost of the sign should be reimbursed only once. To the extent that enforcement of parking signage overlaps with enforcement of other forms of parking restrictions unrelated to the San Diego Permit, the Claimants should be required to provide transparent segregation of costs so that the State can confirm that it is not improperly compensating the Claimants for unreimbursable costs. Finally, as with Street Sweeping enforcement, Claimants should be required to offset any reimbursement for street sweeping parking signage enforcement with revenues received from that enforcement.”

Reply: Regarding the two types of necessary parking signage for conveyance system cleaning and for street sweeping, both types of signs are reimbursable as both inform the public of applicable parking restrictions and their surveillance and enforcement. Claimants acknowledge that if one sign communicates two reimbursable messages, the cost of the sign

should be reimbursed only once. Further, Claimants agree with the Water Boards' contention that unrelated parking enforcement costs should not be claimed.

Regarding the Water Boards' generalization that Claimants be required to offset street sweeping parking signage enforcement costs with revenue received from that enforcement, see Claimants' reply 5, on pages 11-12, to Water Board's comment 7, "Street Sweeping Parking Signage and Enforcement," on page 9.

10. Employee Supervision and Management

Comment:

"See Specific Comment, III.A., Employee Supervision and Management and see also General Comment B."

Reply: See Reply to Specific Comment, III.A. and General Comment B.

11. Contracted Services

Comment:

"See Specific Comment III.A., Contracted Services and see also General Comment D."

Reply: See Reply to Specific Comment, III.A. and General Comment D.

D. Conveyance System Cleaning-Reporting

The Water Boards' specific comments on the conveyance system cleaning - reporting component in Section IV. Reimbursable Activities of the Ps&Gs are as follows:

1. Reporting and Tracking Policies and Procedures

Comment:

"See General Comment C, above, regarding lack of specificity in identification of what costs, other than Personnel Costs, would be required to perform this activity. Claimants should also be required to show why 2001 permit requirements for tracking policies and procedures are no longer adequate to meet San Diego Permit requirements. (See General Comment A, above, regarding higher level of service.)"

Reply: See Reply to General Comments C and A. In addition, Claimants point out that policies and procedures have been changed in the 2007 Permit and consequently the requirements for tracking them needs to be updated. For example, the 2007 Permit now requires that:

"Any catch basin or storm drain inlet that has accumulated trash and debris greater than 33% of design capacity shall be cleaned in a timely manner. Any MS4 facility that is designed to be self cleaning shall be

cleaned of any accumulated trash and debris immediately. Open channels shall be cleaned of observed anthropogenic litter in a timely manner.”
(Permit Part D.3.a.(3)b iii)

Further, the Commission found that the 2007 Permit required the Claimants to update and revise the JURMPs conveyance system cleaning - reporting activities to contain:

- “iv. Identification of the total number of catch basins and inlets, the number of catch basins and inlets inspected, the number of catch basins and inlets found with accumulated waste exceeding cleaning criteria, and the number of catch basins and inlets cleaned.
- v. Identification of the total distance (miles) of the MS4, the distance of the MS4 inspected, the distance of the MS4 found with accumulated waste exceeding cleaning criteria, and the distance of the MS4 cleaned.
- vi. Identification of the total distance (miles) of open channels, the distance of the open channels inspected, the distance of the open channels found with anthropogenic litter, and the distance of open channels cleaned.
- vii. Amount of waste and litter (tons) removed from catch basins, inlets, the MS4, and open channels, by category.
- viii. Identification of any MS4 facility found to require inspection less than annually following two years of inspection, including justification for the finding.”

The Commission also found the (above) activities of updating and revising conveyance system cleaning reports to be reimbursable. Consequently, the reporting activities set forth above, including their updates and revisions, remain in Section IV. Reimbursable Activities of Claimants revised Ps&Gs.

2. Data Tracking and Analysis

Comment:

“See General Comment C, above, regarding lack of specificity in identification of what costs, other than Personnel Costs, would be required to perform this activity. Claimants have not identified types of upgrades or why they are necessary to perform reimbursable activities. In addition, see General Comment E, above, concerning documentation of the need for purchases and upgrades to equipment, hardware and software exclusively to support the San Diego Permit and General Comment E, concerning the need for Claimants to demonstrate in a transparent fashion how they will segregate costs of computer purchases and upgrades associated only with reimbursable activities. The Claimants are sophisticated municipal entities who the Water Boards would expect have computers that are used for many purposes. To the extent some computers or printers are used to comply with reimbursable permit provisions but also for other purposes, the Claimants should be required to demonstrate in a transparent fashion what percentage is used or attributable exclusively to reimbursable permit provision.

The Claimants must also demonstrate what computer equipment and upgrades are necessary to comply with the San Diego Permit above and beyond the prior permit. (See General Comment A.)”

Reply: See Reply to General Comment C. In addition, Computer and software upgrades are necessary to comply with new “updated” data tracking and analysis requirements found in the 2007 Permit, as previously discussed. Computer systems vary among Claimants’ jurisdictions. Consequently, it would be difficult, if not impossible, to develop useful rules in upgrading a Claimant’s particular system. Here, one size does not fit all. Rather, Claimants propose that each jurisdiction claim upgrades which do fit their system. Further, these upgrades would be disclosed and justified on reimbursement claim forms submitted to SCO in accordance with their Mandated Cost Manual for Local Agencies, as previously discussed.

3. Report Writing

Comment:

“Claimants must pro-rate the costs of report writing to exclude unreimbursable activities. (See General Comments C and E.)

Reply: See Reply to General Comments C and E.

4. Employee Supervision and Management

Comment:

“See Specific Comment III.A., Employee Supervision and Management and see also General Comment B.”

Reply: See Reply to Specific Comment III.A and General Comment B.

5. Contracted Services

Comment:

“See Specific Comment III.A., Contracted Services and see also General Comment D, above.”

Reply: See Reply to Specific Comment III.A and General Comment B.

E. Educational Component

1. Program Development

Comment:

“See General Comment C, above, regarding a lack of specificity in identification of activities and associated costs, other than Personnel Costs, to develop an educational program for target communities Claimants must pro-rate personnel and “other costs” to ensure that they are reimbursed only for costs directly

associated with implementation of reimbursable provisions. See also General Comment A, regarding the need to determine what activities were already being performed and do not represent a higher level of service. In addition, to the extent the Program Development incorporates hydromodification management plan or low impact development elements, the copermittees must transparently segregate those costs to avoid seeking improper reimbursement.”

Reply: See Reply to General Comments C and A. Regarding the Water Boards’ concern that Claimants’ proposed reimbursable activities do not represent a higher level of service, Claimants used the listing of educational program development activities found by the Commission to impose a higher level of service. Further, Claimants agree to pro-rate costs to ensure that “... they are reimbursed only for costs directly associated with implementation of reimbursable provisions.” To facilitate the identification and measurement of such reimbursable costs, Claimants have moved specific mandated activities found to be reimbursable by the Commission from Section I. (Summary of the Mandate) of Claimants’ Ps&Gs to Section IV. (Reimbursable Activities).

Also, pending review of Claimants’ appeal, Educational Program Development activities which incorporate hydromodification management plan activities or low impact development elements are now explicitly prohibited in Claimants’ Ps&Gs as reimbursable educational activities and associated costs to avoid seeking improper reimbursement.

2. Educational Reporting and Tracking Policies and Procedures

Under this category, the Water Boards note: “See immediately preceding comment.” Claimants incorporate their response above as though fully set forth here.

3. Educational Data Tracking and Analysis

Comment: “See Specific Comment III.D. Data Tracking and Analysis”

Reply: See Reply to Specific Comment III.D. Data Tracking and Analysis.

4. Educational Materials

Comment:

“See General Comment C, above, regarding a lack of specificity in identification of activities and associated “costs, other than Personnel Costs”, to develop educational materials for target communities. Claimants must pro-rate personnel and “other costs” to ensure that they are reimbursed only for costs directly associated with implementation of reimbursable provisions. To the extent the education materials incorporate hydromodification management plan or low impact development elements, the copermittees must transparently segregate those costs to avoid seeking improper reimbursement. (See also General Comment B.)

Reply: See Reply to General Comments C and B.

5. Employee and Vendor Annual Training

Comment: "See General Comments C and D above."

Reply: See Reply to General Comments C and D.

6. Education of Target Audiences

Comment: "See General Comments C. above."

Reply: See Reply to General Comment C.

7. Report Writing

Comment: "Claimants must pro-rate the costs of report writing to exclude unreimbursable activities. (See General Comments C. and E.)"

Reply: See Reply to General Comments C and E.

8. Employee Supervision and Management

Comment: "See Specific Comment III.A. Employee Supervision and Management." See also General Comment B."

Reply: See Reply to Specific comment III.A and General Comment B.

9. Contracted Services

Comment: "See Specific Comment III.A . Contracted Services. See also General Comment D."

Reply: See Reply to Specific Comment III.A and General Comment D..

F. Watershed Urban Runoff Management Program

Comment:

"With regard to many of the categories under the heading Watershed Urban Runoff Management Program (WURMP), identified in the Proposed Parameters and Guidelines, the Claimants describe costs, including Personnel Costs, associated with organizing and administering the WURMP Working Bodies. In describing these costs, Claimants use vague phrases including, 'such as telephone calls, emails, and video conferencing,' and '[r]equired tasks typically also include, but are not limited to:' (See Proposed Parameters and Guidelines, e.g., pp. 19-20.) With regard to the Collaborative Watershed Work Product Development, Claimants again describe a variety of tasks comprising 'WURMP Work Products' as 'includes, but is not limited to' (*Ibid.*) The Claimants also set forth what appears to be a catch-all category of other watershed work products, described as 'Any Watershed Working Body Work Product not specifically identified above, but required to achieve or maintain compliance with Permit Part E.2.' (*Id.*, p. 20.)

Similarly, Claimants propose the catch-all phrase 'Other programs and activities required to implement the WURMP.' (*Ibid.*) These are examples of similar phrasing that appears throughout the WURMP and other sections of the Proposed Parameters and Guidelines.

.... Claimants are nearing the end of the fourth year of San Diego Permit implementation and should be in a position to describe the tasks necessary to perform the WURMP requirements with greater specificity and to describe anticipated changes in these activities over the remainder of the permit term so that the Water Boards can evaluate whether the tasks are necessary to implement the permit provisions and whether the tasks represent the "most reasonable methods of complying with the mandate." (See Cal. Code Regs., tit. 2, § 1183.1 (a)(4).) Moreover, for the categories and subcategories Claimants identify, see also General Comment D regarding vendor training and General Comment E, regarding computer, hardware and software upgrades."

Reply: Claimants have revised their P&Gs with more specific reimbursable activity description that address each of the concerns raised above. The phrase "such as telephone calls, emails, and video conferencing" has been changed to "telephone calls, emails, and video conferencing." The phrase "[r]equired tasks typically also include, but are not limited to: ..." has been changed to "[r]equired tasks include...." The phrase "includes, but is not limited to ..." has been changed to "includes."

Claimants have eliminated the catch-all category of "other watershed work products" from their Ps&Gs. This category was described as "Any Watershed Working Body Work Product not specifically identified above, but required to achieve or maintain compliance with Permit Part E.2." However, Claimants reserve the right to propose additional specific reimbursable activities necessary to implement Part E.2., prior to Commission's adoption of the Ps&Gs.

Claimants have eliminated the catch-all phrase "Other programs and activities required to implement the WURMP." However, Claimants reserve the right to propose additional specific reimbursable activities necessary to implement the WURMP, prior to Commission's adoption of the Ps&GS.

Claimants disagree with the Water Boards' contention that Claimants have not adequately described the tasks necessary to perform the WURMP requirements and that they are unable to determine whether Claimants' identification of reimbursable tasks necessarily reflect the "most reasonable methods of complying with the mandate." Claimants' Ps&Gs provide detailed listings of such tasks on pages 18-21. Claimants maintain that these listings are sufficient for Parameters and Guidelines, which, as the name implies, are only intended to provide guidance and limitations on reimbursable costs. Moreover, there are no Ps&Gs requirements to predict changes in reimbursable activities over the remainder of the permit term.

Claimants disagree with the Water Boards' assertion that vendor training costs are not recoverable. See Reply to General comment D.

Claimants acknowledge the Water Boards' comment that the costs of purchases and upgrades of equipment, hardware and software must be limited to those necessary to comply

with the San Diego Permit, and must be transparently segregated into use for reimbursable and unreimbursable activities. See Reply to General Comment E.

1. Vehicle and Equipment Maintenance

Comment:

“Among the specific implementation costs Claimants do identify for WURMP provisions are for the categories ‘Equipment’ and “Vehicle and Equipment Maintenance.” Claimants propose parameters and guidelines that will allow them to be reimbursed for the ‘actual cost of purchasing, renting, leasing, or contracting for vehicles and equipment to perform watershed activities mandated by the permit.’ (Proposed Parameters and Guidelines, p. 21.) They also will seek reimbursement for the costs of facilities to store and maintain the vehicles and/or equipment and supplies. (*Ibid.*) The activities Claimants describe under the WURMP provisions do not appear to require vehicles to implement, other than perhaps to attend meetings. It is unlikely that cars have been purchased and are used exclusively for WURMP activities. If they are dedicated to WURMP activities, it is questionable whether such Single-use purchases are the most reasonable methods of complying with the mandate from a cost and efficiency standpoint. The Claimants must demonstrate with specificity what activities they undertake to implement WURMP activities that require vehicles and must also segregate costs associated with other uses of the vehicles so that it is transparent what percentage of vehicle purchase and maintenance costs are reasonably attributable to WURMP activities.

Reply: Claimants agree with the Water Boards’ comments that WURMP provisions do not generally require vehicles to implement, but may in cases where Claimant staff are required to attend meetings. Accordingly, Claimants contend that mileage costs for required travel in attending mandated WURMP meetings are reimbursable at mileage rates authorized by the Claimant’s jurisdiction or the Internal Revenue Service, whichever is less.

G. Regional Collaboration

Comment:

“Claimants use similar, if not identical, qualifying language as in the WURMP discussion to describe activities in the Regional Collaboration discussion. For example, they use the ‘costs, including Personnel Costs[,]’ and for Regional Work Product Development, costs ‘to develop and update any regional work product identified in an approved Regional Working Body Work Plan and Budget. This includes, but is not limited to, the following ...’ (Proposed Parameters and Guidelines, p. 23.) They also identify as ‘Other Regional Work Products’ ‘Any Regional Working Body Work Product not specifically identified above, but required by the Permit or necessary to achieve or maintain Permit compliance. This includes, but is not limited to’ (*Id.*, p. 24.)

As with the Water Boards’ comments on the WURMP activities and in General Comment C, above, the Water Boards are concerned with the lack of specificity in the Claimants’ use of the vague phrases cited above for Regional Collaboration

and the Regional Urban Runoff Management Program. Claimants are nearing the end of the fourth year of San Diego Permit implementation and should be in a position to describe the regional tasks they are performing with greater specificity and to describe anticipated changes to these activities for the remainder of the permit term so that the Water Boards can evaluate whether the tasks are necessary to implement the permit provision and whether the tasks represent the "most reasonable methods of complying with the mandate." (See Cal. Code Regs., tit. 2, § 1183.1 (a)(4).) Moreover, for the additional categories and subcategories identified in the Proposed Parameters and Guidelines, see also General Comment D, regarding vendor costs and Comment E, regarding computer, hardware and software upgrades. The Water Boards' general comments on those topics are equally applicable to the Regional Collaboration discussion.

The Water Boards incorporate General Comments C., D., and E. in the comments on the regional activities and in an effort to avoid repetition, the Water Boards identify below, as applicable only those additional specific comments associated with some of the identified activities in the Propose Parameters and Guidelines"

Reply: See Reply to General Comment C. In addition, the Regional Work Product Development, costs "to develop and update any regional work product identified in an approved Regional Working Body Work Plan and Budget. This includes, but is not limited to, the following" has been changed to costs "to develop and update regional work products identified in an approved Regional Working Body Work Plan and Budget. This includes the following" In the "Other Regional Work Products" section the language "Any Regional Working Body Work Product not specifically identified above, but required by the 2007 Permit or necessary to achieve or maintain Permit compliance. This includes, but is not limited to" has been changed to "Regional Working Body Work Product not specifically identified above, but required by the Permit or necessary to achieve or maintain 2007 Permit compliance."

Claimants disagree with the Water Boards' contention that Claimants have not adequately described the tasks necessary to perform the Regional Collaboration requirements and that they are unable to determine whether Claimants' identification of reimbursable tasks necessarily reflect the "most reasonable methods of complying with the mandate." Claimants' Ps&Gs provide detailed listings of such tasks on pages 22-25. Claimants maintain that these listings are sufficient for Parameters and Guidelines, which, as the name implies, are only intended to provide guidance and limitations on reimbursable costs. Moreover, there are no Ps&Gs requirements to predict changes in reimbursable activities over the remainder of the permit term.

Claimants disagree with the Water Boards' assertion that vendor training costs are not recoverable. See Reply to General Comment D.

Claimants acknowledge the Water Boards' comment that the costs of purchases and upgrades of equipment, hardware and software must be limited to that necessary to comply with the San Diego Permit, and must be transparently segregated into use for reimbursable and unreimbursable activities. See Reply to General Comment E.

1. Regional Work Product Development

“... Report of Waste Discharge.

The Water Boards specifically object to identification of the Report of Waste Discharge (ROWD) as a Regional Work Product required by reimbursable provisions of the San Diego Permit. The requirement to submit a ROWD is set forth in the San Diego Permit at section J.2., but that requirement merely reflects the legal requirement that exists in federal law to submit an ROWD. The Claimants' obligation to prepare and submit a ROWD is imposed directly by federal mandate in the Clean Water Act and the Commission itself recognizes the Claimants' obligation to obtain a permit under the federal law in its Statement of Decision wherein the Commission states: 'NPDES permits are required for 'A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.' (Statement of Decision, p. 6, citing 33 USCA § 1342(p)(2)(C).) The obligation to submit a ROWD for permit renewal arises directly from the federal requirement that NPDES permits are limited to 5 year terms. (40 C.F.R. § 122.46(a) ('NPDES permits shall be effective for a fixed term not to exceed 5 years.').) The Commission's Statement of Decision did not determine otherwise. Therefore, the costs of preparing and submitting a ROWD are not reimbursable.

Claimants agree with the Water Boards' comment that the costs of preparing and submitting a ROWD are not reimbursable. Accordingly, these activities and costs have been deleted in claimants' revised Ps&Gs.

2. Program Effectiveness Assessment

Comment:

“Similar to other descriptions of activities and costs Claimants assert should be included in the Adopted Parameters and Guidelines, Claimants again use language and phrases to allow for the later identification of specific activities and associated costs. For example, as with other permit provisions, the Claimants identify 'costs, including Personnel Costs,' without describing what other 'costs' they intend to reference. (Proposed Parameters and Guidelines, p. 25.) See Water Boards' General Comment C, above, applicable to these unspecified categories of activities. Similarly, the Claimants identify costs of purchases and upgrades to equipment, hardware and software necessary to support data tracking, analysis and reporting (Program Implementation) as costs associated with reimbursable requirements. The Water Boards are concerned that the Claimants have not adequately demonstrated why purchases and upgrades are necessary to support the Program Effectiveness Assessment functions and how they will distinguish activities and costs incurred to comply with the higher level of service identified by the Commission as compared to the prior permit. (See General Comments A and E and Specific Comment III.E.) In addition, the Claimants have not made clear how they will effectively exclude, in a transparent way, costs for computers and associated upgrades that are incurred in connection with unreimbursable provisions such as hydromodification management plan and low impact development elements. Finally, the Claimants assert that training of staff,

including vendor employees, is necessary to comply with the mandated provisions and costs for such training should be reimbursed. The Water Boards disagree. (See Water Boards' General Comment D, above.) The Water Boards' General Comments are generally applicable as well to the categories and subcategories identified for Program Effectiveness Assessment listed in the Proposed Parameters and Guidelines, although the Water Boards do not have any additional specific comments applicable to these categories at this time.”

Reply: The above comments are identical to those previously made and addressed by Claimants. Claimants incorporate by reference their earlier replies to these comments.

Reply to Other Issues Comments by the Water Boards

A. Offsetting Revenues

Comment:

“The Statement of Decision finds that certain types of fees “would be identified as offsetting revenue in the parameters and guidelines.” (Statement of Decision, p 2.) The Claimants’ Proposed Parameters and Guidelines do not address whether there are or they anticipate there will be any offsetting revenues for Inclusion in the Parameters and Guidelines. Claimants should be required to identify offsetting revenues prior to the Commission's adoption of Parameters and Guidelines. Moreover, the Claimants have not, but should be to, identify and include offsetting revenues derived from street sweeping and conveyance system cleaning parking sign enforcement. Finally, the Claimants have not identified any general fund revenues available to apply to reimbursable provisions for purposes of offsetting reimbursement amounts.”

Reply: Claimants have added the following offsetting revenue language to their revised Ps&Gs which was included in Commission’s Statement of Decision (SOD) on page 133:

“Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to service fees collected, federal funds, other state funds, and:

- Any fees or assessments approved by the voters or property owners for any activities in the permit, including those authorized by Public Resources Code section 40059 for street sweeping or reporting on street sweeping, and those authorize by Health and Safety Code section 5471, for conveyance-system cleaning, or reporting on conveyance-system cleaning;
- Any proposed fees that are not subject to a written protest by a majority of parcel owners and that are imposed for street sweeping.
- Fees imposed pursuant to Water Code section 16103 only to the extent that a local agency voluntarily complies with Water Code section 16101, the Regional Board approves the plan and incorporates it into the test claim permit to satisfy

the requirements of the permit.”

Finally, Claimants note that general fund revenues appropriated by the State for the reimbursable portions of the 2007 Permit need to be offset. This is required under the above provisions that “other state funds” for the same executive order’s reimbursable mandates be offset.

B. Reasonable Reimbursement Methodology

Comment:

“In their transmittal letter for the Proposed Parameters and Guidelines, Claimants state that they ‘believe it would be appropriate to include a reasonable reimbursement methodology as defined in Government Code section 17518.5, for a number of the activities found to be reimbursable by the Commission’ To the Water Boards’ knowledge neither Claimants nor any state agency has submitted a proposed reasonable reimbursement methodology. The Water Boards reserve the right to comment on any such methodology that may be proposed in the future in this proceeding.”

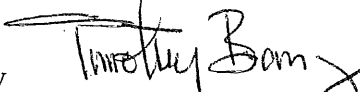
Reply: Claimants are developing a ‘reasonable reimbursement methodology’ (RRM), as defined in Government Code section 17518.5, for a number of the activities found to be reimbursable by the Commission. The types of potential RRM activities under study include repetitive street sweeping and conveyance inspection and cleaning activities and periodic meeting activities.

Claimants have found the NPDES Stormwater Cost Survey, prepared for the California State Water Resources Control Board by the Office of Water Programs, California State University Sacramento during January, 2005, to be particularly helpful in selecting appropriate RRM survey techniques and metrics. For example, the NPDES Stormwater Survey provides substantial information on how to develop the street sweeping metric of ‘cost per curb mile swept’.

Claimants hope to file their RRM metrics with the Commission by late January of 2011.

Very truly yours,

JOHN J. SANSONE, County Counsel

By 

TIMOTHY M. BARRY, Senior Deputy

**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

IN RE TEST CLAIM ON:

San Diego Regional Quality Control Board
Order No. R9-2007-0001
Permit CAS0108758
Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3),
D.3.a.(5), D.5, E.2.f, E.2.g, F.1, F.2, F.3,
I.1, I.2, I.5, J.3.a.(3)(c)iv-viii & x-xv, and
L.

Filed June 20, 2008, by the County of San
Diego, Cities of Carlsbad, Del Mar,
Imperial Beach, Lemon Grove, Poway, San
Marcos, Santee, Solana Beach, Chula
Vista, Coronado, Del Mar, El Cajon,
Encinitas, Escondido, La Mesa, Lemon
Grove, National City, Oceanside, San
Diego, and Vista, Claimants.

Case No.: 07-TC-09

Discharge of Stormwater Runoff

PROPOSED PARAMETERS AND
GUIDELINES PURSUANT TO
GOVERNMENT CODE SECTION 17557
AND TITLE 2, CALIFORNIA CODE OF
REGULATIONS, SECTION 1183.12

(Revised 11/15/10)

Parameters and Guidelines

San Diego Regional Quality Control Board
Order No. R9-2007-0001, Permit CAS0108758
Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,
F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c)iv-viii & x-xv, and L.

Discharge of Stormwater Runoff

I. SUMMARY OF THE MANDATE

On March 26, 2010, the Commission on State Mandates (“Commission”) adopted its Statement of Decision (“SOD”) finding that San Diego Regional Quality Control Board Order No. R9-2007-0001, Permit CAS108758 (the “Permit”) imposes reimbursable state-mandated programs and activities upon the Co-permittees¹ under the Permit within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform the following activities:

- street sweeping (permit part D.3.a(5));
- street sweeping reporting (part J.3.a.(3)(c) x-xv);
- conveyance system cleaning (part D.3.a.(3));
- conveyance system cleaning reporting (J.3.a.(3)(c)(iv)-(viii));
- educational component (part D.5.a.(1)-(2) & D.5.b.(1)(c)-(d) & D.5.(b)(3));
- watershed activities and collaboration in the Watershed Urban Runoff Management Program (part E.2.f & E.2.g);
- Regional Urban Runoff Management Program (parts F.1., F.2. & F.3);
- program effectiveness assessment (parts I.1 & I.2);
- long-term effectiveness assessment (part I.5); and
- all permittee collaboration (part L.1.a.(3)-(6)).

¹ Co-permittees under the Permit include the County of San Diego, the San Diego Unified Port District, the San Diego County Regional Airport Authority and the cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach., and Vista.

The Commission also found that the following test claim activities are not reimbursable because the claimants have fee authority sufficient (within the meaning of Gov't Code § 17556, subd. (d)) to pay for them: hydromodification management plan (part D.1.g); and low-impact development (parts D.1.d.(7) & D.1.d.(8)).

Finally, the Commission determined that the following would be identified as offsetting revenue in the parameters and guidelines:

- Any fees or assessments approved by the voters or property owners for any activities in the permit, including those authorized by Public Resources Code section 40059 for street sweeping or reporting on street sweeping, and those authorize by Health and Safety Code section 5471, for conveyance-system cleaning, or reporting on conveyance-system cleaning; and
- Any proposed fees that are not subject to a written protest by a majority of parcel owners and that are imposed for street sweeping.
- Effective January 1, 2010, fees imposed pursuant to Water Code section 16103 only to the extent that a local agency voluntarily complies with Water Code section 16101 by developing a watershed improvement plan pursuant to Statutes 2009, chapter 577, and the Regional Board approves the plan and incorporates it into the test claim permit to satisfy the requirements of the permit.

II. ELIGIBLE CLAIMANTS

Eligible claimants are the County of San Diego, the San Diego Unified Port District, the San Diego County Regional Airport Authority and the cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, and Vista.

III. PERIOD OF REIMBURSEMENT

The term of the Permit is from January 24, 2007 – January 23, 2012.² The Permit terms and conditions are automatically continued, however, pending issuance of a new permit if all requirements of the federal NPDES regulations on the continuation of expired permits are complied with.³

² According to attachment B of the Permit: "*Effective Date*. This Order shall become effective on the date of its adoption provided the USEPA has no objection...." "(q) *Expiration*. This Order expires five years after adoption."

³ According to attachment B of the Permit: "(r) *Continuation of Expired Order* [23 CCR 2235.4]. After this Order expires, the terms and conditions of this Order are automatically continued pending issuance of a new permit if all requirements of the federal NPDES regulations on the continuation of expired permits (40 CFR 122.6) are complied with."

Government Code section 17557, subdivision (e), provides that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The Co-permittees filed their Test Claim in this matter on June 20, 2008. Therefore, the period of reimbursement began January 24, 2007.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent years may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial year's costs shall be submitted to the Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, an eligible claimant may file a reimbursement claim which may utilize "reasonable reimbursement methodologies" ("RRMs") specified in Section VI. or actual cost methodologies as specified in Section V. Where an RRM is not provided to claim reimbursable costs, the actual cost method must be used.

A. Street Sweeping (part D.3.a.(5)) - Sweeping of Municipal Areas:

Mandated Activities:

Each Copermittee shall implement a program to sweep improved (possessing a curb and gutter) municipal roads, streets, highways, and parking facilities. The program shall include the following measures:

- (a) Roads, streets, highways, and parking facilities identified as consistently generating the highest volumes of trash and/or debris shall be swept at least two times per month.
- (b) Roads, streets, highways, and parking facilities identified as consistently generating moderate volumes of trash and/or debris shall be swept at least monthly.
- (c) Roads, streets, highways, and parking facilities identified as generating low volumes of trash and/or debris shall be swept as necessary, but no less than once per year.

Reimbursable Activities:

Street Sweeping (part D.3.a.(5)) reimbursable activities and costs include:

- Street Sweeping Operations. The claimant's personnel costs⁴ to perform street sweeping.⁵
- Equipment. The actual cost of purchasing, renting, leasing, or contracting for equipment to perform street sweeping and related functions. This includes one-time costs for equipment purchases and corresponding equipment depreciation costs.
- Equipment Maintenance. Annual equipment maintenance costs, including parts, supplies (e.g., water), and Personnel Costs. This also includes the cost of operating, renting, leasing, or contracting for facilities to store and maintain equipment and supplies.
- Materials Disposal. Costs to dispose of material collected from street sweeping, including the removal of materials from street sweeping vehicles, and the transport, storage, and disposal of these materials and the cost of operating, renting, leasing, or contracting for facilities to store or dispose of collected materials, and all applicable disposal fees or charges.
- Fuel. The actual cost of the fuel necessary to run the street sweeping equipment and equipment used to transport and dispose of collected materials.
- Program Development. The claimant's costs to develop and update the claimant's street sweeping program including specific criteria, policies, procedures, manuals, and forms. This includes the development and utilization of criteria to determine which roads, streets, highways, and parking facilities have high, moderate, and low volumes of trash and/or debris.⁶ Program development tasks are generally one-time costs with annual reviews and periodic updates.

⁴ Unless otherwise stated in these Parameters and Guidelines, a claimant's "personnel costs" refer to actual salary, benefit and indirect costs and will be claimed for only that part of the cost that is related to the reimbursable mandate. Some of the actual costs may be incurred through the use of vendors, contractors, consultants, or other service providers, and should be claimed as described in the last bullet point of this section.

⁵ "Street sweeping" includes sweeping of improved roads, streets, highways, and parking facilities subject to the reimbursable mandate.

⁶ Under the Permit, the Copermittees are individually responsible to define high, moderate, and low categories of trash generation, and to implement their sweeping activities accordingly within their jurisdictions.

- Employee and Vendor Training. The claimant's costs to develop, update, and conduct training on street sweeping policies, procedures, to develop and produce documentation (manuals, forms, etc.), and the training costs of all claimant and vendor employees who perform tasks necessary to implement street sweeping and related functions during the life of the Permit.
- Parking Signage and Enforcement. The claimant's costs, to purchase and install street sweeping signage and to enforce parking prohibitions in areas where street sweeping is scheduled and the costs to purchase, installation, or replacement of signage to inform the public of applicable parking restrictions, as well as their surveillance and enforcement.
- Employee Supervision and Management. Time spent by supervisory and management personnel supervising personnel directly responsible for performing the mandated activities. (Hereinafter referred to as "Employee Supervision and Management".)
- Contracted Services. Any of the costs described above may be incurred through the use of vendors, contractors, consultants, or other service providers. In such case, only actual costs to the claimant will be claimed, and will only include that portion of the cost that is related to the reimbursable mandate. Claimants may also include the costs of preparing requests for proposals or requests for bids, negotiating and drafting third party contracts, and subsequently administering service contracts for the time they are performing these tasks using the claimant's Personnel rates. (Hereinafter referred to as "Contracted Services".)

B. Street Sweeping Reporting (part J.3.a.(3)(c)x-xv):

Mandated Activities:

Report annually on the following:

x. Identification of the total distance of curb-miles of improved roads, streets, and highways identified as consistently generating the highest volumes of trash and/or debris, as well as the frequency of sweeping conducted for such roads, streets, and highways.

xi. Identification of the total distance of curb-miles of improved roads, streets, and highways identified as consistently generating moderate volumes of trash and/or debris, as well as the frequency of sweeping conducted for such roads, streets, and highways.

xii. Identification of the total distance of curb-miles of improved roads, streets, and highways identified as consistently generating low volumes of trash and/or debris, as well as the frequency of sweeping conducted for such roads, streets, and highways.

xiii. Identification of the total distance of curb-miles swept.

xiv. Identification of the number of municipal parking lots, the number of municipal parking lots swept, and the frequency of sweeping.

xv. Amount of material (tons) collected from street and parking lot sweeping.

Reimbursable Activities:

Street Sweeping Reporting (part J.3.a.(3)(c)x-xv) reimbursable activities and costs include:

- Reporting and Tracking Policies and Procedures. Claimant's personnel costs to develop, update, and implement street sweeping reporting and tracking policies and procedures.
- Data Tracking and Analysis. Claimant's costs, to develop, update, and implement data tracking and analysis methods and procedures and personnel costs to develop and maintain data tracking methods or systems, and performing data tracking and analysis for reports to the Regional Water Quality Control Board. Also included are the costs of purchases and upgrades to equipment, hardware, and software necessary to support data tracking, analysis, and reporting in compliance with the Permit and subject to the reimbursable mandate.
- Report Writing. Claimant's personnel costs to develop and write reports to the Regional Water Quality Control Board.
- Employee Supervision and Management. (See Section IV.A).
- Contracted Services. (See Section IV.A).

C. Conveyance System Cleaning (part D.3.a.(3)):

Mandated Activities:

(a) Implement a schedule of inspection and maintenance activities to verify proper operation of all municipal structural treatment controls designed to

reduce pollutant discharges to or from its MS4s and related drainage structures.

(b) Implement a schedule of maintenance activities for the MS4 and MS4 facilities (catch basins, storm drain inlets, open channels, etc). The maintenance activities shall, at a minimum, include: [¶]...

[¶]

iii. Any catch basin or storm drain inlet that has accumulated trash and debris greater than 33% of design capacity shall be cleaned in a timely manner. Any MS4 facility that is designed to be self cleaning shall be cleaned of any accumulated trash and debris immediately. Open channels shall be cleaned of observed anthropogenic litter in a timely manner.

Reimbursable Activities:

Conveyance System Cleaning (part D.3.a.(3)): reimbursable activities and costs include:

- Conveyance System Inspection. Claimant's personnel costs to inspect the conveyance system for the purposes of assessing the accumulation of trash, debris, or litter, or for verifying the proper operation of structural treatment controls.
- Conveyance System Cleaning Operations. Claimant's personnel costs to clean any catch basin or storm drain inlet that has accumulated trash and debris greater than 33% of design capacity, to clean accumulated trash and debris from any MS4 facility that is designed to be self cleaning, or to clean open channels of observed anthropogenic litter.
- Vehicles and Equipment. Claimant's costs to purchase, rent, lease, or contract for vehicles and equipment to perform conveyance system inspection or cleaning (including vector trucks and other cleaning equipment), and to transport and dispose of collected material. This includes one-time costs for equipment purchases and corresponding equipment depreciation costs.
- Vehicle and Equipment Maintenance. Annual maintenance costs, including parts, supplies (e.g., water), and personnel costs. This also includes the cost of operating, renting, leasing, or contracting for facilities to store and maintain vehicles, equipment, and supplies.
- Fuel. The actual cost of the fuel necessary to run the vehicles and equipment, to inspect and clean MS4 facilities, and to transport and dispose of collected materials.

- Program Development. Claimant's costs to develop and update the claimant's conveyance system cleaning program including specific criteria, policies, procedures, manuals, and forms. This includes the development and utilization of inspection and maintenance schedules. Program development tasks are generally one-time costs with annual reviews and periodic updates.
- Employee and Vendor Training. Claimant's costs to develop, update, and conduct training on conveyance system inspection, cleaning, and disposal policies and practices. The costs include training of all claimant and vendor employees who perform tasks necessary to implement conveyance system cleaning and related functions during the life of the Permit.
- Parking Signage and Enforcement. Claimant's costs to purchase and install signage and to enforce parking prohibitions in areas where conveyance system cleaning is scheduled and costs to purchase, installation, or replacement of signage to inform the public of applicable parking restrictions, as well as their surveillance and enforcement.
- Employee Supervision and Management. (See Section IV.A).
- Contracted Services. (See Section IV.A).

Nonreimbursable Activities:

Conveyance System Cleaning (part D.3.a.(3)): reimbursable activities and costs do not include:

1. Part D.3.a(3)(a) of the 2007 permit;
2. Part D.3.a.(3)(b)(i),(iv)- (vi) of the 2007 permit;
3. Annual inspection of MS4 facilities (D.3.a(3)(b)(i));
4. Record keeping of the maintenance and cleaning activities including the overall quantity of waste removed (D.3.a(3)(b)(iv));
5. Proper disposal of waste removed pursuant to applicable laws (D.3.a(3)(b)(v));
6. Measures to eliminate waste discharges during MS4 maintenance and cleaning activities (D.3.a(3)(b)(vi)). Part D.3.a.(3)(b)(ii) of the 2007 permit.

D. Conveyance System Cleaning – Reporting (J.3.a.(3)(c) iv-viii)

Mandated Activities:

Update and revise the Copermittees' JURMPs to contain:

iv. Identification of the total number of catch basins and inlets, the number of catch basins and inlets inspected, the number of catch basins and inlets found with accumulated waste exceeding cleaning criteria, and the number of catch basins and inlets cleaned.

v. Identification of the total distance (miles) of the MS4, the distance of the MS4 inspected, the distance of the MS4 found with accumulated waste exceeding cleaning criteria, and the distance of the MS4 cleaned.

vi. Identification of the total distance (miles) of open channels, the distance of the open channels inspected, the distance of the open channels found with anthropogenic litter, and the distance of open channels cleaned.

vii. Amount of waste and litter (tons) removed from catch basins, inlets, the MS4, and open channels, by category.

viii. Identification of any MS4 facility found to require inspection less than annually following two years of inspection, including justification for the finding.

Reimbursable Activities:

Conveyance System Cleaning – Reporting (J.3.a.(3)(c) iv-viii) reimbursable activities and costs include:

- Reporting and Tracking Policies and Procedures. Personnel Costs, to develop, update, and implement conveyance system inspection and cleaning reporting and tracking policies and procedures.
- Data Tracking and Analysis. Claimant's Costs to develop, update, and implement data tracking and analysis methods and procedures and personnel costs to develop or maintain data tracking methods or systems, and to perform data tracking and analysis for reports to the Regional Water Quality Control Board as well as the costs of purchases and upgrades to equipment, hardware, and software necessary to support data tracking, analysis, and reporting in compliance with the Permit and subject to the reimbursable mandate.

- Report Writing. Claimant's personnel costs, to develop and write reports to the Regional Water Quality Control Board.
- Employee Supervision and Management. (See Section IV.A).
- Contracted Services. (See Section IV.A).

E. Educational Component (part D.5):

Mandated Activities:

Each Copermittee shall implement an education program using all media as appropriate to (1) measurably increase the knowledge of the target communities regarding MS4s, impacts of urban runoff on receiving waters, and potential BMP solutions for the target audience; and (2) to measurably change the behavior of target communities and thereby reduce pollutant releases to MS4s and the environment. At a minimum, the education program shall meet the requirements of this section and address the following target communities:

- Municipal Departments and Personnel
- Construction Site Owners and Developers
- Industrial Owners and Operators
- Commercial Owners and Operators
- Residential Community, General Public, and School Children.

a. GENERAL REQUIREMENTS

- (1) Each Copermittee shall educate each target community on the following topics where appropriate: (i) Erosion prevention, (ii) Non storm water discharge prohibitions, and (iii) BMP types: facility or activity specific, LID,-source control, and treatment control.
- (2) Copermittee educational programs shall emphasize underserved target audiences, high-risk behaviors, and "allowable" behaviors and discharges, including various ethnic and socioeconomic groups and mobile sources.

b. SPECIFIC REQUIREMENTS

(1) Municipal Departments and Personnel Education

- (a) Municipal Development Planning – Each Copermittee shall implement an education program so that its Planning Boards and Elected Officials, if applicable, have an understanding of:

i. Federal, state, and local water quality laws and regulations applicable to Development Projects;

ii. The connection between land use decisions and short and long-term water quality impacts (i.e., impacts from land development and urbanization);

iii. How to integrate LID BMP requirements into the local regulatory program(s) and requirements; and

iv. Methods of minimizing impacts to receiving water quality resulting from development, including:

[1] Storm water management plan development and review;

[2] Methods to control downstream erosion impacts;

[3] Identification of pollutants of concern;

[4] LID BMP techniques;

[5] Source control BMPs; and

[6] Selection of the most effective treatment control BMPs for the pollutants of concern.

(b) Municipal Construction Activities – Each Copermittee shall implement an education program that includes annual training prior to the rainy season so that its construction, building, code enforcement, and grading review staffs, inspectors, and other responsible construction staff have, at a minimum, an understanding of the following topics, as appropriate for the target audience:

iii. Proper implementation of erosion and sediment control and other BMPs to minimize the impacts to receiving water quality resulting from construction activities.

iv. The Copermittee's inspection, plan review, and enforcement policies and procedures to verify consistent application.

v. Current advancements in BMP technologies.

vi. SUSMP requirements including treatment options, LID BMPs, source control, and applicable tracking mechanisms.

(c) Municipal Industrial/Commercial Activities – Each Copermittee shall train staff responsible for conducting storm water compliance inspections and enforcement of industrial and commercial facilities at least once a year [except for staff who solely inspect new development]. Training shall cover inspection and enforcement procedures, BMP implementation, and reviewing monitoring data.

(d) Municipal Other Activities – Each Copermittee shall implement an education program so that municipal personnel and contractors performing activities which generate pollutants have an understanding of the activity specific BMPs for each activity to be performed.

(2) New Development and Construction Education

As early in the planning and development process as possible and all through the permitting and construction process, each Copermittee shall implement a program to educate project applicants, developers, contractors, property owners, community planning groups, and other responsible parties. The education program shall provide an understanding of the topics listed in Sections D.5.b.(1)(a) and D.5.b.(1)(b) above, as appropriate for the audience being educated. The education program shall also educate project applicants, developers, contractors, property owners, and other responsible parties on the importance of educating all construction workers in the field about stormwater issues and BMPs through formal or informal training.

(3) Residential, General Public, and School Children Education

Each Copermittee shall collaboratively conduct or participate in development and implementation of a plan to educate residential, general public, and school children target communities. The plan shall evaluate use of mass media, mailers, door hangers, booths at public events, classroom education, field trips, hands-on experiences, or other educational methods.

Reimbursable Activities:

Educational Component (part D.5)⁷ reimbursable activities and costs include:

- Program Development. Claimant's costs to develop an educational program for the target communities and the costs of preparation, collaboration, and development of the educational program, training, policy development, establishment of procedures, and updates to the same. While program development tasks are generally one-time costs, the Permit requires measurable increases in knowledge and measurable changes in behavior, which necessitate annual reviews and periodic updates to the program; therefore these costs are also included.
- Reporting and Tracking Policies and Procedures. Claimant's personnel costs, to develop, update, and implement reporting and tracking policies and procedures.
- Data Tracking and Analysis. Claimant's costs to implement and update data tracking and analysis methods and procedures and personnel costs to develop and maintain data tracking methods or systems and performing data tracking and analysis for reports to the Regional Water Quality Control Board as well as the costs of purchases of and upgrades to equipment, hardware and software necessary to support data tracking, analysis and reporting of the reimbursable mandate in compliance with the Permit.
- Educational Materials. Claimant's personnel and printing costs to develop, produce and distribute educational materials and related reporting to document the efforts.
- Employee and Vendor Annual Training. Claimant's costs to develop, update, and conduct training of staff responsible for providing education to target communities and the costs of training of all claimant and vendor employees who perform tasks necessary to implement educational functions during the life of the Permit.
- Education of Target Audiences. Claimant's personnel and printing costs to implement and conduct educational programs for the target communities.

⁷ Specifically parts D.5.a.(1); D.5.a.(2); D.5.b.(1)(a)(i) and (ii) for planning boards and elected officials; D.5.b.(1)(a)(iii) - (iv) for all target audiences; D.5.b.(1)(b)(iii) - (vi); D.5.b.(1)(c) and (d); D.5.b.(2) for project applicants, contractors, or community planning groups who are not developers or construction site owners; and D.5.b.(3).

- Report Writing. Claimant's personnel costs to develop and write reports to the Regional Water Quality Control Board.
- Employee Supervision and Management. (See Section IV.A).
- Contracted Services. (See Section IV.A).

Nonreimbursable Activities:

Educational Component (part D.5)⁸ reimbursable activities and costs do not include:

1. Laws, Regulations, Permits, & Requirements: Federal, state, and local water quality laws and regulations; Statewide General NPDES Permit for Storm Water Discharges Associated with Industrial Activities (Except Construction); Statewide General NPDES Permit for Storm Water Discharges Associated with Construction Activities; Regional Board's General NPDES Permit for Ground Water Dewatering; Regional Board's 401 Water Quality Certification Program; Statewide General NPDES Utility Vault Permit; Requirements of local municipal permits and ordinances (e.g., storm water and grading ordinances and permits)
2. Best Management Practices: Pollution prevention and safe alternatives; Good housekeeping (e.g., sweeping impervious surfaces instead of hosing); Proper waste disposal (e.g., garbage, pet/animal waste, green waste, household hazardous materials, appliances, tires, furniture, vehicles, boat/recreational vehicle waste, catch basin/ MS4 cleanout waste); Non-storm water disposal alternatives (e.g., all wash waters); Methods to minimized the impact of land development and construction; Methods to reduce the impact of residential and charity car-washing; Preventive Maintenance; Equipment/vehicle maintenance and repair; Spill response, containment, and recovery; Recycling; BMP maintenance.
3. General Urban Runoff Concepts: Impacts of urban runoff on receiving waters; Distinction between MS4s and sanitary sewers; Short-and long-term water, quality impacts associated with urbanization (e.g., land-use decisions, development, construction); How to conduct a storm water inspection.

⁸ Specifically parts D.5.a.(1); D.5.a.(2); D.5.b.(1)(a)(i) and (ii) for planning boards and elected officials; D.5.b.(1)(a)(iii) - (iv) for all target audiences; D.5.b.(1)(b)(iii) - (vi); D.5.b.(1)(c) and (d); D.5.b.(2) for project applicants, contractors, or community planning groups who are not developers or construction site owners; and D.5.b.(3).

4. Other Topics: Public reporting mechanisms; Water quality awareness for Emergency/ First Responders; Illicit Discharge Detection and Elimination observations and follow-up during daily work activities; Potable water discharges to the MS4; Dechlorination techniques; Hydrostatic testing; Integrated pest management; Benefits of native vegetation; Water conservation; Alternative materials and designs to maintain peak runoff values; Traffic reduction, alternative fuel use.

Claimants are required to educate target communities, except for planning boards and elected officials, on the topics specified in part D.5.b.(1)(a) of the 2007 permit which are the same as those topics specified in part F.4.a. of the 2001 permit. The topics which are not reimbursable for planning boards and elected officials are:

1. Federal, state, and local water quality laws and regulations applicable to construction and grading activities. [The 2001 permit, in F.4.a. (p. 35) which covers "...Federal, state and local water quality regulations that affect development projects."]
2. The connection between construction activities and water quality impacts (i.e., impacts from land development and urbanization and impacts from construction material such as sediment. [The 2001 permit, in F.4.a (p. 35) calls this "Water Quality Impacts associated with land development."]

Part D.5.b.(1)(b) (Municipal Construction Activities) of the 2007 Permit requires Part D.5.b.(1)(b) (Municipal Construction Activities) of the permit which requires implementing an educational program for municipal "construction, building, code enforcement, and grading review staffs" is not a reimbursable activity. It is not a new program or higher level of service for those topics in which the 2001 permit also required an education program for "Municipal Departments and Personnel," such as:

1. Federal, state, and local water quality laws and regulations applicable to construction and grading activities. [The 2001 permit, in F.4.a. (p. 35) says: "Federal, state and local water quality regulations that affect development projects."]
2. The connection between construction activities and water quality impacts (i.e., impacts from land development and urbanization and impacts from construction material such as sediment. [The 2001 permit, in F.4.a (p. 35) calls this "Water Quality Impacts associated with land development."] The timing of the educational program specified in D.5.b.(1)(b) requires it to be implemented "prior to the rainy season." This timing requirement is a new program or higher level of service compared with the 2001 permit.

Part D.5.(b)(2) of the 2007 permit requires educational activities that are not reimbursable. These activities for “project applicants, developers, contractors property owners, community planning groups, and other responsible parties are similar to those required in Parts F.4.a and F4.b. of the 2001 permit.

F. Watershed Urban Runoff Management Program (parts E.2.f & E.2.g.)

Mandated Activities:

Each Copermittee shall collaborate with other Copermittees within its WMA(s) [Watershed Management Area] as in Table 4 [of the Permit] to develop and implement an updated Watershed Urban Runoff Management Program for each watershed. Each updated Watershed Urban Runoff Management Program shall meet the requirements of section E of the Order, reduce the discharge of pollutants from the MS4 to the MEP, and prevent urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards. At a minimum, each Watershed Urban Runoff Management Program shall include the elements described below: [¶]...[¶]

[Paragraphs (a) through (e) were not part of the test claim.]

f. Watershed Activities

(1) The Watershed Copermittees shall identify and implement Watershed Activities that address the high priority water quality problems in the WMA. Watershed Activities shall include both Watershed Water Quality Activities and Watershed Education Activities. These activities may be implemented individually or collectively, and may be implemented at the regional, watershed, or jurisdictional level.

(a) Watershed Water Quality Activities are activities other than education that address the high priority water quality problems in the WMA. A Watershed Water Quality Activity implemented on a jurisdictional basis must be organized and implemented to target a watershed’s high priority water quality problems or must exceed the baseline jurisdictional requirements of section D of the Order.

(b) Watershed Education Activities are outreach and training activities that address high priority water quality problems in the WMA.

(2) A Watershed Activities List shall be submitted with each updated Watershed Urban Runoff Management Plan (“WURMP”) and updated annually thereafter. The Watershed Activities List shall include both Watershed Water Quality Activities and Watershed Education Activities, along with a description of how each activity was selected, and

how all of the activities on the list will collectively abate sources and reduce pollutant discharges causing the identified high priority water quality problems in the WMA.

(3) Each activity on the Watershed Activities List shall include the following information:

- (a) A description of the activity;
- (b) A time schedule for implementation of the activity, including key milestones;
- (c) An identification of the specific responsibilities of Watershed Copermittees in completing the activity;
- (d) A description of how the activity will address the identified high priority water quality problem(s) of the watershed;
- (e) A description of how the activity is consistent with the collective watershed strategy;
- (f) A description of the expected benefits of implementing the activity; and
- (g) A description of how implementation effectiveness will be measured.

(4) Each Watershed Copermittee shall implement identified Watershed Activities pursuant to established schedules. For each Permit year, no less than two Watershed Water Quality Activities and two Watershed Education Activities shall be in an active implementation phase. A Watershed Water Quality Activity is in an active implementation phase when significant pollutant load reductions, source abatement, or other quantifiable benefits to discharge or receiving water quality can reasonably be established in relation to the watershed's high priority water quality problem(s). Watershed Water Quality Activities that are capital projects are in active implementation for the first year of implementation only. A Watershed Education Activity is in an active implementation phase when changes in attitudes, knowledge, awareness, or behavior can reasonably be established in target audiences.

g. Copermittee Collaboration

Watershed Copermittees shall collaborate to develop and implement the Watershed Urban Runoff Management Programs. Watershed

Copermittee collaboration shall include frequent regularly scheduled meetings.

Reimbursable Activities:

Watershed Urban Runoff Management Program (parts E.2.f and E.2.g) reimbursable activities and costs include:

- Working Body Support and Representation. Claimant's costs to organize and administer the Watershed Urban Runoff Management Program ("WURMP") Working Bodies.⁹ And the costs incurred 1) to perform the responsibilities of chairs¹⁰, co-chairs, and secretaries¹¹, 2) attend and participate at meetings (including preparation and travel time), and 3) other activities required for planning, discussion, and coordination such as telephone calls, emails, and video conferencing. Required tasks include 1) developing and distributing meeting agendas and notes, and 2) distributing, presenting, reviewing, and approving any of the Watershed Work Products described below.
- Collaborative Watershed Work Product Development. Claimant's Personnel costs to develop and update WURMP Work Products and the costs of such activities including:
 - Watershed Urban Runoff Management Programs ("WURMPs"). A WURMP that includes all of the elements described in Permit Part E.2;

⁹ Permit Part E.2.g requires the collaborative development and implementation of a WURMP for each of the following Watershed Management Areas ("WMAs"): 1) Santa Margarita River; 2) San Luis Rey River; 3) San Dieguito River; 4) Peñasquitos; 5) Mission Bay; 6) San Diego River; 7) San Diego Bay, and: 8) Tijuana River.

¹⁰ MOU Section I defines a Chair as follows: "Chair means presiding over and providing leadership and direction to a Working Body. This includes serving as a point of contact to external entities such as Regional Board staff, stakeholders, and industry groups, soliciting group input on and developing meeting content, facilitating meetings, and coordinating with the Secretary or Working Body Support staff to finalize work products for distribution to the Working Body. Chair responsibilities may also be divided between Co-Chairs."

¹¹ MOU Section I defines a Secretary as follows: "Secretary means a person who takes responsibility for the records, correspondence, minutes or notes of meetings, and related affairs of a Working Body. This includes: maintaining group contact lists; preparing and sending out meeting notifications and agendas; arranging for meeting rooms and equipment; taking, preparing, and finalizing meeting minutes or notes; and, coordinating with the Chair or Working Body Support staff to organize and distribute work products to the Working Body."

- Watershed Activities Lists. Any Watershed Water Quality Activity¹² or Watershed Education Activity¹³ necessary to meet the requirements of Permit Part E.2.f.(2), to include any or all of the minimum information identified in Permit Part E.2.f.(3);
- Annual WURMP Work Plans and Budgets. Any Work Plan or Budget developed to support the implementation of a WURMP;
- WURMP Annual Reports. Both the annual report content provided by individual Watershed Copermittees and the completion of the consolidated WURMP Annual Report;
- Watershed-Specific Standards. 1) Watershed reporting, assessment, and program data and information management standards; and 2) standards and approaches for watershed-level management of specific source categories or types. It applies to work products developed by individual Copermittees, their consolidation into comprehensive, watershed standards documents, and periodic updates as necessary for each;
- Working Body Status Reports. Watershed Working Body status reports developed for dissemination to Copermittees and interested parties. Status reports typically describe Watershed Working Body activities and accomplishments, success in completing scheduled tasks, and key issues, activities, and tasks to be addressed; and
- Other Watershed Work Products. Any Watershed Working Body Work Product not specifically identified above, but required to achieve or maintain compliance with Permit Part E.2.
- Watershed Implementation of Programs and Activities. Claimant's costs for the ongoing implementation of programs and activities funded and/or conducted at the watershed level and Watershed programs and activities costs including:
 - Watershed Water Quality Activities
 - Watershed Education Activities
 - Other programs and activities required to implement the WURMP

¹² Activities other than education that address high priority water quality problems in the WMA.

¹³ Outreach and training activities that address high priority water quality problems in the WMA.

Implementation costs associated with these programs and activities including:

- Materials production and distribution, equipment, supplies, fees, media purchases, and other costs associated with program implementation.
- Equipment. The actual cost of purchasing, renting, leasing, or contracting for vehicles and equipment to perform watershed activities mandated by the Permit. This includes one-time costs for vehicle and equipment purchases and corresponding equipment depreciation costs.
- Vehicle and Equipment Maintenance. Annual vehicle and equipment maintenance costs, including parts, supplies (e.g., water), and Personnel Costs. This also includes the cost of operating, renting, leasing, or contracting for facilities to store and maintain the vehicles and/or equipment and supplies.
- Fuel. The actual cost of the fuel for the vehicles and equipment performing watershed activities mandated by the Permit.
- Reporting and Tracking Policies and Procedures. Claimant's personnel costs to develop, update, and implement each WMA activity and tracking policies and procedures.
- Data Tracking and Analysis. Claimant's costs to develop, update, and implement data tracking and analysis methods and procedures for reports to the Regional Water Quality Control Board and costs of purchases and upgrades to equipment, hardware, and software necessary to support data tracking, analysis, and reporting in compliance with the Permit and subject to the reimbursable mandate.
- Report Writing. Claimant's personnel costs to develop and write reports to the Regional Water Quality Control Board.
- Employee and Vendor Annual Training. Claimant's costs to develop, update, and conduct training of staff responsible for developing or conducting WMA activities and costs of training of all claimant and vendor employees who perform tasks necessary to implement these functions during the life of the Permit.
- Cost Accounting and Documentation. Claimant's personnel costs to monitor and conduct cost accounting for all expenditures incurred in accordance with WURMP development and implementation and costs of documenting and monitoring expenditures incurred in developing and

distributing budget balance and expenditure reports, and claim submittal forms. and costs of individual Copermittee activities in developing and maintaining data tracking methods or systems, and of performing data tracking and analysis (including staff training), as well as the costs of purchases and upgrades to equipment, hardware, and software necessary to support expenditure tracking, analysis, and reporting.

- Coordination. Claimant's personnel costs, to coordinate WURMP Working Body content, issues, programs, and activities with organizations and parties outside the claimant's jurisdiction and the costs of coordination with Regional Board staff, participation at professional organizations and societies, and representation on applicable California Stormwater Quality Association ("CASQA") working bodies.
- Employee Supervision and Management. (See Section IV.A).
- Contracted Services. (See Section IV.A).

G. Regional Urban Runoff Management Program (parts F.1, F.2 & F.3)

Mandated Activities:

Each Copermittee shall collaborate with the other Copermittees to develop, implement, and update as necessary a Regional Urban Runoff Management Program that meets the requirements of part F of the Permit, reduces the discharge of pollutants from the MS4 to the MEP, and prevents urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards. The Regional Urban Runoff Management Program shall, at a minimum:

1. Develop and implement a Regional Residential Education Program. The program shall include:
 - a. Pollutant specific education which focuses educational efforts on bacteria, nutrients, sediment, pesticides, and trash. If a different pollutant is determined to be more critical for the education program, the pollutant can be substituted for one of these pollutants.
 - b. Education efforts focused on the specific residential sources of the pollutants listed in section F.1.a.
2. Develop the standardized fiscal analysis method required in section G of the Permit, and,
3. Facilitate the assessment of the effectiveness of jurisdictional, watershed, and regional programs.

Reimbursable Activities:

All Copermittee [Regional] Collaboration (part L), Regional Urban Runoff Management Program (parts F.1, F.2, and F.3), and, Long Term Effectiveness Assessment (I.5).¹⁴

In general, part L requires the establishment of a regional management structure and the implementation of collaborative activities under that structure to “address common issues, promote consistency among Jurisdictional Urban Runoff Management Programs and Watershed Urban Runoff Management Programs, and to plan and coordinate [required] activities...”. Part F requires Copermittee collaboration, but specifically focuses on the development, implementation, and updating of a Regional Urban Runoff Management Program (“RURMP”).¹⁵ Part I.5 is similar to part F.3 in its requirement for collaboration on effectiveness assessment, but specifically requires the completion of a Long Term Effectiveness Assessment (“LTEA”) in the fifth year of Permit implementation.

In practice, parts L, F, and I.5 are all carried out through the same regional structure, i.e., a defined set of Working Bodies¹⁶ with responsibilities corresponding to specific subject areas (e.g., Regional Management Committee, Municipal Sources Workgroup, or Fiscal, Reporting, and Assessment Workgroup). With limited exception¹⁷, all Copermittee collaboration and coordination is carried out through these Working Bodies. Working Body meetings typically address regional, jurisdictional, and watershed issues or functions concurrently because a clear separation between them does not exist. The types of costs presented below therefore apply to parts L, F, and I.5.

- Regional Coordination of Copermittees and Regional Working Bodies. Claimant’s costs to develop, distribute, review, and present work

¹⁴ The Long Term Effectiveness Assessment must be submitted to the Regional Board no later than 210 days prior to the expiration of the Permit. It is a one-time requirement.

¹⁵ In particular parts F.1 through F.3 require 1) development and implementation of a Regional Residential Education Program, 2) development of a standardized fiscal analysis method, and 3) facilitation of the assessment of effectiveness of jurisdictional, watershed, and regional programs.

¹⁶ MOU Section I defines Working Body as “... Committees, Subcommittees, Workgroups, Sub-workgroups, or any other group of Copermittees assembled to conduct work required by, for, or in furtherance of, compliance with the Permit.” The MOU also identifies specific Working Bodies and the general and specific responsibilities of each. MOU Section III.B.4.e also allows that the Copermittees’ Regional Management Committee may “[e]stablish or modify Working Bodies to review specific issues, make recommendations, or conduct work in support of shared regional priorities or objectives.”

¹⁷ As Principal Permittee, the County of San Diego is also responsible to carry out the functions defined in part M (Principal Permittee Responsibilities). These functions are necessary to support the general mandates of parts F and L.

products necessary for regional planning, coordination, and collaboration amongst Copermittees and Regional Working Bodies and the costs of written work products, presentations at meetings, and other means of coordination and review such as e-mail.

- Working Body Support and Representation.¹⁸ Claimant's costs to organize and administer the Regional Working Bodies and the costs of activities: 1) to perform the responsibilities of chairs, co-chairs, and secretaries, 2) attend and participate in meetings (including preparation and travel time), and 3) planning, discussion, and coordination telephone calls, emails, and video conferencing. Required tasks include: 1) developing and distributing meeting agendas and notes, and 2) distributing, presenting, reviewing, and approving any of the Regional Work Products described below.
- Regional Work Product Development. Claimant's personnel costs to develop and update any regional work product identified in an approved Regional Working Body Work Plan and Budget and the costs of such activities including:
 - Working Body Status Reports. Regional Working Body status reports developed for dissemination to Copermittees and interested parties. Status reports typically describe Regional Working Body activities and accomplishments, success in completing scheduled tasks, and key issues, activities, and tasks to be addressed;
 - Annual Work Plans and Budgets. Both individual Regional Working Body Work Plans and Budgets and the Copermittees' Annual Regional Work Plan and Regional Shared Costs Budget;
 - Regional URMP Annual Reports. Both the annual report content provided by individual Regional Working Bodies and the completion of the consolidated Regional URMP Annual Report;
 - Regional Standards. 1) Regional reporting, assessment, and program data and information management standards; and 2) regional standards and approaches for the management of specific source categories or types. It applies to work products developed by

¹⁸ MOU Section I defines Representation as "... serving as a Copermittee point of contact [for a Working Body], and, as applicable, receiving, reviewing, and providing input on correspondence, meeting materials, and work products." It also defines Participation as "regularly attending meetings, participating in the development, review, and finalization of work products, and carrying out the responsibilities of the Working Body." For the purposes of the MOU and these Parameters and Guidelines, Participants are considered to be a subset of Representatives.

individual Regional Working Bodies, their consolidation into comprehensive, regional standards documents, and periodic updates as necessary for each; and

- Other Regional Work Products. Any Regional Working Body Work Product not specifically identified above, but required by the Permit or necessary to achieve or maintain Permit compliance. This includes, but is not limited to:
 - A formal agreement between the Copermittees that provides a management structure for meeting the requirements of the Permit.¹⁹
 - By-laws for the conduct of Copermittee Working Bodies.
 - A standardized method and format for annually conducting and reporting fiscal analyses of urban runoff management programs.²⁰
 - A Long Term Effectiveness Assessment (“LTEA”) that addresses at least the following: review and assessment of jurisdictional, watershed, and regional program effectiveness (including analysis of outcome levels 1-6); assessment of the effectiveness of the Receiving Waters Monitoring Program in meeting its ability to answer the five core management questions, and; evaluation of the relationship of program implementation to changes in water quality. This may also include shared or individual Copermittee costs of collaboratively developing assessment methods and approaches, developing or maintaining data tracking methods or systems, and of performing data collection, tracking, management, analysis, and reporting (including staff training), as well as purchases and upgrades to equipment, hardware, and software necessary to support these data management functions.
- Regional Implementation of Programs and Activities. Claimant’s personnel costs for the ongoing implementation of regionally-funded and/or conducted programs and costs of materials production and

¹⁹ An executed formal agreement must be submitted to the Regional Board no later than 180 days after adoption of the Permit. It is a one-time requirement that was initially satisfied through the July 24, 2007 amendment of the Copermittees’ Dec. 3, 2001 Memorandum of Understanding (“MOU”). A new MOU was executed on January 29, 2008 and amended in June 2010.

²⁰ The standardized fiscal method must be submitted to the Regional Board by January 31, 2009. It is a one-time requirement.

distribution, equipment, supplies, fees, and media. Regional programs and activities include:

- Education of Residential Target Audiences
- Annual Regional Effectiveness Assessments
- Programs and Activities Included as Part of the Regional URMP
- Cost Accounting and Documentation. Claimant's personnel costs to monitor and conduct cost accounting for all expenditures incurred in accordance with Regional Working Body Work Plans and Budgets and the Copermittees' Annual Regional Work Plan and Regional Shared Costs Budget and costs associated with documenting and monitoring expenditures (e.g., developing and distributing budget balance and expenditure reports, claim submittal forms.) incurred pursuant to approved Regional Working Body Work Plans and Budgets. It also includes the individual Copermittee costs of developing or maintaining data tracking methods or systems, and of performing data tracking and analysis (including staff training), as well as the costs of purchases and upgrades to equipment, hardware, and software necessary to support expenditure tracking, analysis, and reporting.
- External Coordination. Claimant's personnel costs to coordinate Regional Working Body content, issues, programs, and activities with external organizations and parties and coordination with Regional Board staff, participation at professional organizations and societies, and representation on applicable California Stormwater Quality Association ("CASQA") working bodies.
- Employee Supervision and Management. (See Section IV.A).
- Contracted Services. (See Section IV.A).

H. Program Effectiveness Assessment (parts I.1 & I.2)

Mandated Activities:

1. Jurisdictional

a. As part of its Jurisdictional Urban Runoff Management Program, each Copermittee shall annually assess the effectiveness of its Jurisdictional Urban Runoff Management Program implementation. At a minimum, the annual effectiveness assessment shall:

(1) Specifically assess the effectiveness of each of the following:

- (a) Each significant jurisdictional activity/BMP or type of jurisdictional activity/BMP implemented;
- (b) Implementation of each major component of the Jurisdictional Urban Runoff Management Program (Development Planning, Construction, Municipal, Industrial/Commercial, Residential, Illicit Discharge²¹ Detection and Elimination, and Education); and

(c) Implementation of the Jurisdictional Urban Runoff Management Program as a whole.

(2) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the items listed in section I.1.a.(1) above.

(3) Utilize outcome levels 1-6²² to assess the effectiveness of each of the items listed in section I.1.a.(1) above, where applicable and feasible.

²¹ Illicit discharge, as defined in Attachment C of the Permit, is “any discharge to the MS4 that is not composed entirely of storm water except discharges pursuant to a NPDES permit and discharges resulting from firefighting activities [40 C.F.R. 122.26 (b)(2)].”

²² Effectiveness assessment outcome levels are defined in Attachment C of the Permit as follows: Effectiveness assessment outcome level 1 – Compliance with Activity-based Permit Requirements – Level 1 outcomes are those directly related to the implementation of specific activities prescribed by the Order or established pursuant to it. Effectiveness assessment outcome level 2 – Changes in Attitudes, Knowledge, and Awareness – Level 2 outcomes are measured as increases in knowledge and awareness among target audiences such as residents, business, and municipal employees. Effectiveness assessment outcome level 3 – Behavioral Changes and BMP Implementation – Level 3 outcomes measure the effectiveness of activities in affecting behavioral change and BMP implementation. Effectiveness assessment outcome level 4 – Load Reductions – Level 4 outcomes measure load reductions which quantify changes in the amounts of pollutants associated with specific sources before and after a BMP or other control measure is employed. Effectiveness assessment outcome level 5 – Changes in Urban Runoff and Discharge Quality – Level 5 outcomes are measured as changes in one or more specific constituents or stressors in discharges into or from MS4s. Effectiveness assessment outcome level 6 – Changes in Receiving Water Quality – Level 6 outcomes measure changes to receiving water quality resulting from discharges into and from MS4s, and may be expressed through a variety of means such as compliance with water quality objectives or other regulatory benchmarks, protection of biological integrity [i.e., ecosystem health], or beneficial use attainment.

(4) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness each of the items listed in section I.1.a.(1) above, where applicable and feasible.

(5) Utilize Implementation Assessment,²³ Water Quality Assessment,²⁴ and Integrated Assessment,²⁵ where applicable and feasible.

b. Based on the results of the effectiveness assessment, each Copermittee shall annually review its jurisdictional activities or BMPs to identify modifications and improvements needed to maximize Jurisdictional Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of the Order. The Copermittees shall develop and implement a plan and schedule to address the identified modifications and improvements. Jurisdictional activities/BMPs that are ineffective or less effective than other comparable jurisdictional activities/BMPs shall be replaced or improved upon by implementation of more effective jurisdictional activities/BMPs. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, jurisdictional activities or BMPs applicable to the water quality problems shall be modified and improved to correct the water quality problems.

c. As part of its Jurisdictional Urban Runoff Management Program Annual Reports, each Copermittee shall report on its Jurisdictional Urban Runoff Management Program effectiveness assessment as implemented under each of the requirements of sections I.1.a and I.1.b above.

²³ Implementation Assessment is defined in Attachment C of the Permit as an “Assessment conducted to determine the effectiveness of copermittee programs and activities in achieving measurable targeted outcomes, and in determining whether priority sources of water quality problems are being effectively addressed.”

²⁴ Water Quality Assessment is defined in Attachment C of the Permit as an “Assessment conducted to evaluate the condition of non-storm water discharges, and the water bodies which receive these discharges.”

²⁵ Integrated Assessment is defined in Attachment C of the Permit as an “Assessment to be conducted to evaluate whether program implementation is properly targeted to and resulting in the protection and improvement of water quality.”

2. Watershed

a. As part of its Watershed Urban Runoff Management Program, each watershed group of Copermittees (as identified in Table 4)²⁶ shall annually assess the effectiveness of its Watershed Urban Runoff Management Program implementation. At a minimum, the annual effectiveness assessment shall:

(1) Specifically assess the effectiveness of each of the following:

(a) Each Watershed Water Quality Activity implemented;

(b) Each Watershed Education Activity implemented; and

(c) Implementation of the Watershed Urban Runoff Management Program as a whole.

(2) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the items listed in section I.2.a.(1) above.

(3) Utilize outcome levels 1-6 to assess the effectiveness of each of the items listed in sections I.2.a.(1)(a) and I.2.a.(1)(b) above, where applicable and feasible.

(4) Utilize outcome levels 1-4 to assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, where applicable and feasible.

(5) Utilize outcome levels 5 and 6 to qualitatively assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, focusing on the high priority water quality problem(s) of the watershed. These assessments shall attempt to exhibit the impact of Watershed Urban

²⁶ Table 4 of the Permit divides the copermittees into nine watershed management areas. For example, the San Luis Rey River watershed management area lists the city of Oceanside, Vista and the County of San Diego as the responsible watershed copermittees. Table 4 also lists where the hydrologic units are and major receiving water bodies.

Runoff Management Program implementation on the high priority water quality problem(s) within the watershed.

(6) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness each of the items listed in section I.2.a.(1) above, where applicable and feasible.

(7) Utilize Implementation Assessment, Water Quality Assessment, and Integrated Assessment, where applicable and feasible.

b. Based on the results of the effectiveness assessment, the watershed Copermittees shall annually review their Watershed Water Quality Activities, Watershed Education Activities, and other aspects of the Watershed Urban Runoff Management Program to identify modifications and improvements needed to maximize Watershed Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of the Order.²⁷ The Copermittees shall develop and implement a plan and schedule to address the identified modifications and improvements. Watershed Water Quality Activities/Watershed Education Activities that are ineffective or less effective than other comparable Watershed Water Quality Activities/Watershed Education Activities shall be replaced or improved upon by implementation of more effective Watershed Water Quality Activities/Watershed Education Activities. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, Watershed Water Quality Activities and Watershed Education Activities applicable to the water quality problems shall be modified and improved to correct the water quality problems.

c. As part of its Watershed Urban Runoff Management Program Annual Reports, each watershed group of Copermittees (as identified in Table 4) shall report on its Watershed Urban Runoff Management Program effectiveness assessment as implemented under each of the requirements of section I.2.a and I.2.b above.

²⁷ Section A is "Prohibitions and Receiving Water Limitations."

Reimbursable Activities:

Program Effectiveness Assessment (I.1 and I.2) activities and costs which are reimbursable include:

- Program Development. Claimant's costs to develop and annually update JURMP and WURMP effectiveness assessment methods, approaches, and documentation (e.g., policies, procedures, manuals and forms), as well as data management systems and tools necessary to support the implementation of effectiveness assessments.
- Program Implementation. Claimant's personnel costs to conduct the annual JURMP and WURMP effectiveness assessments in accordance with the Copermittee's effectiveness assessment program and the requirements of Parts I.1 and I.2 of the Permit and the costs of purchases and upgrades to equipment, hardware, and software necessary to support data tracking, analysis, and reporting.
- Employee and Vendor Annual Training. Claimant's costs to develop, update, and conduct training of staff responsible for developing or conducting effectiveness assessments and the costs of training claimant and vendor employees who perform tasks necessary to implement assessment functions during the life of the Permit.
- JURMP and WURMP Modifications. Claimant's personnel costs to modify the JURMP and WURMP based upon the results of effectiveness assessments in accordance with the requirements of Parts I.1.b and I.2.b of the Permit and the costs of the development and implementation of plans and schedules to address the identified modifications and improvements.
- Report Writing. Claimant's personnel costs, to develop and write reports required by Parts I.1.c and I.2.c of the Permit.
- Employee Supervision and Management. (See Section IV.A).
- Contracted Services. (See Section IV.A).

I. Long Term Effectiveness Assessment (part I.5)

Mandated Activities:

- a. Collaborate with the other Copermittees to develop a Long Term Effectiveness Assessment ("LTEA"), which shall build on the results of the Copermittees' August 2005 Baseline LTEA. The LTEA shall be submitted by

the Principal Permittee to the Regional Board no later than 210 days in advance of the expiration of the Order.

b. The LTEA shall be designed to address each of the objectives listed in section I.3.a.(6)²⁸ of this Order, and to serve as a basis for the Copermitees' Report of Waste Discharge for the next permit cycle.

c. The LTEA shall address outcome levels 1-6, and shall specifically include an evaluation of program implementation to changes in water quality (outcome levels 5 and 6).

d. The LTEA shall assess the effectiveness of the Receiving Waters Monitoring Program in meeting its objectives and its ability to answer the five core management questions. This shall include assessment of the frequency of monitoring conducted through the use of power analysis and other pertinent statistical methods. The power analysis shall identify the frequency and intensity of sampling needed to identify a 10% reduction in the concentration of constituents causing the high priority water quality problems within each watershed over the next permit term with 80% confidence.

e. The LTEA shall address the jurisdictional, watershed, and regional programs, with an emphasis on watershed assessment.

Reimbursable Activities:

Long Term Effectiveness Assessment (I.5) reimbursable activities and costs are described under Section G. Regional Urban Runoff Management Program.

²⁸ Part I.3.a.(6) of the Permit states: At a minimum, the annual effectiveness assessment shall: (6) Include evaluation of whether the Copermitees' jurisdictional, watershed, and regional effectiveness assessments are meeting the following objectives: (a) Assessment of watershed health and identification of water quality issues and concerns. (b) Evaluation of the degree to which existing source management priorities are properly targeted to, and effective in addressing, water quality issues and concerns. (c) Evaluation of the need to address additional pollutant sources not already included in Copermitee programs. (d) Assessment of progress in implementing Copermitee programs and activities. (e) Assessment of the effectiveness of Copermitee activities in addressing priority constituents and sources. (f) Assessment of changes in discharge and receiving water quality. (g) Assessment of the relationship of program implementation to changes in pollutant loading, discharge quality, and receiving water quality. (h) Identification of changes necessary to improve Copermitee programs, activities, and effectiveness assessment methods and strategies.

J. All Copermittee Collaboration (part L)

Mandated Activities:

1. Each Copermittee shall collaborate with all other Copermittees to address common issues, promote consistency among Jurisdictional Urban Runoff Management Programs and Watershed Urban Runoff Management Programs, and to plan and coordinate activities required under the Permit.

a. Jointly execute and submit to the Regional Board no later than 180 days after adoption of the Permit, a Memorandum of Understanding, Joint Powers Authority, or other instrument of formal agreement that at a minimum: [¶]...[¶]

(1) Establishes a management structure to promote consistency and develop and implement regional activities;

(2) Establishes standards for conducting meetings, decisions-making, and cost-sharing;

(3) Provides guidelines for committee and workgroup structure and responsibilities;

(4) Lays out a process for addressing Copermittee non-compliance with the formal agreement.

Reimbursable Activities:

All Copermittee Collaboration (part L) reimbursable activities and costs are described under Section G. Regional Urban Runoff Management Program.

Nonreimbursable Activities:

All Permittee Collaboration activities which are not reimbursable include those in Part L.1.a in the 2007 San Diego Permit requiring a memorandum of understanding (MOU) which:

a. Identifies and defines the responsibilities of the principal Permittee and Lead Watershed Permittees;

b. Identifies Copermittees and defines their individual and joint responsibilities;

c. Includes any and all other collaborative arrangements for compliance with this order.

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursable activities specified in Section IV. must be supported by source documentation for actual costs as set forth below, except for those reimbursable activities claimed using a 'reasonable reimbursable methodology' (RRM) specified in Section VI.

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts. Evidence corroborating the source documents may include worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Claimants may use time studies to support personnel costs when an activity is task repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office (SCO). SCO's time study guidelines are available at www.sco.ca.gov/Files-ARD-Local/mancost_timestudyguidelines.pdf.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies

that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Reimbursable costs may be incurred through the use of vendors, contractors, consultants, or other service providers. In such cases, only actual costs to the claimant will be claimed. If the contract services are also used for purposes other than the reimbursement activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Claimants may also include the costs of preparing requests for proposals or requests for bids, negotiating and drafting third party contracts, and subsequently administering service contracts for the time they are performing these tasks.

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for capital assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the capital asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed. Compensation for fixed asset costs are reimbursable utilizing the procedure provided in the Office and Management Budget Circular A-87 (OMB A-87). Example: Compensation for the use of equipment. The claimant may be compensated for the equipment use through a use allowance or depreciation. A use allowance may be computed at an annual rate not to exceed 6 2/3% of acquisition cost. This is reported and claimed through the agency's service-wide cost allocation plan under the cost element "Use Allowance". Where a depreciation method followed, adequate property records must be maintained and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific class of assets for all affected programs.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Mileage reimbursement shall be at the rate set by the local jurisdiction or as permitted by the IRS, whichever is lower. Report employee

travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan. Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%. If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).) However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable. The distributions base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to

mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separate a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. REASONABLE REIMBURSEMENT METHODOLOGIES

(Under development.)

VII. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later.

However, if no funds are appropriated or no payments are made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed no later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VIII. OFFSETTING SAVING AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, claimants shall deduct from the costs claimed reimbursements for this mandate from any source, including but not limited to service fees collected, federal funds, other state funds, and:

- Any fees or assessments approved by the voters or property owners for any activities in the permit, including those authorized by Public Resources Code section 40059 for street sweeping or reporting on street sweeping, and those authorized by Health and Safety Code section 5471, for conveyance-system cleaning, or reporting on conveyance-system cleaning;

- Any proposed fees that are not subject to a written protest by a majority of parcel owners and that are imposed for street sweeping.
- Fees imposed pursuant to Water Code section 16103 only to the extent that a local agency voluntarily complies with Water Code section 16101, the Regional Board approves the plan and incorporates it into the test claim permit to satisfy the requirements of the permit.

IX. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

X. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines adopted by the Commission, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the Test Claim. The administrative record, including the Statement of Decision, is on file with the Commission.