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January 14, 2016

Mr. Robert Perdue

Executive Officer

Regional Water Quality Control Board, Colorado River Basin Region

73-720 Fred Waring Drive, Suite 100

Palm Desert, California 92260

Re: Legal Authority of the City of Indio to Implement and Enforce the  
Requirements of RWQCB Order R7-2013-0011, NPDES Permit CAS617002

Dear Mr. Perdue:

The City of Indio (“City”), by and through its City Attorney, hereby submits the following certification (“Statement”), pursuant to Section E.5 of Order R7-2013-0011 (NPDES Permit CAS617002), issued by the California Regional Water Quality Control Board, Colorado River Basin Region (“RWQCB”) on June 20, 2013, which regulates storm water discharges within the Whitewater River Watershed (the “Permit”).

The City is one of the permittees under the Permit. Section E.5 of the Permit requires the City to submit a statement, signed by the City’s legal counsel, certifying that the City has legal authority to implement and enforce applicable provisions of this MS4 Permit as part of the Fiscal Year 2014-2015 Annual Report. The purpose of this statement is to describe the City’s compliance with Section E.5 of the Permit. As discussed in further detail herein, it is our opinion that the City has the necessary legal authority to implement the Permit and to control and prohibit discharges of pollutants into the Municipal Separate Storm Sewer System (“MS4”). However, this Statement is not, nor should it be construed as, a waiver of any rights that the City may have relating to the Permit.

The Permit designates the County of Riverside (“County”) and the Riverside County Flood Control and Water Conservation District (“District”) as the principal permittees. This statement therefore assumes that the County and District both have adequate legal authority to comply with the Permit requirements imposed on them as the principal permittees, to the extent permitted by state and federal law, and that the principal permittees will exercise their legal authority as appropriate to comply with the Permit.

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## **1. Legal Authority Statement**

In our opinion, the City has the necessary legal authority to comply with the legal requirements imposed upon it under the Permit, consistent with the requirements set forth in the U.S. Environmental Protection Agency’s regulations promulgated under the Clean Water Act, and, specifically, 40 C.F.R. § 122.26(d)(2)(i)(A-F), and to the extent permitted by state and federal law and subject to the limitations on municipal action under the California and United States Constitutions, except as noted herein.

The City, as a general law city, has broad general police powers under the California Constitution to enact legislation for health and public welfare of the community to the extent not preempted by federal or state law. In addition, the City adopted ordinances for the purpose of ensuring that it has adequate legal authority to implement and enforce its storm water control program. The City has the authority under the California Constitution and state law to enact and enforce these ordinances. These ordinances were duly enacted.

## **2. Ordinances**

The City has adopted ordinances related to the regulation of urban runoff to control and prohibit discharges of pollutants into the MS4 and to comply with the requirements of the Permit applicable to it, as well as, to the extent applicable, 40 C.F.R. § 122.26 (d)(2)(i)(A)-(F). The City’s Storm Water Ordinance (Chapter 55 of the Indio Municipal Code (“IMC”)) is the principal City ordinance addressing the control of urban runoff. Under this ordinance, the City has the necessary legal authority to do the following:

- i. 40 C.F.R. § 122.26(d)(2)(i)(A); Permit Section E.4.a: Control through ordinance, permit, contract, order or similar means, the contribution of Pollutants to the MS4 by Urban Runoff associated with industrial activity and the quality of Urban Runoff discharged from sites of industrial activity (IMC § 55.20—Discharge of Pollutants; IMC § 55.21—Discharge in Violation of Permit; IMC § 55.24—Outdoor Storage Areas; Commercial and Industrial Facilities; IMC § 55.25—Construction Sites; IMC § 55.27—Compliance with General Permits);
- ii. 40 C.F.R. § 122.26(d)(2)(i)(B); Permit Section E.4.b: Prohibit through ordinance, order or similar means, illegal discharges to the MS4 (IMC § 55.20—Discharge of Pollutants; IMC § 55.21—Discharge in Violation of Permit; IMC § 55.23—Reduction of Pollutants in Storm Water);

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iii. 40 C.F.R. § 122.26(d)(2)(i)(C); Permit Section E.4.c: Control through ordinance, order or similar means the discharge to the MS4 of spills, dumping or disposal of materials other than urban runoff (IMC § 55.20—Discharge of Pollutants; IMC § 55.21—Discharge in Violation of Permit; IMC § 55.22);

iv. 40 C.F.R. § 122.26(d)(2)(i)(D); Permit Section E.4.d: Control through interagency agreements among Permittees the contribution of pollutants from one portion of the MS4 to another portion of the MS4 (IMC Chapter 55; state law governing intergovernmental agreements including, but not limited to, Government Code § 6502);

v. 40 C.F.R. § 122.26(d)(2)(i)(E); Permit Section E.4.e: Require compliance with conditions in Permittee ordinances, permits, contracts or orders consistent with the Enforcement and Compliance Strategy described in Section 1.7 of the SWMP (IMC § 55.42—Violations Deemed a Public Nuisance; IMC § 55.44—Civil Actions; IMC § 55.45—Administrative Enforcement Powers’ IMC § 55.46—Authority to Arrest or Issue Citations; IMC § 55.47—Nonexclusivity of Remedies; IMC § 55.99--Penalty);

vi. 40 C.F.R. § 122.26(d)(2)(i)(F); Permit Section E.4.f: Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance with MS4 Permit conditions, including the prohibition on illegal discharges to the MS4 (IMC § 55.40—Authority to Inspect; IMC § 55.41—Concealment); and

vii. 40 C.F.R. § 122.26(d)(2)(i)(E); Permit Section E.4.g: Require that urban runoff collection, transport, and storage facilities shall be in good working condition at all times to effectuate compliance with this MS4 Permit (IMC § 55.28—Compliance with BMP’s).

Furthermore, the City has included in its Stormwater Ordinance regulations to comply with the Permit’s New Development/Redevelopment Program. These provisions of the Stormwater Ordinance are found in IMC § 55.26—New Development and Redevelopment.

Other ordinances that provide the City adequate legal authority to implement and enforce the Permit include, but are not limited to: IMC § 10.98—Violations of Code; IMC § 10.99—General Penalty; IMC § 10.100—Public Nuisance; IMC Chapter 11—Administrative Citations; IMC Chapter 51—Garbage, Rubbish, Swill; IMC Chapter 95A—Nuisance; IMC Chapter 155—Soil Erosion; IMC Chapter 156—Subdivision

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Regulations; IMC Chapter 159—Zoning Regulations; and IMC Chapter 162—  
Grading.

Please contact me if you have any questions or if you need any additional information  
regarding the City's legal authority to implement or enforce the Permit.

Very truly yours,



Roxanne M. Diaz  
City Attorney

cc: Dan Martinez, City Manager  
Tim Wassil, Public Works Director  
Sara Toyoda, Environmental Programs Coordinator  
Nicholas R. Ghirelli, Esq.