



## AGENDA REPORT

**Meeting Date:** July 8, 2010

**Item Number:** G-7

**To:** Honorable Mayor & City Council

**From:** Shana Epstein, Environmental Utilities Manager  
Josette Descalzo – Water Quality Specialist

**Subject:** A. MEMORANDUM OF AGREEMENT BETWEEN CITY OF LOS ANGELES AND CITY OF BEVERLY HILLS REGARDING THE ADMINISTRATION AND COST SHARING OF IMPLEMENTING THE COORDINATED MONITORING PLAN FOR THE TOTAL MAXIMUM DAILY LOAD FOR BACTERIAL INDICATOR DENSITIES IN BALLONA CREEK, BALLONA ESTUARY, & SEPULVEDA CHANNEL; AND

APPROVAL OF A PURCHASE ORDER TO THE CITY OF LOS ANGELES FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$12,234.13.

B. MEMORANDUM OF AGREEMENT BETWEEN CITY OF LOS ANGELES AND CITY OF BEVERLY HILLS REGARDING THE ADMINISTRATION AND COST SHARING OF IMPLEMENTING THE COORDINATED MONITORING PLAN AND TOXICITY IDENTIFICATION EVALUATION STUDY FOR THE BALLONA CREEK METALS AND BALLONA CREEK ESTUARY TOXIC POLLUTANTS TMDLS; AND

APPROVAL OF A PURCHASE ORDER TO THE CITY OF LOS ANGELES FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$94,259.

C. MEMORANDUM OF AGREEMENT BETWEEN CITY OF LOS ANGELES AND CITY OF BEVERLY HILLS REGARDING THE ADMINISTRATION AND COST SHARING OF THE DEVELOPMENT OF IMPLEMENTATION PLANS FOR BALLONA CREEK METALS TMDL, BALLONA CREEK ESTUARY TOXIC POLLUTANTS TMDL, AND BALLONA CREEK, BALLONA ESTUARY & SEPULVEDA CHANNEL BACTERIA TMDL; AND

APPROVAL OF A PURCHASE ORDER TO THE CITY OF LOS ANGELES FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$47,716.

**Attachments:**

1. MOA for Ballona Creek and Estuary Bacteria TMDL CMP
2. MOA for Ballona Creek and Estuary Metals & Toxics TMDL CMP
3. MOA for Ballona Creek and Estuary Implementation Plan

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**RECOMMENDATION**

It is recommended that the City Council adopt the three Memorandum of Agreements (MOAs) between the City of Beverly Hills and the City of Los Angeles for the Coordinated Monitoring Plans (CMP) for: Ballona Creek and Estuary Bacteria Total Maximum Daily Load (TMDL) CMP, Ballona Creek and Estuary Metals and Toxics TMDL CMP, and Ballona Creek and Estuary Implementation Plan (I-Plan) TMDLs. The amounts of these MOAs are not to exceed \$12,234.13, \$94,259 and \$47,716, respectively. MOAs will need to be amended if the costs are to exceed these amounts to reflect any changes.

**INTRODUCTION**

The City of Beverly Hills, as well as other agencies in the Ballona Creek (BC) Watershed, is required by State regulations to implement the Federal Clean Water Act to perform monitoring and submit an implementation plan that addresses the water quality impairments in Ballona Creek, Ballona Estuary and Sepulveda Channel. The BC watershed is divided based on the land distribution data defined by the Regional Water Quality Control Board, Los Angeles Region (LARWQCB). The region includes the government agencies of Beverly Hills, Culver City, Inglewood, City of Los Angeles, Santa Monica, West Hollywood, County of Los Angeles, and the State of California through its Department of Transportation (Caltrans). The City of Beverly Hills is responsible for 4.4% of the total watershed area while the City of Los Angeles has the largest area of responsibility at 81.3%.

Since the City of Los Angeles has the largest area of responsibility, they are fulfilling the lead agency role. As the lead agency and having the resources to meet these regulatory requirements, the City of Beverly Hills and the other seven agencies have agreed to enter into an agreement with the City of Los Angeles to employ and perform the services on the City's behalf and reimburse them for their proportional share of the cost.

The MOAs are agreements between the City of Beverly Hills and the City of Los Angeles for the services they will be performing to meet State regulations that reflect the requirements of the Federal Clean Water Act. The MOAs describe the work the City of Los Angeles will be performing as well as the cost allocation reimbursement for their work. These MOAs will expire on June 30, 2012 and new arrangements will be needed to continue the services thereafter and to meet new regulations.

**DISCUSSION**

The Ballona Creek and Estuary Bacteria, Metals, and Toxics Total Maximum Daily Load (TMDL) were established based on the Federal Regulations under the Clean Water Act (CWA). The CWA requires States to develop a list of impaired waters and pollutants for

which they are impaired. The States must then establish capacity of the water body to assimilate the impairing pollutants. This criterion is done in the form of the pollutant TMDL that the water body can receive and still achieve the water quality objectives necessary to protect beneficial uses. Waste Load Allocations (WLA) from sources and load allocations must be reduced as needed according to the schedule to meet the TMDL of the water body. These TMDLs are incorporated as amendments to the Los Angeles Regional Water Quality Control Plan (Basin Plan).

In 1998 and 2002, Ballona Creek and Estuary were established as an impaired water body by the CWA. The Ballona Creek and Estuary jurisdictional group began gathering information and meeting with representatives of the various agencies that had historically conducted monitoring within BC, namely: City of Los Angeles Bureau of Sanitation (City of Los Angeles) and the Los Angeles County Department of Public Works (Los Angeles County). The LARWQCB divided the watershed responsibility based on their data. As a result, there are eight governing agencies that are responsible to implement the requirements of the Federal CWA.

Beginning 2005, City of Los Angeles, County of Los Angeles, Cal Trans and the cities of Beverly Hills, Culver City, Inglewood, Santa Monica and West Hollywood began meeting on a monthly basis to assess the plans for monitoring and implementation of the TMDL requirements in Ballona Creek and Ballona Creek Estuary.

From these meetings, the agencies decided that the most cost effective way to implement the requirements of the CWA is to have a watershed approach. A watershed approach considers the overall hydrology, sources of pollutant loadings and runoff contribution to the watershed. In addition, the State regulation measures compliance at the water body and not individual agency's discharge points. Understanding these factors, agencies can implement monitoring strategies that capture the most representative samples in the watershed. Based on these results, the agencies can then implement Best Management Practices (BMPs) throughout the watershed where it can reduce the pollutant loadings and meet regulatory limits.

Since the inception of the group, the agencies have prepared, planned and submitted the Ballona Creek TMDL Coordinated Monitoring Plans (CMPs) for Bacteria and Metals & Toxics TMDL to the LARWQCB. The CMPs identify monitoring locations in the watershed, methodologies for testing and the frequency of monitoring. These two CMPs were approved in December 2008 by the LARWQCB. Currently all the agencies, with the exception of County of Los Angeles, have been preparing the Implementation Plan for Bacteria and Metals & Toxics TMDLs where it describes BMPs strategies that would reduce pollutant loadings to the watershed.

In order to meet monitoring deadlines, the BC agencies have started performing sampling and special studies as prescribed in the approved Bacteria and Metals & Toxics CMPs. Thus far, the monitoring results are being evaluated. The BC agencies will have an opportunity to review these results and reports before being submitted to the LARWQCB.

The purpose of these MOAs is to describe the responsibilities of the agencies and also identify the cost sharing responsibility of each agency to the City of Los Angeles. These MOAs identify that the City of Los Angeles will perform the monitoring services according to the approved CMP and the other agencies will reimburse the City of Los Angeles for the services. These MOAs will expire on June 30, 2012. Any new

arrangements or regulations that are required to be implemented now to June 30, 2012 will require an amendment.

The City of Los Angeles began its services in FY 2009/10 to meet regulatory deadlines for monitoring and establishing an implementation plan. Invoices were not issued during this fiscal year because these MOAs were not finalized until FY 2010/11. As a result, invoices for FY 2009/10 and FY 2010/11 will be paid in FY 2010/11.

**FISCAL IMPACT**

The table below exhibits the cost for each fiscal year. Funds have been reserved in the Stormwater Program. The City of Beverly Hills will pay the City of Los Angeles \$8,190.10, \$77,557 and \$47,716 for the Ballona Creek Bacteria TMDL and Ballona Creek Metals & Toxics TMDL CMPs and Ballona Creek Implementation Plan, respectively, for the FY 2010/11. The remainder of the costs will impact FY 2011/12.

MOA	FY2009/10	FY 2010/11	FY 2011/12	Total
BC Bacteria TMDL CMP	\$4,146.07 <sup>1</sup>	\$4,044.03 <sup>1</sup>	\$4,044.03	\$12,234.13
BC Metals & Toxics CMP	\$40,300 <sup>1</sup>	\$37,257 <sup>1</sup>	\$16,702	\$94,259
BC Implementation Plan	NA	\$47,716	NA	\$47,716

(1) BC Bacteria TMDL and BC Metals & Toxics CMPs invoice for FY 2009/10 will be paid in FY 2010/11 because MOAs were not finalized until FY 2010/11.

  
 Scott Miller  
 Finance Approval

  
 David Gustavson  
 Approved By

# **Attachment 1**

MOA for Ballona Creek and Estuary  
Bacteria TMDL CMP

MEMORANDUM OF AGREEMENT  
BETWEEN  
CITY OF LOS ANGELES  
AND  
CITY OF BEVERLY HILLS

REGARDING THE ADMINISTRATION AND COST SHARING OF  
IMPLEMENTING THE COORDINATED MONITORING PLAN FOR THE  
TOTAL MAXIMUM DAILY LOAD FOR BACTERIAL INDICATOR  
DENSITIES IN BALLONA CREEK, BALLONA ESTUARY, & SEPULVEDA  
CHANNEL

This Memorandum of Agreement (“this Agreement”) is made and entered into as of the date of the last signature set forth below by and among the City of Los Angeles, a body corporate and politic, and the City of Beverly Hills, a body corporate and politic, collectively referred to herein as the “Parties” or individually as “Party”, with respect to the following:

RECITALS

WHEREAS, the Regional Water Quality Control Board, Los Angeles Region (“LARWQCB”) adopted the Total Maximum Daily Load (TMDL) for Bacterial Indicators in Ballona Creek, Ballona Estuary & Sepulveda Channel (BC Bacteria TMDL) on June 8, 2006, by Resolution No. 2006-011; and

WHEREAS, the BC Bacteria TMDL became effective on April 27, 2007; and

WHEREAS, the Parties recognize that the BC Bacteria TMDL is not self-enforcing and has not been incorporated into the 2001 National Pollutant Discharge Elimination System Permit for Municipal Storm Water and Urban Runoff Dischargers within the County of Los Angeles, and the incorporated cities therein except the City of Long Beach, dated December 13, 2001, for the BC Bacteria TMDL to be legally enforceable; and

WHEREAS, the BC Bacteria TMDL addresses water quality impairments caused by elevated bacterial indicator densities in Ballona Creek, Ballona Estuary, Sepulveda Channel, and their tributaries, and has the intent of improving water quality in these water bodies; and

WHEREAS, the BC Bacteria TMDL identifies the Cities of Los Angeles, Culver City, Inglewood, West Hollywood, Beverly Hills and Santa Monica, the County of Los Angeles, and the State of California through its Department of Transportation (Caltrans), herein collectively referred to as “Regulated Entities” or individually as “Regulated Entity”, as jointly responsible for meeting the waste load allocations; and

WHEREAS, the BC Bacteria TMDL requires the preparation and implementation of a Coordinated Monitoring Plan (“CMP”) by the Regulated Entities designated to monitor water quality within Ballona Creek, Ballona Estuary, and Sepulveda Channel; and

WHEREAS, the CMP entitled “Ballona Creek, Ballona Estuary, and Sepulveda Channel Bacteria TMDL Coordinated Monitoring Plan” was submitted to the LARWQCB by the Regulated Entities on January 29, 2009, after conditional approval by the LARWQCB that required monitoring be started by June 2009; and

WHEREAS, the Regulated Entities have agreed to start the implementation of the CMP prior to the execution of cost-sharing agreements to comply with the LARWQCB requirement; and

WHEREAS, the Regulated Entities have agreed to cooperatively share in fully funding the estimated costs of the implementation of the CMP contained in Table 2 of Exhibit A, based on the cost allocation formula contained in Table 1 of Exhibit A of this Agreement; and

WHEREAS, the City of Los Angeles has the expertise and equipment to perform sampling services, laboratory analyses, and reporting services (“Monitoring Services”) consistent with the CMP; and

WHEREAS, the Regulated Entities agree to retain the City of Los Angeles to perform the Monitoring Services on their behalf at locations identified in the CMP, the Regulated Entities agree to pay the City of Los Angeles for its Monitoring Services, and the City of Los Angeles is willing to provide perform, and be reimbursed for such Monitoring Services as indicated in Exhibit A; and

WHEREAS, to expedite the cost-sharing of Monitoring Services as contained in Exhibit A of this Agreement, the Regulated Entities have agreed that the City of Los Angeles will enter into separate agreements between the City of Los Angeles and each Regulated Entity;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties do hereby agree as follows:

Section 1. Recitals. The recitals set forth above are fully incorporated as part of this Agreement.

Section 2. Purpose. The purpose of this Agreement is to cooperatively fund the implementation of the CMP and to coordinate the payment and performance of the Monitoring Services.

Section 3. Cooperation. The Parties shall fully cooperate with one another to attain the purposes of this Agreement.

Section 4. Voluntary Nature. This Agreement is voluntarily entered into for the implementation of the CMP.

Section 5. Term. This Agreement shall become effective upon execution by the Parties and it shall remain and continue in effect until June 30, 2012.

Section 6. Coordinated Monitoring Plan. The CMP consists of the regulatory background, ambient and effectiveness monitoring, monitoring sites, sampling parameters, analytical methods, schedule, reporting, and other regulatory requirements, and is incorporated into this Agreement by this reference.

Section 7. Assessment for Proportional Costs of the CMP. The City of Beverly Hills agrees to pay the City of Los Angeles for the Monitoring Services in the amounts not to exceed those shown in Table 3 of Exhibit A, based on the cost allocation formula for annual monitoring in Table 1 of Exhibit A, attached hereto and made a part of the Agreement by this reference. The City of Los Angeles will annually invoice the City of Beverly Hills upon execution of this Agreement as shown in Table 3 of Exhibit A, based on allocated CMP costs and project administration and management costs at a percentage not to exceed 5% of the allocated CMP costs shown in Table 3 of Exhibit A. At the end of each fiscal year, the City of Los Angeles will provide the Regulated Entities with a statement with the actual expenditures. Unexpended cost at the termination of this Agreement will be reimbursed to the City of Beverly Hills. Any proposed increase in the City of Beverly Hills' share of the costs in excess of the amounts shown in Exhibit A will require an amendment to this Agreement.

Section 8. Role of the City of Los Angeles.

- a) Monitoring – The City of Los Angeles will perform the Monitoring Services at locations indicated in the CMP.
- b) Early Start of Monitoring – The LARWQCB required monitoring to begin by June 2009. The Regulated Entities agree that the City of Los Angeles will start the monitoring before cost-sharing agreements have been executed by the Regulated Entities to ensure compliance with the TMDL. The Regulated Entities thereby accept that costs incurred by the City of Los Angeles for this early monitoring will be included in the initial City of Los Angeles invoice to the Regulated Entities.
- c) Reporting – The City of Los Angeles will submit monthly summary monitoring reports to the LARWQCB as described in the CMP and distribute copies of the monthly reports to the Regulated Entities three days prior to submittal to the LARWQCB for the Regulated Entities' review and approval.

Section 9. Invoice and Payment

- a) Annual Payment – The City of Beverly Hills shall reimburse the City of Los Angeles for its proportional share cost for Monitoring Services and project administration and management costs as shown in Table 3 of Exhibit A within forty five (45) days of receipt of the invoice from the City of Los Angeles. The annual monitoring cost shall be annually<sup>1</sup> increased by the State of California Consumer Price Index (CPI). The total annual monitoring cost estimates presented in Exhibit A are the estimated costs that have been agreed upon amongst the City of Los Angeles and the Regulated Entities. The estimated costs of Monitoring Services presented in Exhibit A and costs of any monitoring activities are subject to changes in the CMP pursuant to LARWQCB new requirements or unforeseen challenges in the field. The actual costs of Monitoring Services will be reconciled in accordance with Section 7 of this Agreement.
  
- b) Invoice. The City of Los Angeles will invoice the City of Beverly Hills as shown in Table 3 of Exhibit A. The first invoice will take place immediately following the execution of this Agreement and will consist of the allocated CMP costs for the period of June 2009 – June 2010. The second annual payment for the period of July 2010 – June 2011 will be invoiced in January of 2011, and the third annual payment for the period of July 2011 – June 2012 will be invoiced in January of 2012.

Section 10. Indemnification. To the fullest extent permitted by law, the City of Beverly Hills and the City of Los Angeles agree to save, indemnify, defend, and hold harmless each other from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorney fees, court costs, and any other costs of any nature without restriction incurred in relation to, as a consequence of, or arising out of, the performance of this Agreement, and attributable to the fault of the other. Following a determination of the percentage of fault and or liability by agreement between the Parties or a court of competent jurisdiction, the Party responsible for liability to the other will indemnify the other Party to this Agreement for the percentage of liability determined. No Party shall indemnify another Party, however, for the other Party's own negligence or willful misconduct.

In light of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the Parties hereto, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, shall assume the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by any act of omission occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose, each of the Parties indemnifies, defends, and holds harmless each other Party for any liability, cost, or expense that may be imposed upon such other Party solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

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<sup>1</sup> The State of California CPI is referenced at <http://www.dir.ca.gov/DLSR> for Los Angeles-Riverside-Orange County Region for the month of June.

Section 11. Termination of Agreement. Either Party may terminate this Agreement for any reason, in whole or part, by giving the other Party thirty (30) days written notice thereof. The City of Beverly Hills shall be responsible only for the allocated costs of CMP activities incurred up to the date of the termination. The City of Los Angeles shall notify in writing all Regulated Entities within fourteen (14) days of receiving written notice from any Party that intends to terminate this Agreement.

Section 12. General Provisions.

- a) Notices. Any notices, bills, invoices, or reports relating to this Agreement, and any request, demand, statement or other communication required or permitted hereunder shall be in writing and shall be delivered to the Representative of the Party at the address set forth in Exhibit C. Parties shall promptly notify each other of any change of contact information, including personnel changes, provided in Exhibit C. Written notice shall include notice delivered via email or fax. A notice shall be deemed to have been received on (a) the date of delivery, if delivered by hand during regular business hours, or by confirmed facsimile or by email; or (b) on the third (3rd) business day following mailing by registered or certified mail (return receipt requested) to the addresses set forth in Exhibit C.
- b) Administration. For the purposes of this Agreement, the Parties hereby designate as their respective Party Representatives, the persons named in Exhibit C. The designated Party Representatives, or their respective designees, shall administer the terms and conditions of this Agreement on behalf of their respective Party. Each of the persons signing below on behalf of a Party represents and warrants that they are authorized to sign this Agreement on behalf of such Party.
- c) Relationship of Parties. The Parties are and shall remain at all times as to each other, wholly independent entities. No Party to this Agreement shall have power to incur any debt, obligation, or liability on behalf of another Party unless expressly provided to the contrary by this Agreement. No employee, agent, or officer of a Party shall be deemed for any purpose whatsoever to be an agent, employee, or officer of another Party.
- d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of each Party to this Agreement and their respective heirs, administrators, representatives, successors and assigns.
- e) Amendment. The terms and provisions of this Agreement may not be amended, modified or waived, except by an instrument in writing signed by all the Parties.
- f) Waiver. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party to any breach of the provisions of this Agreement

shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement.

- g) Law to Govern; Venue. This Agreement shall be interpreted, construed, and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in the state trial courts shall lie exclusively in the County of Los Angeles.
- h) No Presumption in Drafting. The Parties to this Agreement agree that the general rule that an Agreement is to be interpreted against the Party drafting it, or causing it to be prepared shall not apply.
- i) Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, whether written or oral, with respect thereto.
- j) Severability. If any term, provision, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and this Agreement shall be read and constructed without the invalid, void, or unenforceable provision(s).
- k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute but one and the same instrument, provided, however, that such counterparts shall have been delivered to all Parties to this Agreement.
- l) All Parties have been represented by counsel in the preparation and negotiation of this Agreement. Accordingly, this Agreement shall be construed according to its fair language.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on their behalf, respectively, as follows:

**CITY OF LOS ANGELES**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Cynthia M. Ruiz, President  
Board of Public Works

ATTEST:

By: \_\_\_\_\_  
June Lagmay  
City Clerk

APPROVED AS TO FORM:

Carmen Trutanich  
City Attorney

By: \_\_\_\_\_  
Edward M. Jordan  
Assistant City Attorney

**CITY OF BEVERLY HILLS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jeffrey C. Kolin, City Manager

ATTEST:

\_\_\_\_\_  
Byron Pope  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT

By:   
\_\_\_\_\_  
Laurence Wiener  
City Attorney

By:   
\_\_\_\_\_  
*for* David D. Gustavson  
Director of Public Works & Transportation

**EXHIBIT A**  
**Total Estimated Cost-Sharing for Ballona Creek Bacteria Monitoring and Invoicing by City of Los Angeles**

**Table 1. Cost Allocation Formula.**

Agency	Acres <sup>(1)</sup>	Square miles	% of Area <sup>(2)</sup>
City of Los Angeles	67,053.44	104.77	81.32
Los Angeles County	3,928.91	6.14	4.77
City of Beverly Hills	3,630.38	5.67	4.40
City of Culver City	3,234.81	5.05	3.92
City of Inglewood	1,934.57	3.02	2.35
Caltrans	1,206.00	1.88	1.46
City of West Hollywood	1,201.43	1.88	1.46
City of Santa Monica	264.97	0.41	0.32
<b>Total</b>	<b>82,454.51</b>	<b>128.84</b>	<b>100.00</b>

<sup>(1)</sup> Land distribution data as defined by LARWQCB.

<sup>(2)</sup> Proportionality of cost-sharing by Regulated Entities is based on each Regulated Entity's % area of the total watershed area of 82,455 acres.

**Table 2. Estimated Costs for Monitoring Services and Project Administration and Management.**

Period	Monitoring Services	Project Administration and Management <sup>(3)</sup>	Total Estimated Cost
June 2009 <sup>(1)</sup>	\$1,438.90	-	\$1,438.90
July 2009 – June 2010 <sup>(2)</sup>	\$88,371.38	\$4,418.57	\$92,789.95
July 2010 – June 2011 <sup>(2)</sup>	\$87,533.16	\$4,376.66	\$91,909.82
July 2011 – June 2012 <sup>(2)</sup>	\$87,533.16	\$4,376.66	\$91,909.82
<b>Total</b>	<b>\$264,876.60</b>	<b>\$13,171.89</b>	<b>\$278,048.49</b>

<sup>(1)</sup> The cost was calculated by prorating the 1<sup>st</sup> year annual monitoring cost, excluding the one-time reporting fee, into a daily prorated cost. The daily prorated cost was then applied over the time from the start of the early monitoring period until June 30, 2009.

<sup>(2)</sup> Estimated cost for Monitoring Services, see Exhibit B, not adjusted for the annual increase by State of California Consumer Price Index. A one-time legal reporting fee of \$838.22 is added to the estimated costs for the period of July 2009 – June 2010.

<sup>(3)</sup> Not to exceed 5% of estimated cost of Monitoring Services.

**Table 3. Invoicing by City of Los Angeles to City of Beverly Hills.**

Period	City of Beverly Hills Share	Invoice Amount <sup>(1)</sup>
June 2009	\$63.31	\$4,146.07 <sup>(2)</sup>
July 2009 – June 2010	\$4,082.76	
July 2010 – June 2011	\$4,044.03	\$4,044.03 <sup>(3)</sup>
July 2011 – June 2012	\$4,044.03	\$4,044.03 <sup>(3)</sup>
<b>Total</b>	<b>\$12,234.13</b>	<b>\$12,234.13</b>

<sup>(1)</sup> Amounts have not been adjusted for annual increases by State of California Consumer Price Index.

<sup>(2)</sup> The first payment is due upon execution of this Agreement, which includes early monitoring (June 2009) and the estimated annual cost for the period of June 2009 – July 2010.

<sup>(3)</sup> For the period of July 2010 – June 2012, City of Los Angeles will invoice estimated annual cost in January of each year.

**EXHIBIT B**  
**Estimated Annual Costs for Ballona Creek Bacteria TMDL Monitoring**

**Table B.1. Ballona Creek TMDL monitoring costs**

Item No.	Item Description	Item Cost
1a.	Routine cost per event; Eight (8) sampling sites Σ 3a - 3h	\$1,666.17 <sup>(1)</sup>
1b.	Annual routine cost; (52 x Item 1a.) + (12 x E*)	\$87,533.16
2	Accelerated Sample Analysis:	Summer/Winter Dry Weather: Will begin during effectiveness monitoring  Wet weather: Will begin after the 4 <sup>th</sup> year re-opener

(1) One-time set-up cost of \$838.22 for Legal Reporting (not included in Item1)

**Table B.2 Monitoring costs for different bacterial indicators**

Costs		
A	Fecal Coliform (MF) <sup>(1)</sup>	\$54.69
B	Total Coliform/ <i>E. coli</i> (CS) <sup>(2)</sup>	\$44.76
C	Enterococcus (CS) <sup>(2)</sup>	\$39.80
D	WPD Sampling/Site	\$120.00
E	DSM Monthly Reporting	\$74.36

(1) Note: MF (Membrane Filtration)

(2) Note: CS (Chromogenic Substrate)

**Table B.3 Monitoring costs per station**

	<b>Number of Samples</b>	<b>Site</b>	<b>Item Cost</b>	<b>See Costs</b>
3a.	1	BCB-1	\$174.69	A, D
3b.	1	BCB-2	\$219.45	A,B,D
3c.	1	BCB-3	\$219.45	A,B,D
3d.	1	BCB-4	\$219.45	A,B,D
3e.	1	BCB-5	\$219.45	A,B,D
3f.	1	BCB-6	\$204.56	B,C,D
3g.	1	BCB-7	\$204.56	B,C,D
3h.	1	BCB-8	\$204.56	B,C,D

**EXHIBIT C**  
**Ballona Creek Watershed**  
**Representatives of Regulated Entities**

**Primary Agency:**

1. City of Los Angeles (“Primary agency”)  
Watershed Protection Division  
1149 South Broadway Blvd.  
Los Angeles, CA 90015  
Mail Stop: 1149-756  
Party Representative: Hubertus Cox, Ph.D, P.E.  
[Hubertus.Cox@lacity.org](mailto:Hubertus.Cox@lacity.org)  
Phone No.: (213) 485-3984  
Fax: (213) 485-3939
  
2. Hyperion Treatment Plant, Environment Monitoring Division  
12000 Vista Del Mar  
Harry Pregerson Technical Support Facility  
Playa Del Rey, CA 90293  
Party Representative: Mas Dojiri, Environmental Monitoring Division  
[mas.dojiri@lacity.org](mailto:mas.dojiri@lacity.org)  
Fax: (310) 648-5731

**Responsible Agencies:**

1. County of Los Angeles, Watershed Management Division, 11<sup>th</sup> floor  
900 South Fremont Ave.  
Alhambra, CA 91803-1331  
Party Representative: Oliver Galang, P.E., Watershed Manager  
[Ogalang@dpw.lacounty.gov](mailto:Ogalang@dpw.lacounty.gov)  
Phone No.: (626) 458-4364  
Fax: (626) 457-1526
  
2. City of Beverly Hills  
455 North Rexford Drive  
Beverly Hill, CA 90210  
Party Representative: Josette Descalzo, Water Quality Specialist  
[jdescalzo@beverlyhills.org](mailto:jdescalzo@beverlyhills.org)  
Phone No.: (310) 285-2467  
Fax: (310) 285-2467
  
3. City of Culver City  
9770 Culver Blvd., 2<sup>nd</sup> Floor  
Culver City, CA 90232-0507

Party Representative: Damian Skinner, Environmental Programs and Operations Manager  
[Damian.Skinner@culvercity.org](mailto:Damian.Skinner@culvercity.org)  
Phone No.: (310) 253-6402 or (310) 253-6421  
Fax: (310) 253-5626

4. City of Inglewood  
Public Works Department  
1 Manchester Blvd.  
Inglewood, CA 90301  
Party Representative: Lauren Amimoto, Senior Administrative Analyst  
[lamimoto@cityofinglewood.org](mailto:lamimoto@cityofinglewood.org)  
Phone No.: (310) 412-5192  
Fax: (310) 412-5552
  
5. California Department of Transportation, District 07 (Caltrans)  
100 South Main Street, Suite 100, MS 13  
Los Angeles, CA 90012  
Party Representative: Bob Wu, Senior Transportation Engineer  
[robert\\_wu@dot.ca.gov](mailto:robert_wu@dot.ca.gov)  
Phone No.: (213) 897-8636  
Fax: (213) 897-0205
  
6. City of West Hollywood  
Department of Transportation and Public Works  
8300 Santa Monica Blvd.  
West Hollywood, CA 90069-6216  
Party Representative: Susannah Turney, Environmental Programs Coordinator  
[sturney@weho.org](mailto:sturney@weho.org)  
Phone No.: (323) 848-6499  
Fax: (323) 848-6564
  
7. City of Santa Monica  
Environmental Programs Division  
200 Santa Monica Pier #K  
Santa Monica, CA 90401  
Party Representative: Neal Shapiro, Urban Runoff Management Coordinator  
[Neal.Shapiro@smgov.net](mailto:Neal.Shapiro@smgov.net), [www.santa-monica.org/environment](http://www.santa-monica.org/environment)  
Phone No.: (310) 458-8223  
Fax: (310) 393-1279

## **Attachment 2**

MOA for Ballona Creek and Estuary  
Metals & Toxics TMDL CMP

MEMORANDUM OF AGREEMENT  
BETWEEN  
CITY OF LOS ANGELES  
AND  
CITY OF BEVERLY HILLS

REGARDING THE ADMINISTRATION AND COST SHARING OF  
IMPLEMENTING THE COORDINATED MONITORING PLAN AND  
TOXICITY IDENTIFICATION EVALUATION STUDY FOR THE BALLONA  
CREEK METALS AND BALLONA CREEK ESTUARY TOXIC POLLUTANTS  
TMDLs

This Memorandum of Agreement (“Agreement”) is made and entered into as of the date of the last signature set forth below by and among the City of Los Angeles, a body corporate and politic, and the City of Beverly Hills, a body corporate and politic, collectively referred to herein as the “Parties” or individually as “Party”, with respect to the following:

RECITALS

WHEREAS, the Regional Water Quality Control Board, Los Angeles Region (“LARWQCB”) adopted the Ballona Creek Metals Total Maximum Daily Load (“BC Metals TMDL”) on September 6, 2007, by Resolution No. R2007-015; and

WHEREAS, the LARWQCB adopted the Ballona Creek Estuary Toxic Pollutants Total Maximum Daily Load (“BC Toxics TMDL”) on July 7, 2005, by Resolution No. R2005-008; and

WHEREAS, the BC Metals TMDL and the BC Toxics TMDL (jointly referred to herein as “BC TMDLs”) became effective on January 11, 2006; and

WHEREAS, the Parties recognize that the BC TMDLs are not self-enforcing and have not been incorporated into the 2001 National Pollutant Discharge Elimination System Permit for Municipal Storm Water and Urban Runoff Dischargers within the County of Los Angeles, and the incorporated cities therein except the City of Long Beach, dated December 13, 2001 for the BC TMDLs to be legally enforceable; and

WHEREAS, the BC TMDLs address water quality impairments caused by metals and toxic pollutants in Ballona Creek, Ballona Estuary and their tributaries, and have the intent to improve the water quality in these water bodies; and

WHEREAS, the BC TMDLs identifies the Cities of Los Angeles, Culver City, Inglewood, West Hollywood, Beverly Hills, and Santa Monica, the County of Los Angeles, and the State of California through its Department of Transportation (Caltrans), herein collectively referred to as

“Regulated Entities” or individually as “Regulated Entity”, as jointly responsible for meeting the waste load allocations; and

WHEREAS, the BC TMDLs require the preparation and implementation of a Coordinated Monitoring Plan (“CMP”) by the Regulated Entities designated to monitor water and sediment quality in Ballona Creek and Ballona Estuary; and

WHEREAS, the BC Toxics TMDL also requires that a special study be conducted by the Regulated Entities to provide additional data to support the reconsiderations of BC TMDLs by the LARWQCB; and

WHEREAS, the CMP entitled “Ballona Creek Metals TMDL and Ballona Creek Estuary Toxic Pollutants TMDL Coordinated Monitoring Plan” was submitted to the LARWQCB by the Regulated Entities on January 29, 2009; and

WHEREAS, to comply with the LARWQCB requirement that monitoring be started within six months of CMP approval, the Regulated Entities have agreed to cooperatively participate in the implementation of the CMP prior to the execution of cost-sharing agreements; and

WHEREAS, the Regulated Entities have agreed to cooperatively participate in the Toxicity Identification Evaluation Study (“TIE Study”) that is required by the BC Toxics TMDL; and

WHEREAS, the Regulated Entities have agreed that the City of Los Angeles will collaborate with the Southern California Coastal Water Research Project (“SCCWRP”) to conduct the TIE Study and that the City of Los Angeles will provide “TIE Services” in support of the TIE Study, consistent with the scope of work in Exhibit D; and

WHEREAS, the Regulated Entities have agreed to cooperatively share in fully funding the estimated costs of the implementation of the CMP, including the design and installation of automated water samplers, and the TIE Study and TIE Services (herein collectively referred to as “CMP Services”) contained in Table 2 of Exhibit A, based on the cost allocation formula contained in Table 1 of Exhibit A of this Agreement; and

WHEREAS, the City of Los Angeles has the expertise and equipment to perform the monitoring services, automated water sampler installations, and the scope of work of the TIE study in Exhibit D; and

WHEREAS, the Regulated Entities agree to retain the City of Los Angeles to perform and coordinate the CMP Services on their behalf, and the Regulated Entities agree to pay the City of Los Angeles for its CMP Services, and the City of Los Angeles is willing to perform, coordinate, and be reimbursed for such CMP Services as indicated in Exhibit A of this Agreement; and

WHEREAS, to expedite the cost-sharing of Monitoring Services as contained in Exhibit A of this Agreement, the Regulated Entities have agreed that the City of Los Angeles will enter into separate agreements between the City of Los Angeles and each Regulated Entity;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties do hereby agree as follows:

Section 1. Recitals. The recitals set forth above are fully incorporated as part of this Agreement.

Section 2. Purpose. The purpose of this Agreement is to cooperatively fund the implementation and to coordinate the payment and performance of the CMP Services.

Section 3. Cooperation. The Parties shall fully cooperate with one another to attain the purposes of this Agreement.

Section 4. Voluntary Nature. This Agreement is voluntarily entered into for the implementation of the CMP Services.

Section 5. Term. This Agreement shall become effective upon execution by the Parties and it shall remain and continue in effect until June 30, 2012.

Section 6. CMP Services. The CMP Services consist of the implementation of the CMP including the design and installation of automated water samplers, the TIE Study, and the TIE Services. The CMP for the BC TMDLs consists of the regulatory background, ambient and effectiveness monitoring, monitoring sites, sampling parameters, analytical methods, schedule, reporting, and other regulatory requirements and is incorporated into this Agreement by this reference. The scope of the TIE Study and TIE Services is contained in Exhibit D of this Agreement.

Section 7. Assessment for Proportional Costs. The City of Beverly Hills agrees to pay the City of Los Angeles for the CMP Services in the amounts not to exceed those shown in Table 3 of Exhibit A, based on the cost allocation formula set forth in Table 1 of Exhibit A, attached hereto and made a part of the Agreement by this reference. The City of Los Angeles will annually invoice the City of Beverly Hills upon execution of this Agreement as shown in Table 3 of Exhibit A, based on the allocated CMP costs and the project administration and management costs at a percentage not to exceed 5% of the allocated costs for the CMP Services shown in Table 2 of Exhibit A. At the end of each fiscal year, the City of Los Angeles will provide the Regulated Entities with a statement with the actual expenditures. Unexpended cost at the termination of this Agreement will be reimbursed to the City of Beverly Hills. Any proposed increase in the City of Beverly Hills' share of the costs in excess of the amounts shown in Exhibit A will require an amendment to this Agreement.

Section 8. Role of the City of Los Angeles.

- a) Monitoring Services – The City of Los Angeles will perform the monitoring services and coordinate the installations of automated water samplers at the locations indicated in the CMP on behalf of the Regulated Entities.

- b) Early Start of Monitoring – The LARWQCB required monitoring to begin within six months of LARWQCB approval of the CMP. The Regulated Entities agree that the City of Los Angeles will start the CMP Services before cost-sharing agreements have been signed by the Regulated Entities to ensure compliance with the BC TMDLs. The Regulated Entities thereby accept that all costs incurred by the City Los Angeles for this early monitoring be included in the initial City of Los Angeles invoice to the Regulated Entities.
- c) Reporting – The City of Los Angeles will submit final summary monitoring reports to the LARWQCB annually as described in the CMP and distribute copies of the annual reports to the Regulated Entities seven days prior to submittal to the LARWQCB for the Regulated Entities’ review and approval.
- d) TIE Study – The City of Los Angeles shall be responsible for coordinating the activities of SCCWRP for the TIE Study, including the TIE Services and all related deliverables, as specified in the Scope of Work shown in Exhibit D and agreed upon by the Regulated Entities in the manner provided herein.

Section 9. Invoice and Payment.

- a) Annual Payment – The City of Beverly Hills shall reimburse the City of Los Angeles for its proportional share of the cost for CMP Services and project administration and management costs as shown in Table 3 of Exhibit A within forty-five (45) days of receipt of the invoice from the City of Los Angeles. The annual cost shall be annually<sup>1</sup> increased by the State of California Consumer Price Index (CPI). The total costs shown in Exhibit A are the estimated costs that have been agreed upon amongst the City of Los Angeles and the Regulated Entities. The estimated cost of the CMP Services presented in Exhibit A and the costs of any monitoring activities are subject to changes in the CMP pursuant to LARWQCB requirements or unforeseen challenges in the field. The actual cost of CMP Services will be reconciled in accordance with Section 7 of this Agreement.
- b) Invoice – The City of Los Angeles will invoice the City of Beverly Hills as shown in Table 3 of Exhibit A. The first invoice will take place immediately following the execution of this Agreement and will consist of the allocated costs for CMP Services for early monitoring until June 30, 2009, and for the period of July 2009 – June 2010. The annual payments for the period of July 2010 – June 2012 will be invoiced in January of each year starting January 2011.

Section 10. Indemnification. To the fullest extent permitted by law, the City of Beverly Hills and the City of Los Angeles agree to save, indemnify, defend, and hold harmless each other from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorney fees, court costs, and any other costs

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<sup>1</sup> The State of California CPI is referenced at <http://www.dir.ca.gov/DLSR> for Los Angeles-Riverside-Orange County Region for the month of June.

of any nature without restriction incurred in relation to, as a consequence of, or arising out of, the performance of this Agreement, and attributable to the fault of the other. Following a determination of the percentage of fault and or liability by agreement between the Parties or a court of competent jurisdiction, the Party responsible for liability to the other will indemnify the other Party to this Agreement for the percentage of liability determined. No Party shall indemnify another Party, however, for the other's Party own negligence or willful misconduct.

In light of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the Parties hereto, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, shall assume the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by any act of omission occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose, each of the Parties indemnifies, defends, and holds harmless each other Party for any liability, cost, or expense that may be imposed upon such other Party solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

Section 11. Termination of Agreement. Either Party may terminate this Agreement for any reason, in whole or part, by giving the other Party thirty (30) days written notice thereof. The City of Beverly Hills shall be responsible only for the allocated costs of CMP Services incurred up to the date of the termination. The City of Los Angeles shall notify in writing all Regulated Entities within fourteen (14) days of receiving written notice from any Party that intends to terminate this Agreement.

Section 12. General Provisions.

- a) Notices. Any notices, bills, invoices, or reports relating to this Agreement, and any request, demand, statement or other communication required or permitted hereunder shall be in writing and shall be delivered to the Representative of the Party at the address set forth in Exhibit E. Parties shall promptly notify each other of any change of contact information, including personnel changes, provided in Exhibit E. Written notice shall include notice delivered via email or fax. A notice shall be deemed to have been received on (a) the date of delivery, if delivered by hand during regular business hours, or by confirmed facsimile or by email; or (b) on the third (3rd) business day following mailing by registered or certified mail (return receipt requested) to the addresses set forth in Exhibit E.
- b) Administration. For the purposes of this MOA, the Parties hereby designate as their respective Party Representatives, the persons named in Exhibit E. The designated Party Representatives, or their respective designees, shall administer the terms and conditions of this MOA on behalf of their respective Party. Each of the persons signing below on behalf of a Party represents and warrants that they are authorized to sign this MOA on behalf of such Party.

- c) Relationship of Parties. The Parties are and shall remain at all times as to each other, wholly independent entities. No Party to this MOA shall have power to incur any debt, obligation, or liability on behalf of another Party unless expressly provided to the contrary by this MOA. No employee, agent, or officer of a Party shall be deemed for any purpose whatsoever to be an agent, employee, or officer of another Party.
- d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of each Party to this Agreement and their respective heirs, administrators, representatives, successors and assigns.
- e) Amendment. The terms and provisions of this Agreement may not be amended, modified or waived, except by an instrument in writing signed by all the Parties.
- f) Waiver. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party to any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement.
- g) Law to Govern; Venue. This Agreement shall be interpreted, construed, and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in the state trial courts shall lie exclusively in the County of Los Angeles.
- h) No Presumption in Drafting. The Parties to this Agreement agree that the general rule that an Agreement is to be interpreted against the Party drafting it, or causing it to be prepared shall not apply.
- i) Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, whether written or oral, with respect thereto.
- j) Severability. If any term, provision, condition, or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and this Agreement shall be read and constructed without the invalid, void, or unenforceable provision(s).
- k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute but one and the same instrument, provided, however, that such counterparts shall have been delivered to all Parties to this Agreement.
- l) All Parties have been represented by counsel in the preparation and negotiation of this Agreement. Accordingly, this Agreement shall be construed according to its fair language.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on their behalf, respectively, as follows:

**CITY OF LOS ANGELES**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Cynthia M. Ruiz, President  
Board of Public Works

ATTEST:

By: \_\_\_\_\_  
June Lagmay  
City Clerk

APPROVED AS TO FORM:

Carmen Trutanich  
City Attorney

By: \_\_\_\_\_  
Edward M. Jordan  
Assistant City Attorney

**CITY OF BEVERLY HILLS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jimmy Delshad, Mayor

ATTEST:

\_\_\_\_\_  
Byron Pope  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT

By:   
Laurence Wiener  
City Attorney

By:   
~~Fed~~ David D. Gustavson  
Director of Public Works & Transportation

## EXHIBIT A

### Total Estimated Cost-Sharing for Ballona Creek Metals and Toxics Monitoring & Toxicity Identification Evaluation Study and Invoicing by the City of Los Angeles

**Table 1. Cost Allocation Formula.**

Agency	Acres <sup>(1)</sup>	Square miles	% of Area <sup>(2)</sup>
City of Los Angeles	67,053.44	104.77	81.32
Los Angeles County	3,928.91	6.14	4.77
City of Beverly Hills	3,630.38	5.67	4.40
City of Culver City	3,234.81	5.05	3.92
City of Inglewood	1,934.57	3.02	2.35
Caltrans	1,206.00	1.88	1.46
City of West Hollywood	1,201.43	1.88	1.46
City of Santa Monica	264.97	0.41	0.32
<b>Total</b>	<b>82,454.51</b>	<b>128.84</b>	<b>100.00</b>

<sup>(1)</sup> Land distribution data as defined by LARWQCB.

<sup>(2)</sup> Proportionality of cost-sharing by Regulated Entities is based on each Regulated Entity's % area of the total watershed area of 82,455 acres.

**Table 2. Estimated Costs for CMP Services and Project Administration and Management.**

Period	CMP Services	Project Administration and Management <sup>(3)</sup>	Total Estimated Cost
February 2009 – June 2009 <sup>(1)</sup>	\$20,915	-	\$20,915
July 2009 – June 2010 <sup>(2)</sup>	\$852,370	\$42,619	\$894,989
July 2010 – June 2011 <sup>(2)</sup>	\$806,430	\$40,322	\$846,752
July 2011 – June 2012 <sup>(2)</sup>	\$361,526	\$18,076	\$379,602
<b>Total</b>	<b>\$2,041,241</b>	<b>\$101,017</b>	<b>\$2,142,258</b>

<sup>(1)</sup> Actual cost of early monitoring over February – June 2009, see Exhibit B.

<sup>(2)</sup> Estimated cost for CMP Services, see Exhibit C, not adjusted for the annual increase by State of California Consumer Price Index. CMP Services include: Monitoring Services per the CMP; installation of automated water samplers; the TIE Study and the TIE Services.

<sup>(3)</sup> Not to exceed 5% of estimated cost of CMP Services.

**Table 3. Invoicing by City of Los Angeles to City of Beverly Hills.**

Period	City of Beverly Hills Share	Invoice Amount <sup>(1)</sup>
February 2009 – June 2009	\$920	\$40,300 <sup>(2)</sup>
July 2009 – June 2010	\$39,380	
July 2010 – June 2011	\$37,257	\$37,257 <sup>(3)</sup>
July 2011 – June 2012	\$16,702	\$16,702 <sup>(3)</sup>
<b>Total</b>	<b>\$94,259</b>	<b>\$94,259</b>

<sup>(1)</sup> Amounts have not been adjusted for annual increase by State of California Consumer Price Index.

<sup>(2)</sup> The first payment is due upon execution of this Agreement, which includes early monitoring (February – June 2009) and the estimated annual cost for the period of July 2009 – June 2010.

<sup>(3)</sup> For the period of July 2010 – June 2012, City of Los Angeles will invoice estimated annual cost in January of each year.

## EXHIBIT B

### Ballona Creek Metals and Toxic Pollutants TMDLs February - June 2009 Monitoring Costs

**Table 1. Ballona Creek Metals TMDL: early start monitoring costs over February – June 2009.**

City of Los Angeles' Tasks	Cost/Sample	No. of Stations	Cost per Sample Event	Early Start Monitoring Sample Events	Total Early Start Monitoring Cost
Dry-weather Water Quality SAMPLING (Creek)	\$160	4	\$640	5	\$3,200
Dry-weather Water Quality ANALYSIS (Metals)	\$365	4	\$1,460	5	\$7,300
Special Dissolved Field Sampling and Filtration Equipment(2 yrs)	\$67	4	\$268	5	\$1,340
Speical Dissolved Lab Analysis QA (2 yrs)	\$730			5	\$3,650
<b>Sub-total (Table 1)</b>					<b>\$15,490</b>

**Table 2. Ballona Creek Toxic Pollutants TMDL: early start monitoring costs over February – June 2009.**

City of Los Angeles' Tasks	Cost/Sample	No. of Stations	Cost per Sample Event	Early Start Monitoring Sample Events	Total Early Start Monitoring Cost
Salt Water SAMPLING (Estuary) (Dry weather ambient monitoring)	\$160	1	\$160	5	\$800
Salt Water ANALYSIS (Metals) (Ambient monitoring)	\$145	1	\$145	5	\$725
Salt Water ANALYSIS (Organics) (Ambient monitoring)	\$650	1	\$650	5	\$3,250
Salt Water SHIPPING (Metals) (Ambient monitoring)	\$130	1	\$130	5	\$650
<b>Sub-total (Table 2)</b>					<b>\$5,425</b>

**Total early start monitoring costs over February – June 2009 (Tables 1 + 2): \$20,915.**

## EXHIBIT C

### Ballona Creek Metals and Toxic Pollutants TMDLs FYs 09/12 Estimated Monitoring Costs

**Table 1. Estimated Annual Costs for Monitoring Services, TIE Services and TIE Study.**

City Of Los Angeles Tasks (Reoccurring)	(B) Cost/Sample	(C) No. of Stations	(D=B x C) Cost per Sample Event	(E) 1st Yr. No. Sample Events	(F) 2nd Yr. Sample Events	(G=D x E) 1st Year Annual Cost	(H=D x F) 2nd Year Annual Cost	3rd Year Annual Cost
Dry-weather Water Quality SAMPLING (Creek)	\$160	4	\$640	12	12	\$7,680	\$7,680	\$7,680
Dry-weather Water Quality ANALYSIS (Metals)	\$365	4	\$1,460	12	12	\$17,520	\$17,520	\$17,520
Wet-weather Water Quality SAMPLING (Creek)	\$440	5	\$2,200	8	8	\$17,600	\$17,600	\$17,600
Wet-weather Water Quality ANALYSIS (Metals)	\$365	5	\$1,825	8	8	\$14,600	\$14,600	\$14,600
Wet-weather Water Quality ANALYSIS (Organics) (Toxics TMDL)	\$650	2	\$1,300	8	8	\$10,400	\$10,400	\$10,400
Special Dissolved Field Sampling and Filtration Equipment (2 yrs)	\$67	5	\$335	12	12	\$804	\$804	-
Special Dissolved Lab Analysis QA (2 yrs)	\$730			20	20	\$14,600	\$14,600	-
Salt Water SAMPLING (Estuary) (Dry weather ambient monitoring)	\$160	1	\$160	12	12	\$1,920	\$1,920	\$1,920
Salt Water ANALYSIS (Metals) (Dry weather ambient monitoring)	\$145	1	\$145	12	12	\$1,740	\$1,740	\$1,740
Salt Water ANALYSIS (Organics) (Dry weather ambient monitoring)	\$650	1	\$650	12	12	\$7,800	\$7,800	\$7,800
Salt Water SHIPPING (Metals) (Dry weather ambient monitoring)	\$130	1	\$130	12	12	\$1,560	\$1,560	\$1,560
Storm-borne Sediments: Sampling (Creek)	\$160	5	\$800	8	8	\$6,400	\$6,400	\$6,400
Storm-borne Sediments: Analysis (Metals)	\$140	5	\$700	1	1	\$700	\$700	\$700
Storm-borne Sediments: Analysis (Organics)	\$540	5	\$2,700	1	1	\$2,700	\$2,700	\$2,700
SEDIMENT SAMPLING	\$1,227	6	\$7,362	1	1	\$7,362	\$7,362	\$7,362
SEDIMENT Analysis (Organics)	\$640	6	\$3,840	1	1	\$3,840	\$3,840	\$3,840
SEDIMENT Analysis (Metals)	\$140	6	\$840	1	1	\$840	\$840	\$840
SEDIMENT Analysis (Grain Size)	\$210	6	\$1,260	1	1	\$1,260	\$1,260	\$1,260
SEDIMENT Analysis (TOC)	\$100	6	\$600	1	1	\$600	\$600	\$600
SEDIMENT Toxicity Testing: Amphipod 10-day*	\$5,191	6	\$31,146	1	1	\$31,146	\$31,146	\$31,146
SEDIMENT Toxicity Testing: Amphipod 28-day*	\$6,938	6	\$41,628	1	1	\$41,628	\$41,628	\$41,628
SEDIMENT Toxicity Testing: Sea Urchin*	\$2,175	6	\$13,050	1	1	\$13,050	\$13,050	\$13,050
SEDIMENT Toxicity Testing: Abalone*	\$2,706	6	\$16,236	1	1	\$16,236	\$16,236	\$16,236
SEDIMENT Toxicity Testing: Ref. Tox (3 species)*	-	-	\$8,864	1	1	\$8,864	\$8,864	\$8,864
*-Prices based on EMD price list 2007 v4(1)								
BIOACCUMULATION Sampling (Mussels; 5 samples/station)	\$1,840	2	\$3,680	1	1	\$3,680	\$3,680	\$3,680
BIOACCUMULATION Sampling (Fish; 5 samples/station)	\$15,460	2	\$30,920	1	1	\$30,920	\$30,920	\$30,920
BIOACCUMULATION Analysis (Metals)	\$140	30	\$4,200	1	1	\$4,200	\$4,200	\$4,200
BIOACCUMULATION Analysis (Organics)	\$540	30	\$16,200	1	1	\$16,200	\$16,200	\$16,200
Data Analysis	-	-	-	-	-	\$50,000	\$50,000	\$50,000
Reporting & Program Management	-	-	-	-	-	\$30,000	\$30,000	\$30,000
Stream Gage Service/data collection	\$1,000	5	-	-	-	\$5,000	\$5,000	\$5,000
Autosampler Maintenance	\$700	5	-	-	-	\$3,500	\$3,500	\$3,500
TIE Services (By City of Los Angeles)	-	-	-	-	-	\$120,000	-	-
Toxicity Identification Evaluation (TIE) Study (By SCCWRP)	-	-	-	-	-	\$94,500	\$279,500	-
<b>Sub-total (Table 1)</b>						<b>\$588,850</b>	<b>\$653,850</b>	<b>\$358,946</b>

**Table 2. Estimated Annual Costs for Autosampler Installation.**

Autosampler (Los Angeles)	Cost	Quantity	1st Year Annual Cost	2nd Year Annual Cost	3rd Year Annual Cost	TOTAL
Design, Equipment & Installation*	\$52,188.00	5	\$260,940	\$150,000	\$0	\$410,940
Telemetry Phone Service	\$516.00	5	\$2,580.00	\$2,580.00	\$2,580.00	\$7,740
Sub-total (Table 2)			\$263,520	\$152,580.00	\$2,580.00	\$418,680.00

**Table 3. Total Estimated Annual Costs for CMP Services.**

	YEAR 1	YEAR 2	YEAR 3	TOTAL
Total Los Angeles Annual Costs (Tables 1 + 2)	\$852,370	\$806,430	\$361,526	\$2,020,327

# **EXHIBIT D**

## **Scope of Work for Toxicity Identification Evaluation (TIE) In Ballona Creek Estuary**

August 22, 2007  
Steven Bay, SCCWRP

### **Background**

Historical data showing the presence of sediment toxicity and elevated contaminants were important factors in the listing of Ballona Creek Estuary as an impaired water body. Recent studies conducted as part of the Bight'03 regional survey confirmed that toxic sediments are still present in the estuary. Although specific contaminants are listed in the Ballona Creek Estuary Toxics TMDL, very little reliable information is available to identify the cause of toxicity or to determine appropriate target concentrations. Because of the lack of information, TMDL sediment targets are currently based on NOAA ERL (Effects Range-Low) sediment quality guidelines, which were never intended to represent TMDL targets or to determine the cause of toxicity. The Southern California Coastal Water Research Project (SCCWRP) has conducted preliminary Toxicity Identification Evaluations (TIE) at two Ballona Creek Estuary stations and the results indicate that organic contaminants were the likely cause of the observed toxicity. Some of these constituents could be current use pesticides including pyrethroid compounds. However, no follow-up toxicological testing was performed to identify and confirm the specific contaminants causing the toxicity. Due to these data limitations, there is a great deal of uncertainty whether the correct contaminants have been identified. In addition, it is not known whether the target concentrations specified in the TMDL are appropriate for Ballona Creek Estuary sediments; they may be highly under- or overprotective, resulting in an ineffective TMDL.

### **Objectives**

1. Obtain additional information on the spatial extent and magnitude of sediment toxicity and contamination in Ballona Creek Estuary.
2. Determine the likely cause(s) of sediment toxicity (if any) to benthic invertebrates.
3. Determine the range of sediment concentrations of target contaminants that are associated with toxicity in Ballona Creek Estuary.

### **Expected Products**

1. Map showing the magnitude of toxicity in different locations within the estuary.
2. Evaluation of the likelihood of current TMDL target chemicals as the cause of sediment toxicity.
3. List of other contaminants likely to be the cause of toxicity.
4. Range of chemical concentrations associated with toxicity for selected target chemicals.

### **Benefits to TMDL**

Identification of target contaminants, description of sources, and the determination of total loads are key elements of the TMDL that cannot be accomplished effectively without knowledge of the

cause of impairment. This project will address these key data gaps by using state of the art TIE methods to confirm whether the existing TMDL targets are correct and determine if there are additional contaminants of high concern. There are three specific benefits to the TMDL:

- Fulfills requirement of the TMDL to conduct TIE studies when toxicity is present
- Provides confidence that the appropriate contaminants are considered
- Provides data to support the calculation of relevant TMDL numeric targets

### **Description of Work**

This project consists of five (5) technical tasks, plus communication of the results (Task 6). Each of the technical tasks addresses a specific data need, as described above. Task 1 includes assisting with the Coordinated Monitoring Program and measurement of pesticides that are not currently included in existing monitoring activities. Task 2 includes the first phase of the TIE process, which is the characterization of the major toxicant groups. Task 3 includes the second phase of the TIE process, which is the isolation and identification of the probable toxicants. Task 4 includes the third phase of the TIE, which includes the analysis of additional samples to confirm the results. Task 5 includes additional studies and data analyses that are needed to help apply the study findings to the TMDL refinement process. The specific methods used in Tasks 3-5 are contingent upon the results of Task 2 and thus cannot be described in detail at the present time. The following descriptions for Tasks 3-5 include those methods that are anticipated to be used based on the results of studies conducted at other locations.

**Task 1. Sediment contamination and toxicity survey.** SCCWRP will provide assistance with design and implementation of the Ballona Creek Estuary Coordinated Monitoring Program (CMP) for sediment quality to be conducted by the City of Los Angeles EMD. Sediment samples from six locations in the estuary will be analyzed at SCCWRP for pyrethroid pesticides (Table 1). A total of six samples from two annual sampling events will be analyzed. These data along with the results of chemistry and toxicity measurements by EMD will be used to select a subset of two stations for TIE studies.

**Task 2. Toxicity characterization.** Sediment from two of the most toxic estuary stations will be collected and used for Phase I TIE analyses. Phase I TIEs are the initial step that characterizes the categories of contaminants responsible for toxicity. These characterization tests will examine both whole sediment and interstitial water/overlying water, and use the same species employed in Task 1.

The Phase I tests will be conducted on a single set of samples collected in the first year of the study. The sample treatments to be used in this task are listed in Table 2. The test species and methods cannot be determined definitively until the results of Task 1 are available, but it is anticipated that the marine amphipod *Eohaustorius estuarius* will be used, as previous tests have shown this species to be sensitive to sediment toxicity in the Ballona Creek Estuary. It is anticipated that both sediment and interstitial water TIE tests will be conducted using this species. The sediment TIE tests will consist of 10-day exposures with three replicates of each of five treatments. A baseline sample (no TIE manipulation) will also be tested to provide a reference for comparison. The water overlying the test chambers will also be tested for dissolved oxygen, pH, and ammonia. Approximately 30 sediment TIE test samples will be prepared and analyzed.

The interstitial water TIE tests will likely use 10-day exposures of *E. estuarius* also. Interstitial water will be obtained by centrifugation at 10,000 x g. Five TIE treatments and a baseline (reference) will each be tested in triplicate for each sediment sample. Blanks, consisting of laboratory seawater exposed to the various treatments will also be tested for QA purposes. Approximately 51 sample analyses will be conducted for the interstitial water tests. The interstitial water will also be tested for dissolved oxygen, pH, and ammonia.

The Phase I TIE data analyses will include comparison of amphipod survival in the sample treatments to the baseline sample. Treatments producing an increase in survival will provide an indication as to whether the sediment or interstitial water toxicity is caused by major contaminant categories such as metals, organics, or ammonia.

**Task 3. Toxicant identification.** The specific methods used will be determined by the results of Task 2, but it is assumed that selective extraction techniques will be used to isolate potential nonpolar toxicants from the samples. Either sediment or interstitial water samples will be analyzed for the two stations investigated in Task 2. The sediment/interstitial water toxicants will first be concentrated onto C18 solid phase extraction columns. Sequential elution of the C18 columns with various concentrations of methanol/water will then be used to fractionate the toxicants into five subgroups based on polarity. Each fraction will be tested for toxicity to amphipods. The toxic fractions will be analyzed using GCMS to identify the compounds present. Additional fractionation by HPLC and subsequent toxicity testing/chemical analysis may be needed to isolate and identify the suspected toxicants.

The chemicals identified in these analyses will be compared to those identified in the TMDL. The results will indicate whether the current TMDL target compounds are likely to be responsible for the observed toxicity and/or whether additional contaminants are causing the toxicity.

**Task 4. Confirmation of toxicants.** Additional field sampling for chemistry and toxicity will be conducted in 2008. It is anticipated that Phase I TIEs and chemical analysis will be conducted on 4 samples to determine whether the toxicants identified in Tasks 2 and 3 are the primary causes of toxicity in other locations within the estuary. The chemical analyses may include the use of *in situ* SPME technology, laboratory bioaccumulation tests, or interstitial water chemical analysis to measure bioavailable contaminants in the sediment and water column.

Sampling and analyses will be coordinated with the CMP and make use of existing activities to the maximum extent possible. Correlation and regression analyses of sediment chemistry and toxicity data from prior studies will be used to determine if variations in the concentrations of the suspected toxicants correspond with changes in sediment toxicity.

**Task 5. Evaluation of TMDL targets.** Studies will be conducted to determine potential target concentrations for the toxicants identified in Tasks 2-4 and where appropriate, compare these targets to current TMDL targets. Analyses will be conducted for the 2 contaminants identified as most likely to be causing sediment toxicity in the estuary. Chemical data from the CMP and other programs will be analyzed statistically to determine the range of concentrations of the target contaminants associated with toxicity.

In addition, spiked sediment experiments for the target contaminants will be conducted. Ballona Creek or nearby reference sediments will be spiked at four concentrations for each contaminant and allowed to equilibrate for 60 days in the laboratory. Sediment toxicity tests (*E. estuarius* 10-day survival) and chemical analysis will be conducted on the spiked samples to estimate the threshold concentrations associated with sediment toxicity.

**Task 6. Reporting.** Three types of reports will be produced: 1) verbal presentations to the study group; 2) progress report; and 3) final report. Verbal reports of the project's findings and status will be presented to the Ballona Creek Estuary study group upon request. It is anticipated that three such presentations will be given that will correspond to the completion of Task 2, submission of progress report, and submission of draft final report. A first year progress report that summarizes the preliminary results of Tasks 1-3 will be submitted to the study group. This report will contain summaries of the analytical results and a description of the methods used. An updated workplan for the remaining tasks will also be included. A draft final report will be submitted following the conclusion of all technical tasks. This report will include a description of the methods, all laboratory results, and a discussion of the findings and their significance to the Ballona Creek TMDL. The draft final report will be revised to address any comments received from the study group.

**Table 1. Pyrethroid pesticide analytes for Task 1**

<u>Analyte</u>
Bifenthrin
Cyfluthrin
Beta-Cyfluthrin
Cypermethrin
S-Cypermethrin (also called Zeta-)
Delta/Tralomethrin (coelutes)
Esfenvalerate
Fenpropathrin
G-Cyhalothrin
L-Cyhalothrin
Permethrin

**Table 2. Phase I TIE treatments to be conducted during Task 2**

<b>Sediment</b>		<b>Interstitial Water</b>	
<b>Treatment</b>	<b>Target Toxicant</b>	<b>Treatment</b>	<b>Target Toxicant</b>
Baseline	Toxicity reference	Baseline	Toxicity reference
Carbon Addition	Nonpolar organics	C18 extraction	Nonpolar organics
Cation Exchange Resin	Divalent metals	EDTA addition	Divalent metals
Sediment Dilution	Handling control	Sodium thiosulfate	Oxidants/divalent metals
Piperonyl Butoxide	Organophosphate pesticides	Piperonyl Butoxide	Organophosphate pesticides
Acid Volatile Sulfides	Divalent metals	Carboxylase	Pyrethroid pesticides

**Table 3. Schedule of Tasks**

Task	Description	Completion Date
1	2007 Sediment survey and chemical analysis	March 2008
1	2007 Sediment survey and chemical analysis	March 2009
2	Toxicity characterization	January 2008
3	Toxicant identification	October 2008
4	Confirmation of toxicants	March 2009
5	Evaluation of TMDL targets	May 2009
6	Year 1 progress report	July 2008
6	Final report	July 2009

**Table 4. Task Budget**

Task	Description	Cost	
		2007-08	2008-09
1	Sediment contamination and toxicity survey	\$28,500	\$8,500
2	Toxicity characterization	\$21,000	\$0
3	Toxicant identification	\$40,000	\$70,000
4	Confirmation of toxicants	\$0	\$76,000
5	Evaluation of TMDL targets	\$0	\$90,000
6	Project reporting and meetings	\$5,000	\$35,000
	Subtotal	\$94,500	\$279,500
	Total Project		\$374,000

**Table 5. Line Item Budget**

Category	2007-08		2008-09		Total Days	Total Costs
	Days	Cost	Days	Cost		
Personnel						
Principal Scientist	15	\$17,130	25	\$30,250	40	\$47,380
Scientist	40	\$32,240	145	\$123,830	185	\$156,070
Marine/Lab Coordinator	15	\$12,645	25	\$22,350	40	\$34,995
Research Technician	25	\$13,425	70	\$39,900	95	\$53,325
Lab Assistant	20	\$7,240	35	\$13,440	55	\$20,680
Total Personnel	115	\$82,680	300	\$229,770	415	\$312,450
Supplies		\$7,870		\$12,330		\$20,200
Travel		\$150		\$650		\$800
Contractual – Chemical Analysis		\$3,800		\$36,750		\$40,550
Total		\$94,500		\$279,500		\$374,000

**EXHIBIT E**  
**Ballona Creek Watershed**  
**Representatives of Regulated Entities**

**Primary Agency:**

1. City of Los Angeles (“Primary agency”)  
Watershed Protection Division  
1149 South Broadway  
Los Angeles, CA 90015  
Mail Stop: 1149-756  
Party Representative: Hubertus Cox, PhD, P.E., TMDL Implementation Section  
[Hubertus.Cox@lacity.org](mailto:Hubertus.Cox@lacity.org)  
Phone No.: (213) 485-3984  
Fax: (213) 485-3939
  
2. Hyperion Treatment Plant, Environment Monitoring Division  
12000 Vista Del Mar  
Harry Pregerson Technical Support Facility  
Playa Del Rey, CA 90293  
Party Representative: Mas Dojiri, Environmental Monitoring Division  
[mas.dojiri@lacity.org](mailto:mas.dojiri@lacity.org)  
Fax: (310) 648-5731

**Responsible Agencies:**

1. County of Los Angeles, Watershed Management Division, 11<sup>th</sup> floor  
900 South Fremont Ave.  
Alhambra, CA 91803-1331  
Party Representative: Oliver Galang, P.E., Watershed Manager  
[Ogalang@dpw.lacounty.gov](mailto:Ogalang@dpw.lacounty.gov)  
Phone No.: (626) 458-4364  
Fax: (626) 457-1526
  
2. City of Beverly Hills  
455 North Rexford Drive  
Beverly Hill, CA 90210  
Party Representative: Josette Descalzo, Water Quality Specialist  
[jdescalzo@beverlyhills.org](mailto:jdescalzo@beverlyhills.org)  
Phone No.: (310) 285-2467  
Fax: (310) 285-2467
  
3. City of Culver City  
9770 Culver Blvd., 2<sup>nd</sup> Floor

Culver City, CA 90232-0507

Party Representative: Damian Skinner, Environmental Programs and Operations Manager

[Damian.Skinner@culvercity.org](mailto:Damian.Skinner@culvercity.org)

Phone No.: (310) 253-6402 or (310) 253-6421

Fax: (310) 253-5626

4. City of Inglewood  
Public Works Department  
1 Manchester Blvd.  
Inglewood, CA 90301  
Party Representative: Lauren Amimoto, Senior Administrative Analyst  
[lamimoto@cityofinglewood.org](mailto:lamimoto@cityofinglewood.org)  
Phone No.: (310) 412-5192  
Fax: (310) 412-5552
  
5. California Department of Transportation, District 07 (Caltrans)  
100 South Main Street, Suite 100, MS 13  
Los Angeles, CA 90012  
Party Representative: Bob Wu, Senior Transportation Engineer  
[robert\\_wu@dot.ca.gov](mailto:robert_wu@dot.ca.gov)  
Phone No.: (213) 897-8636  
Fax: (213) 897-0205
  
6. City of West Hollywood  
Department of Transportation and Public Works  
8300 Santa Monica Blvd.  
West Hollywood, CA 90069-6216  
Party Representative: Susannah Turney, Environmental Programs Coordinator  
[sturney@weho.org](mailto:sturney@weho.org)  
Phone No.: (323) 848-6499  
Fax: (323) 848-6564
  
7. City of Santa Monica  
Environmental Programs Division  
200 Santa Monica Pier #K  
Santa Monica, CA 90401  
Party Representative: Neal Shapiro, Urban Runoff Management Coordinator  
[Neal.Shapiro@smgov.net](mailto:Neal.Shapiro@smgov.net), [www.santa-monica.org/environment](http://www.santa-monica.org/environment)  
Phone No.: (310) 458-8223  
Fax: (310) 393-1279

## **Attachment 3**

# MOA for Ballona Creek and Estuary Implementation Plan

**MEMORANDUM OF AGREEMENT  
BETWEEN  
CITY OF LOS ANGELES  
AND  
CITY OF BEVERLY HILLS**

**REGARDING THE ADMINISTRATION AND COST SHARING OF THE  
DEVELOPMENT OF IMPLEMENTATION PLANS FOR BALLONA CREEK METALS  
TMDL, BALLONA CREEK ESTUARY TOXIC POLLUTANTS TMDL, AND BALLONA  
CREEK, BALLONA ESTUARY & SEPULVEDA CHANNEL BACTERIA TMDL**

This Memorandum of Agreement (“Agreement”) is made and entered into as of the date of the last signature set forth below by and among the City of Los Angeles, a body corporate and politic, and the City of Beverly Hills, a body corporate and politic, collectively referred to herein as the “Parties” or individually as “Party”, with respect to the following:

RECITALS

WHEREAS, the Regional Water Quality Control Board, Los Angeles Region (“LARWQCB”), adopted the Ballona Creek Metals Total Maximum Daily Load (“BC Metals TMDL”) on September 6, 2007, by Resolution No. R2007-015; and

WHEREAS, the LARWQCB adopted the Ballona Creek Estuary Toxic Pollutants Total Maximum Daily Load (“BC Toxics TMDL”) on July 7, 2005, by Resolution No. R2005-008; and

WHEREAS, the LARWQCB adopted the Total Maximum Daily Load for Bacteria Indicator Densities in Ballona Creek, Ballona Estuary and Sepulveda Channel (“BC Bacteria TMDL”) on June 8, 2006, by Resolution No. R2006-011; and

WHEREAS, the BC Metals TMDL and the BC Toxics TMDL became effective on January 11, 2006, and the BC Bacteria TMDL became effective on April 27, 2007; and

WHEREAS, the Parties recognize that the BC Metals TMDL, the BC Toxics TMDL, and the BC Bacteria TMDL (collectively referred to herein as “BC TMDLs”) are not self-enforcing and have not been incorporated into the 2001 National Pollutant Discharge Elimination System Permit for Municipal Storm Water and Urban Runoff Dischargers within the County of Los Angeles, and the incorporated cities therein except the City of Long Beach, dated December 13, 2001, for the BC TMDLs to be legally enforceable; and

WHEREAS, the BC TMDLs address water and sediment quality impairments caused by metals, toxic pollutants and indicator bacteria in Ballona Creek, Ballona Estuary and Sepulveda Channel and by toxic pollutants in Ballona Creek Estuary sediments, and have the intent of improving the water quality in these water bodies; and

WHEREAS, the BC TMDLs identified the Cities of Los Angeles, Culver City, Inglewood, West Hollywood, Beverly Hills and Santa Monica, the County of Los Angeles, and the State of California through its Department of Transportation (Caltrans), as jointly responsible for meeting the waste load allocations; and

WHEREAS, each BC TMDL requires the development of a Draft and Final Implementation Plan (collectively referred to herein as "Implementation Plans") that outline how the waste load allocations specified by the BC TMDLs will be met; and

WHEREAS, the Cities of Los Angeles, Culver City, Inglewood, West Hollywood, Beverly Hills and Santa Monica, and Caltrans (collectively referred to herein as "Agencies" or individually as "Agency") have agreed to collectively develop and submit the Implementation Plans to the LARWQCB according to the schedule in Table 1 of Exhibit A; and

WHEREAS, the Agencies have agreed to cooperatively share in fully funding the costs for developing the Implementation Plans contained in Table 3 of Exhibit A, based on the cost allocation formula contained in Table 2 of Exhibit A of this Agreement; and

WHEREAS, the City of Los Angeles has the expertise to develop the Implementation Plans consistent with the BC TMDLs; and

WHEREAS, the Agencies have agreed that the City of Los Angeles will retain a Consultant to develop the Implementation Plans; and

WHEREAS, the Agencies have agreed to retain the City of Los Angeles to develop the Implementation Plans on their behalf, the Agencies are willing to pay the City of Los Angeles for these services, and the City of Los Angeles is willing to perform and be reimbursed for these services as indicated in Exhibit A; and

WHEREAS, to expedite the cost-sharing of the development of the Implementation Plans as contained in Exhibit A of this Agreement, the Agencies have agreed that the City of Los Angeles will enter into separate agreements between the City of Los Angeles and each Agency;

NOW, THEREFORE, in consideration of the mutual benefits and promises made herein, the Parties do hereby agree as follows:

Section 1. Recitals. The recitals set forth above are fully incorporated as part of this Agreement.

Section 2. Purpose. The purpose of this Agreement is to cooperatively fund and coordinate the payment of the development of the Implementation Plans.

Section 3. Cooperation. The Parties shall fully cooperate with one another to attain the purposes of this Agreement.

Section 4. Voluntary Nature. This Agreement is voluntarily entered into for the development of Implementation Plans consistent with the provisions of the BC TMDLs.

Section 5. Term. This Agreement shall become effective upon execution by the Parties and it shall remain and continue in effect until June 30, 2011.

Section 6. Implementation Plans. The Implementation Plans will outline how the Agencies intend to cooperatively achieve compliance with the waste load allocations of the BC TMDLs, which may include implementation methods, implementation schedules and proposed milestones.

Section 7. Assessment for Proportional Cost of the Implementation Plans. The City of Beverly Hills agrees to pay the City of Los Angeles for developing the Implementation Plans in the amounts not to exceed those shown in Table 4 of Exhibit A, based on the cost allocation formula shown in Table 2 of Exhibit A, attached hereto and made part of the Agreement by this reference. The City of Los Angeles will annually invoice the City of Beverly Hills upon execution of this Agreement as shown in Table 4 of Exhibit A, based on the allocated costs for developing the Implementation Plans and the project administration and management costs at a percentage not to exceed 5% of the allocated costs for development of the Implementation Plans shown in Table 4 of Exhibit A. At the end of each fiscal year, the City of Los Angeles will provide the Agencies with a detailed statement with the actual expenditures. Unexpended cost at the termination of this Agreement will be reimbursed to the City of Beverly Hills. Any proposed increase in the City of Beverly Hills' share of the costs in excess of the amounts shown in Exhibit A will require an amendment to this Agreement.

Section 8. Role of the City of Los Angeles.

- a) Contracting of Consultant – The Agencies agree that the City of Los Angeles will use an existing contract with Camp Dresser & McKee, Inc. (CDM) for Consultant Services to assist with the development of the Implementation Plans. The contract with CDM incorporates City of Los Angeles contracting requirements and policies and the City of Los Angeles will be responsible for the coordination of activities with CDM and the handling of all administrative responsibilities, including receipt and payment of invoices from CDM.
- b) Reporting and Review – The City of Los Angeles will periodically inform the Agencies on the progress of Implementation Plans development in monthly jurisdictional meetings and provide copies of technical memo's and draft and final Implementation Plans for review by the Agencies at least two weeks before submittal to the LARWQCB.

Section 9. Role of the other Agencies.

- a) Information Sharing – The Agencies mutually agree to share, to the extent not otherwise prohibited by law or by legal or trade secret privilege, all information required to develop, prepare, and submit documents for the Implementation Plans,

including monitoring data, CAD (Computer Aided Design/Drawing) files and GIS (Geographic Information Systems) layers or other electronic data. Such sharing shall be subject to any applicable license agreements or other restrictions. All data shared among the Agencies shall be provided “as is” and without warranties as to accuracy or as to any other characteristics, whether expressed or implied. The intent of this data-sharing provision is to facilitate the development of the Implementation Plans, and the Agencies agree not to use such data for tasks unrelated to the Implementation Plans.

Section 10. Invoice and Payment.

- a) Payment – The City of Beverly Hills shall reimburse the City of Los Angeles for its proportional share cost for development of the Implementation Plans and the project administration and management costs as shown in Table 4 of Exhibit A within forty five (45) days of receipt of the invoice from the City of Los Angeles.
- b) Invoice – The City of Los Angeles will invoice the City of Beverly Hills as shown in Table 4 of Exhibit A. The first payment will be invoiced immediately following the execution of this Agreement and will consist of the allocated costs for the development of the Implementation Plan of the BC Bacteria TMDL. The second payment will be invoiced in January of 2011 and will consist of the allocated costs for the development of the Implementation Plan of the BC Metals TMDL. The third payment will be invoiced in June of 2011 and will consist of the allocated costs for the development of the Implementation Plan of the BC Toxics TMDL.

Section 11. Indemnification. To the fullest extent permitted by law, the City of Beverly Hills and the City of Los Angeles agree to save, indemnify, defend, and hold harmless each other from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorney fees, court costs, and any other costs of any nature without restriction incurred in relation to, as a consequence of, or arising out of, the performance of this Agreement, and attributable to the fault of the other. Following a determination of the percentage of fault and or liability by agreement between the Parties or a court of competent jurisdiction, the Party responsible for liability to the other will indemnify the other Party to this Agreement for the percentage of liability determined. No party shall indemnify another Party, however, for the other Party’s own negligence or willful misconduct.

In light of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the Parties hereto, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, shall assume the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by any act of omission occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose, each of the Parties indemnifies, defends, and holds harmless each other Party for any liability, cost, or expense that may be imposed upon such other Party solely by

virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

Section 12. Termination of Agreement. Either Party may terminate this Agreement for any reason, in whole or in part, by giving the other Party thirty (30) days written notice thereof. The City of Beverly Hills shall be responsible for the allocated costs incurred up to the date of the termination. The City of Los Angeles shall notify in writing all Agencies within fourteen (14) days of receiving written notice from any Party that intends to terminate this Agreement.

Section 13. General Provisions.

- a) Notices. Any notices, bills, invoices, or reports relating to this Agreement, and any request, demand, statement or other communication required or permitted hereunder shall be in writing and shall be delivered to the Representative of the Party at the address set forth in Exhibit B. Parties shall promptly notify each other of any change of contact information, including personnel changes, provided in Exhibit B. Written notice shall include notice delivered via email or fax. A notice shall be deemed to have been received on (a) the date of delivery, if delivered by hand during regular business hours, or by confirmed facsimile or by email; or (b) on the third (3rd) business day following mailing by registered or certified mail (return receipt requested) to the addresses set forth in Exhibit B.
- b) Administration. For the purpose of this Agreement, the parties hereby designate as their respective Party Representatives the persons named in Exhibit B. The designated Party Representatives, or their respective designees, shall administer the terms and conditions of this Agreement on behalf of their respective Party. Each of the persons signing below on behalf of a Party represents and warrants that they are authorized to sign this Agreement on behalf of such Party.
- c) Relationship of Parties. The Parties are and shall remain at all times as to each other, wholly independent entities. No Party to this Agreement shall have power to incur any debt, obligation, or liability on behalf of another Party unless expressly provided to the contrary by this Agreement. No employee, agent, or officer of a Party shall be deemed for any purpose whatsoever to be an agent, employee or officer of another Party.
- d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of each Party to this Agreement and their respective heirs, administrators, representatives, successors and assigns.
- e) Amendment. The terms and provisions of this Agreement may not be amended, modified or waived, except by an instrument in writing signed by all the Parties.
- f) Waiver. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party to any breach of the provisions of this Agreement

shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement.

- g) Law to Govern; Venue. This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in the state trial courts shall lie exclusively in the County of Los Angeles.
- h) No Presumption in Drafting. The Parties to this Agreement agree that the general rule that an Agreement is to be interpreted against the Party drafting it, or causing it to be prepared shall not apply.
- i) Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, whether written or oral, with respect thereto.
- j) Severability. If any term, provision, condition or covenant of this Agreement is declared or determined by any court or competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and this Agreement shall be read and constructed without the invalid, void, or unenforceable provision(s).
- k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute but one and the same instrument, provided, however, that such counterparts shall have been delivered to all Parties to this Agreement.
- l) All Parties have been represented by counsel in the preparation and negotiation of this Agreement. Accordingly, this Agreement shall be construed according to its fair language.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed on their behalf, respectively, as follows:

**CITY OF LOS ANGELES**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Cynthia M. Ruiz, President  
Board of Public Works

ATTEST:

By: \_\_\_\_\_  
June Lagmay  
City Clerk

APPROVED AS TO FORM:

Carmen Trutanich  
City Attorney

By: \_\_\_\_\_  
Edward M. Jordan  
Assistant City Attorney

**CITY OF BEVERLY HILLS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jimmy Delshad, Mayor

ATTEST:

\_\_\_\_\_  
Byron Pope  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT

By:   
Laurence Wiener  
City Attorney

By:   
~~FOR~~ David D. Gustavson  
Director of Public Works & Transportation

## EXHIBIT A

### Total Estimated Cost-Sharing for Development of Implementation Plans for Ballona Creek TMDLs and Invoicing by City of Los Angeles

**Table 1. TMDL Implementation Plans Development Schedule.**

TMDL	Effective Date of TMDL	Due Date for Draft Implementation Plan	Target Date for Final Implementation Plan
BC Bacteria TMDL	April 27, 2007	October 27, 2009	April 27, 2010 <sup>(1)</sup>
BC Metals TMDL	January 11, 2006	January 11, 2010	July 11, 2010
BC Toxics TMDL	January 11, 2006	January 11, 2011	July 11, 2011

<sup>(1)</sup> Actual due date is 3 months after the LARWQCB issues comments to the Draft Implementation Plan.

**Table 2. Cost Allocation Formula.**

Agency	Acres <sup>(1,2)</sup>	Square Miles	% of Area <sup>(3)</sup>
Los Angeles	67,053.44	104.77	85.39
Beverly Hills	3,630.38	5.67	4.62
Culver City	3,234.81	5.05	4.12
Inglewood	1,934.57	3.02	2.46
Caltrans	1,206.00	1.88	1.54
West Hollywood	1,201.43	1.88	1.53
Santa Monica	264.97	0.41	0.34
<b>TOTAL</b>	<b>78,525.60</b>	<b>122.68</b>	<b>100</b>

<sup>(1)</sup> Land distribution data defined by LARWQCB.

<sup>(2)</sup> Total effective watershed area for the purpose of this Agreement is the total watershed area (82,454.51 acres) minus the County of Los Angeles area (3,928.91 acres).

<sup>(3)</sup> The proportionality of cost-sharing by Agencies is based on each Agency's % area in the effective watershed area of 78,525.60 acres.

**Table 3. Estimated Costs for Development of Implementation Plans and Project Administration and Management.**

TMDL	Estimated Cost for Implementation Plan Development	Project Administration and Management <sup>(1)</sup>	Total Estimated Cost
BC Bacteria TMDL	\$320,524	\$16,026	\$336,550
BC Metals TMDL	\$327,524	\$16,376	\$343,900
BC Toxics TMDL	\$335,574	\$16,779	\$352,353
<b>TOTAL</b>	<b>\$983,622</b>	<b>\$49,181</b>	<b>\$1,032,803</b>

<sup>(1)</sup> Not to exceed 5% of estimated cost of development of Implementation Plans.

**Table 4. Invoicing from City of Los Angeles to City of Beverly Hills.**

<b>TMDL</b>	<b>Invoice Amount</b>
BC Bacteria TMDL	\$15,549 <sup>(1)</sup>
BC Metals TMDL	\$15,888 <sup>(2)</sup>
BC Toxics TMDL	\$16,279 <sup>(3)</sup>
<b>Total</b>	<b>\$47,716</b>

<sup>(1)</sup> The first payment is due upon execution of this Agreement.

<sup>(2)</sup> Second invoice will be in January of 2011.

<sup>(3)</sup> Third invoice will be in June of 2011.

**EXHIBIT B**  
**Ballona Creek Watershed**  
**Representatives of Agencies**

**Primary Agency:**

1. City of Los Angeles (“Primary Agency”)  
Watershed Protection Division  
1149 South Broadway Blvd.  
Los Angeles, CA 90015  
Mail Stop: 1149-756  
Party Representative: Hubertus Cox, PhD, P.E., TMDL Implementation Section  
[Hubertus.Cox@lacity.org](mailto:Hubertus.Cox@lacity.org)  
Phone No.: (213) 485-3984  
Fax: (213) 485-3939

**Responsible Agencies:**

1. City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, CA 90210  
Party Representative: Josette Descalzo, Water Quality Specialist  
[jdescalzo@beverlyhills.org](mailto:jdescalzo@beverlyhills.org)  
Phone No.: (310) 285-2467  
Fax: (310) 285-2467
2. City of Culver City  
9770 Culver Blvd., 2<sup>nd</sup> Floor  
Culver City, CA 90232-0507  
Party Representative: Charles D. Herbertson, Director of Public Works/City Engineer  
[charles.herbertson@culvercity.org](mailto:charles.herbertson@culvercity.org)  
Phone No.: (310) 253-5630  
Fax: (310) 253-5626
3. City of Inglewood  
Public Works Department  
1 Manchester Blvd.  
Inglewood, CA 90301  
Party Representative: Lauren Amimoto, Senior Administrative Analyst  
[lamimoto@cityofinglewood.org](mailto:lamimoto@cityofinglewood.org)  
Phone No.: (310) 412-5192  
Fax: (310) 412-5552

4. City of West Hollywood  
Department of Transportation and Public Works  
8300 Santa Monica Blvd.  
West Hollywood, CA 90069-6216  
Party Representative: Susannah Turney, Environmental Programs Coordinator  
[sturney@weho.org](mailto:sturney@weho.org)  
Phone No.: (323) 848-6499  
Fax: (323) 848-6564
  
5. California Department of Transportation, District 07 (Caltrans)  
100 South Main Street, Suite 100, MS 13  
Los Angeles, CA 90012  
Party Representative: Bob Wu, Senior Transportation Engineer  
[robert\\_wu@dot.ca.gov](mailto:robert_wu@dot.ca.gov)  
Phone No.: (213) 897-8636  
Fax: (213) 897-0205
  
6. City of Santa Monica  
Environmental Programs Division  
200 Santa Monica Pier #K  
Santa Monica, CA 90401  
Party Representative: Neal Shapiro, Urban Runoff Management Coordinator  
[Neal.Shapiro@smgov.net](mailto:Neal.Shapiro@smgov.net), [www.santa-monica.org/environment](http://www.santa-monica.org/environment)  
Phone No.: (310) 458-8223  
Fax: (310) 393-1279