



**CITY OF BEVERLY HILLS**

***PUBLIC WORKS SERVICES DEPARTMENT***

**MEMORANDUM**

**TO:** Public Works Commission

**FROM:** Trish Rhay, Utilities Manager, Public Works Services Department

**DATE:** October 10, 2013

**SUBJECT:** Storm Water NPDES (MS4) Permit Memorandum of Agreements (MOA) and Memorandum of Understanding (MOU)

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One of the central compliance requirements in the City of Beverly Hills MS4 permit is to develop a Watershed Management Plan. The purpose of this plan is to identify and implement projects that address the water quality issues within our watershed.

We have elected to develop a joint Ballona Creek watershed management plan (EWMP) with all MS4 permittees within the creek basin. The City of Los Angeles has been designated as the lead agency for this effort.

The attached MOAs and the MOU formalize our collaborative effort and joint cost sharing agreements with the City of Los Angeles. The MOA's must be signed by Jeff Kolin, the City Manager, by November 2013. The MOU requires Council approval by December 2013.



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  
BALLONA CREEK METALS AND BALLONA CREEK ESTUARY TOXIC  
POLLUTANTS TMDLs

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 municipal corporation, 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 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 revised Ballona Creek Metals Total Maximum Daily Load (“BC Metals TMDL”) on September 6, 2007, by Resolution No. R2007-015; and

WHEREAS, the BC Toxics TMDL and the BC Metals TMDL (jointly referred to herein as “BC TMDLs”) became effective on January 11, 2006 and October 29, 2008; and

WHEREAS, the BC TMDLs have been incorporated into the 2012 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, by Order R4-2012-0175 on December 28, 2012; and

WHEREAS, the BC TMDLs address water and sediment 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 requirements of the BC TMDLs; and

WHEREAS, Resolutions No. R2005-008 and R2007-015 identified the City of Los Angeles as the primary jurisdiction ("Primary Agency") for the Ballona Creek watershed; and

WHEREAS, the BC TMDLs require the preparation and implementation of a Coordinated Monitoring Plan ("CMP") by the Regulated Entities that is designed to monitor water and sediment quality in Ballona Creek and Ballona Estuary; 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 May 4, 2009; and

WHEREAS, the CMP was revised, herein referred to as "Revised CMP", and resubmitted to the LARWQCB on October 29, 2012, and approved by the LARWQCB on February 17, 2013; and

WHEREAS, the Revised CMP is hereby made part of the Agreement by reference; and

WHEREAS, the Regulated Entities have agreed to cooperatively share in fully funding the estimated costs of the implementation of the Revised CMP contained in Table 3 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 (collectively "Monitoring Services") consistent with the Revised CMP; and

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

WHEREAS, the current agreements for cost-sharing of monitoring for the BC TMDLs have expired on June 30, 2012; and

WHEREAS, the Regulated Entities desire to enter into new agreements for the period of July 1, 2012 through June 30, 2015 to continue the existing Monitoring Services performed by the City of Los Angeles; 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 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 Revised CMP.

Section 5. Term. This Agreement shall become effective on the date of final execution by the Parties and it shall remain and continue in effect until June 30, 2015.

Section 6. Continuation of Monitoring. The Regulated Entities agree that any costs incurred by the City of Los Angeles for Monitoring Services performed between July 1, 2012 and the execution date of this Agreement be cost-shared by the Regulated Entities. The estimated costs and invoicing amount for the period of July 2012 – June 2013 as contained in Exhibit A are based on the Monitoring Services commencing on July 1, 2012.

Section 7. Coordinated Monitoring Plan. The Revised 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 8. Role of the City of Beverly Hills. The City of Beverly Hills agrees to pay the City of Los Angeles for the Monitoring Services in the amounts shown in Table 4 of Exhibit A, based on the cost allocation formula in Table 1 and the total estimated annual costs in Table 3 of Exhibit A, attached hereto and made a part of the Agreement by this reference. Exhibit B of this Agreement details the estimated annual cost for the Monitoring Services.

Section 9. Role of the City of Los Angeles.

- a) Monitoring Services – The City of Los Angeles will perform the Monitoring Services at the locations indicated in the Revised CMP.
- b) Reporting – The City of Los Angeles will submit annual monitoring reports to the LARWQCB as described in the Revised CMP and distribute copies of the annual reports to the Regulated Entities prior to submittal to the LARWQCB for review and approval.
- c) Invoicing. - The City of Los Angeles will annually invoice the City of Beverly Hills as shown in Table 4 of Exhibit A. The total estimated costs for Monitoring Services have been adjusted for 3% inflation and 5% project administration and management costs as shown in Tables 2 and 3 of Exhibit A.

Section 10. Invoice and Payment.

- a) Annual Payment – The City of Beverly Hills shall pay the City of Los Angeles for its proportional share of the estimated cost for Monitoring Services and project administration and management as shown in Table 4 of Exhibit A within forty-five (45) days of receipt of the invoice from the City of Los Angeles. The cost estimates presented in Exhibit A and B have been agreed upon by the City of Los Angeles and the Regulated Entities, and are subject to changes in the Revised CMP pursuant to LARWQCB new requirements, unforeseen challenges in the field, or any decreases or increases of the estimated frequency of sampling.
- b) Invoice. – The City of Los Angeles will invoice the City of Beverly Hills as shown in Table 4 of Exhibit A. The annual payments for the period of July 2012 – June 2015 will be invoiced in January of each year starting January 2013 or upon the execution of this Agreement, whichever is later.
- c) Contingency – The City of Los Angeles will notify the Regulated Entities if actual expenditures for Monitoring Services are anticipated to exceed the cost estimates contained in Exhibits A and B and obtain approval of such expenditures from all Regulated Entities. Upon approval, the City of Beverly Hills agrees to reimburse the City of Los Angeles for its proportional share of these additional expenditures at an amount not to exceed 10% of the estimated cost for Monitoring Services as shown in Exhibit A. This 10% contingency will not be invoiced, unless actual expenditures exceed the cost estimates for Monitoring Services. Expenditures that exceed the 10% contingency will require an amendment of this Agreement.
- d) Reconciliation of this Agreement - Unexpended cost at the termination of this Agreement will be returned to the City of Beverly Hills using the cost allocation formula in Table 1 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.
- e) Reconciliation of expenditures for CMP Services through June 30, 2012 – The City of Los Angeles will provide the Regulated Agencies with a statement of the actual expenditures incurred by the City of Los Angeles for performing Monitoring Services over February 2009 through June 30, 2012. If actual expenditures are less than the invoiced amounts, the City of Los Angeles will reimburse the City of Beverly Hills for its proportional share. If actual expenditures are higher than the invoiced amounts, the City of Beverly Hills agrees to reimburse the City of Los Angeles for its proportional share at an amount not to exceed 10% of the invoiced amount. The City of Los Angeles will reconcile any debits or credits for Monitoring Services performed through June 30, 2012, in the first invoice to the City of Beverly Hills upon execution of this Agreement as shown in Table 4 of Exhibit A.

Section 11. Indemnification.

- a) Pursuant to Government Code Section 895.4 and 895.6, each Party shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by any negligent or wrongful act or omission occurring in the performance of this Agreement.
- b) Each Party indemnifies and holds harmless the other party for any loss, costs, or expenses that may be imposed upon such other party by virtue of Government Code section 895.2, which imposes joint civil liability upon public entities solely by reason of such entities being parties to an agreement, as defined by Government Code Section 895.
- c) In the event of third-party loss caused by negligence, wrongful act or omission by more than one Party, each Party shall bear financial responsibility in proportion to its percentage of fault as may be mutually agreed or judicially determined. The provisions of Civil Code Section 2778 regarding interpretation of indemnity agreements are hereby incorporated.

Section 12. 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 for the allocated costs of Monitoring 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. If one of the Regulated Entities elects to withdraw from cost sharing of Monitoring Services before the end of the term of this Agreement, it is agreed that the remaining cost share will be distributed among the other Regulated Entities based on the existing cost allocation formula.

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 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: \_\_\_\_\_

Capri W. Maddox, President  
Board of Public Works

ATTEST:

By: \_\_\_\_\_

June Lagmay  
City Clerk

APPROVED AS TO FORM:

Carmen Trutanich  
City Attorney

By: \_\_\_\_\_

John A. Carvalho  
Deputy City Attorney

CITY OF BEVERLY HILLS

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

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

ATTEST:

\_\_\_\_\_  
David Gustavson  
Director of Public Works

APPROVED AS TO FORM:

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

## EXHIBIT A

### Total Estimated Cost-Sharing for Ballona Creek Metals and Toxics Monitoring & Tier II Installation 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>
Los Angeles	67053.44	104.77	81.32
Los Angeles County	3928.91	6.14	4.77
Beverly Hills	3630.38	5.67	4.4
Culver City	3234.81	5.05	3.92
Inglewood	1934.57	3.02	2.35
Caltrans	1206	1.88	1.46
West Hollywood	1201.43	1.88	1.46
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. Baseline Monitoring Costs.**

Period	Monitoring Services <sup>(1)</sup>	Project Administration and Management (5%)	Monitoring Cost
July 2012 – June 2013	\$180,644.01	\$9,032.20	\$189,676.21
July 2013 – June 2014	\$172,154.01	\$8,607.70	\$180,761.71
July 2014 – June 2015	\$172,154.01	\$8,607.70	\$180,761.71

<sup>(1)</sup> Estimated cost for Monitoring Services, see Exhibit B.

**Table 3. Total Estimated Costs and Contingency.**

Period	Monitoring Cost	Inflation (3%)	Total Estimated Cost	Contingency <sup>(1)</sup>
July 2012 – June 2013	\$189,676.21	--	\$189,676.21	\$18,967.62
July 2013 – June 2014	\$180,761.71	\$5,422.85	\$186,184.56	\$18,618.46
July 2014 – June 2015	\$186,184.56 <sup>(2)</sup>	\$5,585.54	\$191,770.10	\$19,177.01

<sup>(1)</sup> Contingency is 10% of the total estimated cost. Contingency will not be invoiced unless there is a need for its expenditure as agreed by all Regulated Entities

<sup>(2)</sup> Baseline amount plus inflation adjustment in second year

**Table 4. Proportional Share of City of Beverly Hills and Invoicing by City of Los Angeles.**

<b>Period</b>	<b>Invoice amount to City of Beverly Hills <sup>(1)</sup></b>	<b>Contingency (10%)</b>	<b>City of Beverly Hills share including contingency</b>
July 2012 – June 2013	\$ 8,345.75 <sup>(2)</sup>	\$ 834.58	\$ 9,180.33
July 2013 – June 2014	\$ 8,192.12	\$ 819.21	\$ 9,011.33
July 2014 – June 2015	\$ 8,437.88	\$ 843.79	\$ 9,281.67
<b>Total</b>	<b>\$ 24,975.76</b>	<b>\$ 2,497.58</b>	<b>\$ 27,473.33</b>

<sup>(1)</sup> Total estimated cost from Table 3 multiplied by percentage area from Table 1, and excluding the 10% contingency.

<sup>(2)</sup> The first invoice will be adjusted for reconciliation of actual expenditures for Monitoring Services performed over July 2009 – June 2012 per Section 10(e) of this Agreement. Actual expenditures over this period are anticipated to be lower than the estimated, invoiced amounts. The City of Beverly Hills will be credited accordingly and this credit will be subtracted from the invoice amount over July 2012 – June 2013; the actual amount will be determined upon termination of the previous agreement.

## EXHIBIT B

Ballona Creek Metals and Toxic Pollutants TMDLs  
 July 2012 - June 2015 Monitoring Services; estimated annual cost, not adjusted for  
 inflation

	FY 2012- 2013	FY 2013- 2014	FY 2014- 2015
Monitoring Program BC	Estimated Costs	Estimated Costs	Estimated Costs
<b>Dry-Weather Monitoring "A"</b>			
Dry-weather fresh water sampling	\$3,840.00	\$3,840.00	\$3,840.00
Dry-weather fresh water analysis	\$13,140.00	\$13,140.00	\$13,140.00
Dry-weather salt water sampling	\$960.00	\$0.00	\$0.00
Dry-weather salt water analysis	\$7,530.00	\$0.00	\$0.00
Bioaccumulation sampling	\$6,975.10	\$6,975.10	\$6,975.10
Bioaccumulation analysis	\$20,400.00	\$20,400.00	\$20,400.00
Sediment sampling	\$4,637.10	\$4,637.10	\$4,637.10
Sediment analysis (Chemistry)	\$6,540.00	\$6,540.00	\$6,540.00
Sediment analysis (Toxicity)	\$19,572.00	\$19,572.00	\$19,572.00
Sediment TIE sampling	\$1,545.70	\$1,545.70	\$1,545.70
Sediment TIE analysis	\$8,941.00	\$8,941.00	\$8,941.00
"A" Total	\$94,080.90	\$85,590.90	\$85,590.90
<b>Wet-Weather Monitoring "B"</b>			
Wet-weather sampling	\$15,400.00	\$15,400.00	\$15,400.00
Wet-weather analysis	\$36,085.00	\$36,085.00	\$36,085.00
Storm-Borne Sediments Sampling	\$16,400.00	\$16,400.00	\$16,400.00
Storm-Borne Sediments Analysis	\$1,360.00	\$1,360.00	\$1,360.00
"B" Total	\$69,245.00	\$69,245.00	\$69,245.00
<b>Miscellaneous "C"</b>			
Data analysis	\$2,518.11	\$2,518.11	\$2,518.11
Reporting and Program Management	\$1,100.00	\$1,100.00	\$1,100.00
Autosampler O&M	\$6,000.00	\$6,000.00	\$6,000.00
Telemetry phone service and Misc. equipment	\$7,700.00	\$7,700.00	\$7,700.00
"C" Total	\$17,318.11	\$17,318.11	\$17,318.11
<b>"Monitoring Services" Annual Cost</b>	<b>\$180,644.01</b>	<b>\$172,154.01</b>	<b>\$172,154.01</b>

**EXHIBIT C**  
**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: Armond Ghazarian, P.E.  
[Aghazar@dpw.lacounty.gov](mailto:Aghazar@dpw.lacounty.gov)  
Phone No.: (626) 458-7149  
Fax: (626) 457-1526
  
2. City of Beverly Hills  
455 North Rexford Drive  
Beverly Hill, CA 90210  
Party Representative: Daniel Cartagena, Senior Management Analyst  
[dcartagena@beverlyhills.org](mailto:dcartagena@beverlyhills.org)  
Phone No.: (310) 285-1189  
Fax: (310) 278-1838

3. 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
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: Sharon Perlstein, City Engineer  
[Sperlstein@weho.org](mailto:Sperlstein@weho.org)  
Phone No.: (323) 848-6368  
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

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 municipal corporation, and the City of Beverly Hills, a municipal corporation, 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 BC bacteria TMDL has been incorporated into the 2012 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, by Order R4-2012-0175 on December 28, 2012; 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 the meeting the requirements of the BC Bacteria TMDL; 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 receiving conditional approval by the LARWQCB on December 16, 2008 which required that monitoring be started by June 2009; and

WHEREAS, the LARWQCB adopted Resolution R10-005 on July 8, 2010, to remove the fecal coliform objective for freshwaters designated for water contact recreation, which was approved by U.S. Environmental Protection Agency (U.S. EPA) on December 5, 2011; and

WHEREAS, the BC Bacteria TMDL was amended ("Amended BC Bacteria TMDL") and adopted by the LARWQCB on June 7, 2012 and approved by the State Water Resources Control Board on March 19, 2013, but is awaiting final approval by the Office of Administrative Law (OAL), and U.S. EPA before becoming effective; and

WHEREAS, the Amended BC Bacteria TMDL will require the submittal of an Outfall Monitoring Plan within six months of its effective date, which will replace the requirement by the original BC Bacteria TMDL of accelerated monitoring of the monitoring locations that do not attain the water quality objectives; and

WHEREAS, the Regulated Entities requested the LARWQCB on November 14, 2012 the removal of accelerated monitoring requirement prior to the effective date of the Amended BC Bacteria TMDL, which was approved by the LARWQCB in a letter dated December 18, 2012 on the condition that the CMP would be revised to include an Outfall Monitoring Plan; and

WHEREAS, the Regulated Entities submitted the Outfall Monitoring Plan for review and approval by the LARWQCB on April 26, 2013; and

WHEREAS, the Regulated Entities have agreed to cooperatively share in fully funding the estimated costs of the implementation of the CMP and Outfall Monitoring Plan contained in Table 3 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 Outfall Monitoring Plan; and

WHEREAS, the Regulated Entities have agreed to retain the City of Los Angeles to perform the Monitoring Services on their behalf at locations identified in the CMP and Outfall Monitoring Plan, the Regulated Entities have agreed 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, the current agreements for cost-sharing of monitoring for the BC Bacteria TMDL expired on June 30, 2012; and

WHEREAS, the Regulated Entities desire to enter into new agreements for the period of July 1, 2012 through June 30, 2015 to continue the Monitoring Services for the BC Bacteria TMDL performed by the City of Los Angeles as well as the additional Monitoring Services for the Amended BC Bacteria TMDL; 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 Outfall Monitoring Plan 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 and Outfall Monitoring Plan.

Section 5. Term. This Agreement shall become effective on the date of final execution by the Parties and it shall remain and continue in effect until June 30, 2015.

Section 6. Continuation of monitoring. The Regulated Entities agree that any costs incurred by the City of Los Angeles for monitoring performed between July 1, 2012 and the execution date of this Agreement be cost-shared by the Regulated Entities. The estimated costs and invoicing amount for the period of July 2012 – June 2013 as contained in Exhibit A are based on continuation of the Monitoring Services as of July 1, 2012.

Section 7. Coordinated Monitoring Plan and Outfall Monitoring Plan. The CMP addresses receiving water monitoring and consists of the regulatory background, ambient and effectiveness monitoring, monitoring sites, sampling parameters, analytical methods, schedule, reporting, and other regulatory requirements. The Outfall Monitoring Plan addresses monitoring of dry weather discharges from outfalls and consists of the regulatory background, sampling frequencies, protocols for enhanced outfall monitoring, analytical methods, schedule and reporting. Both plans are incorporated into this Agreement by this reference.

Section 8. Role of the City of Beverly Hills. The City of Beverly Hills agrees to pay the City of Los Angeles for the Monitoring Services in the amounts shown in Table 4 of Exhibit A, based on the cost allocation formula in Table 1 and the total estimated annual costs in Table 3 of

Exhibit A, attached hereto and made a part of the Agreement by this reference. Exhibit B of this Agreement details the estimated annual cost for the Monitoring Services

Section 9. 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 and Outfall Monitoring Plan.
- b) Reporting. – The City of Los Angeles will provide the LARWQCB with monthly summary monitoring reports as described in the CMP and annual reports as described in the Outfall Monitoring Plan and distribute copies of these reports to the Regulated Entities prior to submittal to the LARWQCB for review and approval.
- c) Invoicing. - The City of Los Angeles will annually invoice the City of Beverly Hills as shown in Table 4 of Exhibit A. The invoice amounts have been adjusted for annual 3% inflation for July 2013 to June 2015 and a flat 5% project administration and management cost for each year as shown in Tables 2 and 3 of Exhibit A.

Section 10. Invoice and Payment.

- a) Annual Payment. – The City of Beverly Hills shall pay the City of Los Angeles for its proportional share of the estimated cost for Monitoring Services and 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. The cost estimates presented in Exhibits A and B have been agreed upon by the City of Los Angeles and the other Regulated Entities, and are subject to changes in the CMP and Outfall Monitoring Plan pursuant to LARWQCB new requirements, unforeseen challenges in the field, or any decreases or increases of the estimated frequency of accelerated sampling.
- b) Invoice. – The City of Los Angeles will invoice the City of Beverly Hills as shown in Table 4 of Exhibit A. The annual payments for the period of July 2012 – June 2015 will be invoiced in January of each year starting January 2013 or upon the execution of this Agreement, whichever is later.
- c) Contingency.– The City of Los Angeles will notify the Regulated Entities if actual expenditures for Monitoring Services are anticipated to exceed the cost estimates contained in Exhibits A and B and obtain approval of such expenditures from all Regulated Entities. Upon approval of the additional expenditures, the City of Beverly Hills agrees to pay the City of Los Angeles for its proportional share of these additional expenditures at an amount not to exceed 10% of the estimated cost for Monitoring Services as shown in Exhibit A. This 10% contingency will not be invoiced, unless actual expenditures exceed the cost estimates for Monitoring Services. Expenditures that exceed the 10% contingency will require an amendment of this Agreement.

- d) Reconciliation of this Agreement. - Unexpended funds at the termination of this Agreement will be returned to the City of Beverly Hills using the cost allocation formula in Table 1 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.
- e) Reconciliation of expenditures for Monitoring Services through June 30, 2012. - The City of Los Angeles will provide the Regulated Agencies with a statement of the actual expenditures incurred by the City of Los Angeles for performing Monitoring Services over February 2009 through June 30, 2012. If actual expenditures are less than the invoiced amounts, the City of Los Angeles will reimburse the City of Beverly Hills for its proportional share. If actual expenditures are higher than the invoiced amounts, the City of Beverly Hills agrees to pay the City of Los Angeles for its proportional share at an amount not to exceed 10% of the invoiced amount. The City of Los Angeles will reconcile and include any debits or credits for Monitoring Services performed through June 30, 2012, in the first invoice to the City of Beverly Hills upon execution of this Agreement as shown in Table 4 of Exhibit A.

Section 11. Indemnification.

- a) Pursuant to Government Code Section 895.4 and 895.6, each Party shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by any negligent or wrongful act or omission occurring in the performance of this Agreement.
- b) Each Party indemnifies and holds harmless the other party for any loss, costs, or expenses that may be imposed upon such other party by virtue of Government Code section 895.2, which imposes joint civil liability upon public entities solely by reason of such entities being parties to an agreement, as defined by Government Code Section 895.
- c) In the event of third-party loss caused by negligence, wrongful act or omission by more than one Party, each Party shall bear financial responsibility in proportion to its percentage of fault as may be mutually agreed or judicially determined. The provisions of Civil Code Section 2778 regarding interpretation of indemnity agreements are hereby incorporated.

Section 12. 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 for the allocated costs of CMP and Outfall Monitoring Plan 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. If one of the Regulated Entities elects to withdraw from cost sharing of Monitoring Services before the end of the term of this Agreement, it is agreed that the remaining cost share will be distributed among the other Regulated Entities based on the existing cost allocation formula.

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 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 (3) 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: \_\_\_\_\_

Capri W. Maddox, President  
Board of Public Works

ATTEST:

By: \_\_\_\_\_

June Lagmay  
City Clerk

APPROVED AS TO FORM:

Carmen Trutanich  
City Attorney

By: \_\_\_\_\_

John A. Carvalho  
Deputy City Attorney

CITY OF BEVERLY HILLS

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

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

ATTEST:

\_\_\_\_\_  
David Gustavson  
Director of Public Works

APPROVED AS TO FORM:

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

## 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. Baseline Monitoring Costs.**

Period	Monitoring Services <sup>(1)</sup>	Project Administration and Management (5%)	Monitoring Cost
July 2012 – June 2013	\$120,726.16	\$6,036.31	\$126,762.47
July 2013 – June 2014	\$150,355.16	\$7,517.76	\$157,872.92
July 2014 – June 2015	\$120,781.16	\$6,039.06	\$126,820.22

<sup>(1)</sup> Estimated cost for Monitoring Services, see Exhibit B.

**Table 3. Total Estimated Costs and Contingency.**

Period	Monitoring Cost	Inflation (3%)	Total Estimated Cost	Contingency <sup>(1)</sup>
July 2012 – June 2013	\$126,762.47	--	\$126,762.47	\$12,676.25
July 2013 – June 2014	\$157,872.92	\$4,736.19	\$162,609.11	\$16,260.91
July 2014 – June 2015	\$130,624.83 <sup>(2)</sup>	\$3,918.74	\$134,543.57	\$13,454.36

<sup>(1)</sup> Contingency is 10% of the total estimated cost. Contingency will not be invoiced unless there is a need for its expenditure as agreed by all Regulated Entities

<sup>(2)</sup> Baseline amount plus inflation adjustment in second year

Table 4. Proportional Share of City of Beverly Hills and Invoicing by City of Los Angeles.

Period	Invoice amount to City of Beverly Hills <sup>(1)</sup>	Contingency (10%)	City of Beverly Hills share including contingency
July 2012 – June 2013	\$5,577.55 <sup>(2)</sup>	\$557.76	\$6,135.31
July 2013 – June 2014	\$7,154.80	\$715.48	\$7,870.28
July 2014 – June 2015	\$5,929.92	\$592.99	\$6,522.91
<b>Total</b>	<b>\$18,662.27</b>	<b>\$1,866.23</b>	<b>\$20,528.50</b>

<sup>(1)</sup> Total estimated cost from Table 3 multiplied by percentage area from Table 1, and excluding the 10% contingency.

<sup>(2)</sup> The first invoice will be adjusted for reconciliation of actual expenditures for Monitoring Services performed over July 2009 – June 2012 as indicated in Section 10(e) of this Agreement. Actual expenditures over this period are anticipated to be lower than the estimated, invoiced amounts. The City of Beverly Hills will be credited accordingly and this credit will be subtracted from the invoice amount over July 2012 – June 2013; the actual amount will be determined upon termination of the previous agreement.

## EXHIBIT B

### Estimated Annual Costs for Ballona Creek Bacteria TMDL Monitoring

#### 1. Receiving Water Monitoring per Coordinated Monitoring Plan

Table 1. Estimated annual cost (not adjusted for inflation).

Item No.	Item description	Item Cost
1a.	Routine cost per weekly event Eight (8) sampling sites sum(2a-2i)	\$1,631.42
1b.	Routine cost 52 weeks (52 x Item 1a)	\$84,833.84
1d.	DSM Monthly Overhead (12 x Item E)	\$892.32
1e.	<b>Total Cost</b>	<b>\$85,726.16</b>

Table 2. Monitoring costs for different bacterial indicators.

Costs		
A	Fecal Coliform	\$54.69
B	Total Coliform/E. coli	\$44.76
C	Enterococcus	\$39.80
D	WPD sampling/site	\$120.00
E	DSM Monthly Overhead	\$74.36
F	QA Samples	2 per week

Table 3. Monitoring costs per station.

Cost per sample based on site				
	No of Samples	Site	Item Cost	See costs
2a	1	BCB-1	\$174.69	A,D
2b	1	BCB-2	\$164.76	B,D
2c	1	BCB-3	\$164.76	B,D
2d	1	BCB-4	\$164.76	B,D
2e	1	BCB-5	\$164.76	B,D
2f	1	BCB-6	\$204.56	B,C,D
2g	1	BCB-7	\$204.56	B,C,D
2h	1	BCB-8	\$204.56	B,C,D
2i	2	QA Controls (weekly)	\$184.01	(A+B, B+C)

#### 2. Implementation of Outfall Monitoring Plan

Task	Fiscal Year 2012/13	Fiscal Year 2013/14	Fiscal Year 2014/15
Plan development	\$35,000	-	-
Outfall monitoring <sup>1</sup>	-	\$42,805	\$21,403
Data analysis and QA/QC	-	\$11,748	\$7,282
Annual report	-	\$10,076	\$6,380
<b>Total</b>	<b>\$35,000</b>	<b>\$64,629</b>	<b>\$35,065</b>

<sup>1</sup> The Outfall Monitoring Plan that was submitted to the LARWQCB on April 27, 2013 and specified two outfall surveys in fiscal year 2013-14 and one outfall survey in fiscal year 2014-15.

### 3. Estimated Annual Cost for Monitoring Services (not adjusted for inflation)

Monitoring	Fiscal Year 2012/13	Fiscal Year 2013/14	Fiscal Year 2014/15
CMP Monitoring	\$85,726.16	\$85,726.16	\$85,726.16
Outfall Monitoring	\$35,000.00	\$64,629.00	\$35,065.00
<b>Total</b>	<b>\$120,726.16</b>	<b>\$150,355.16</b>	<b>\$120,781.16</b>

**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: Armond Ghazarian, P.E.  
[Aghazar@dpw.lacounty.gov](mailto:Aghazar@dpw.lacounty.gov)  
Phone No.: (626) 458-7149  
Fax: (626) 457-1526
  
2. City of Beverly Hills  
455 North Rexford Drive  
Beverly Hill, CA 90210  
Party Representative: Daniel Cartagena, Senior Management Analyst  
[dcartagena@beverlyhills.org](mailto:dcartagena@beverlyhills.org)  
Phone No.: (310) 285-1189  
Fax: (310) 278-1838

3. 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
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: Sharon Perlstein, City Engineer  
[Sperrstein@weho.org](mailto:Sperrstein@weho.org)  
Phone No.: (323) 848-6368  
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



MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF LOS ANGELES, THE CITY OF BEVERLY HILLS, THE CITY OF CULVER  
CITY, THE CITY OF INGLEWOOD, THE CITY OF SANTA MONICA, THE CITY OF  
WEST HOLLYWOOD, THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,  
AND THE COUNTY OF LOS ANGELES

REGARDING THE ADMINISTRATION AND COST SHARING FOR DEVELOPMENT OF  
THE ENHANCED WATERSHED MANAGEMENT PROGRAM FOR THE BALLONA  
CREEK WATERSHED

This Memorandum of Understanding (MOU) is made and entered into as of the date of the last signature set forth below by and between: the City of Los Angeles, a municipal corporation; the City of Beverly Hills, a municipal corporation; the City of Culver City, a municipal corporation; the City of Inglewood, a municipal corporation; the City of Santa Monica, a municipal corporation; the City of West Hollywood, a municipal corporation; the Los Angeles County Flood Control District (LACFCD), a body corporate and politic; and the County of Los Angeles, a political subdivision of the State of California. Collectively, these entities shall be known herein as "Parties" or individually as "Party."

WITNESSETH

WHEREAS, the Regional Water Quality Control Board, Los Angeles Region ("Regional Board") adopted National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit Order No. R4-2012-0175 ("MS4 Permit"); and

WHEREAS, the MS4 Permit became effective on December 28, 2012 and requires that the LACFCD, County of Los Angeles, and 84 of the 88 cities (excluding Avalon, Long Beach, Palmdale, and Lancaster) within the County of Los Angeles comply with the prescribed elements of the MS4 Permit; and

WHEREAS, the MS4 Permit identified the Parties as the MS4 permittees that are responsible for compliance with the MS4 Permit requirements pertaining to the Ballona Creek watershed in the Santa Monica Bay Watershed Management Area; and

WHEREAS, the Parties have agreed to collaborate on the development of an Enhanced Watershed Management Program (EWMP) for the Ballona Creek watershed of the Santa Monica Bay Watershed Management Area to comply with certain elements of the MS4 Permit; and

WHEREAS, the Parties agree that each shall assume full and independent responsibility for ensuring its own compliance with the MS4 Permit despite the collaborative approach of the MOU; and

WHEREAS, the development of an EWMP includes the preparation of a Work Plan, a draft and final Coordinated Integrated Monitoring Program ("CIMP"), and a draft and final

Enhanced Watershed Management Program Plan ("EWMP Plan"), collectively referred to herein as "Plans"; and

WHEREAS, the Parties collaboratively prepared a final Scope of Work and Request for Proposal to obtain a Consultant for preparing the Plans that will satisfy the requirements of the MS4 Permit; and

WHEREAS, the Parties have determined that hiring a Consultant to prepare and deliver the Plans will be beneficial to the Parties and they desire to participate and will provide funding in accordance with the cost allocation on Exhibit A; and

WHEREAS, the Parties have agreed that the total cost for developing the Plans shall not exceed \$1,382,903 including the project administration and management cost but excluding 10% contingency; and

WHEREAS, the Parties have agreed to retain the City of Los Angeles to coordinate the services of a Consultant to develop the Plans, the Parties have agreed to share in the cost and pay the City of Los Angeles for these consultant services as provided by Exhibit A of this MOU, and the City of Los Angeles has agreed to act on behalf of all Parties in the preparation of the Plans and the coordination of the consultant services;

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Parties, and of the promises contained in this MOU, the Parties agree as follows:

Section 1. Recitals: The recitals set forth above are fully incorporated into this MOU.

Section 2. Purpose: The purpose of this MOU is to cooperatively fund the preparation and submittal of the Plans to the Regional Board.

Section 3. Cooperation: The Parties shall fully cooperate with one another to attain the purpose of this MOU.

Section 4. Voluntary: This MOU is voluntarily entered into for the purpose of preparing and submitting the Plans to the Regional Board.

Section 5. Term: This MOU shall become effective on the last date of execution by the Parties or December 28, 2013, whichever comes first, and shall remain in effect until June 30, 2016. If a Party does not execute this MOU by December 28, 2013, that Party shall be excluded from this MOU and this MOU shall become effective on December 28, 2013 by execution by the remaining Parties.

Section 6. Assessment for Proportional Cost: The Parties agree to pay the City of Los Angeles for preparation and delivery of the Plans in the amounts shown in Table (4) of Exhibit A, based on the total costs shown in Tables (1) and (2) and the cost allocation formula shown in Table (3) of Exhibit A, attached hereto and made part of this MOU by this reference. The City of Los Angeles will invoice the Parties in two installments upon execution of this MOU as shown in

Table (4) of Exhibit A, based on the allocated costs for developing the Plans by the Consultant and the project administration and management costs at a percentage of 5% of the allocated costs for development of the Plans. At the end of each fiscal year, the City of Los Angeles will provide the Parties with a statement with the actual expenditures. Unexpended funds at the termination of this MOU will be returned to the Parties in accordance with the cost allocation formula set forth in Table (3) of Exhibit A.

Section 7. City of Los Angeles agrees:

- a. To solicit proposals for, award and administer a Consultant contract for the preparation and delivery of the Plans. The City of Los Angeles will be compensated for the administration and management of the Consultant contract as described in Exhibit A.
- b. To utilize the funds deposited by the Parties only for the administration of the Consultant contract, project management, and the preparation and completion of the Plans.
- c. To provide the Parties with an electronic copy of the technical memos, draft Plans and completed Plans within 7 business days of receipt from the Consultant.
- d. To invoice the Parties in the amounts and according to the schedule shown in Table (4) of Exhibit A.
- e. To provide an accounting within 90 days after the termination of the MOU or within 90 days after the early termination of the MOU pursuant to Section 11. The City of Los Angeles shall return the unused portion of all funds deposited with the City of Los Angeles in accordance with the cost allocation formula set forth in Table (3) in Exhibit A.

Section 8. The Parties further agree:

- a. To make a full faith effort to cooperate with one another to achieve the purposes of this MOU by providing information about project opportunities, reviewing deliverables in a timely manner, and informing their respective administration, agency heads, and/or governing body.
- b. To fund the cost of the preparation and delivery of the Plans and to pay the City of Los Angeles for the preparation and delivery of the Plans based on the cost allocation shown in Exhibit A. This includes the costs incurred by the City of Los Angeles for administering the Consultant services between awarding the Consultant contract and the execution of this MOU.
- c. To grant access rights and entry to the City of Los Angeles and the Consultant during the terms of this MOU to the Parties' facilities (i.e. storm drains, channels, catch basins, properties, etc.) ("Facilities") to achieve the purposes of this MOU. Prior to

exercising said right of entry, the City of Los Angeles or their Consultant shall provide written notice to the Parties at least 72 hours in advance. For the purposes of this provision, written notice shall include notice delivered via e-mail that has been delivered to the Parties' representatives identified in Exhibit B.

#### Section 9. Invoice and Payment

- a. **Payment:** The Parties shall pay the City of Los Angeles their proportional share of the cost for the preparation and delivery of the Plans and project administration and management as shown in Table (4) of Exhibit A. Payments are due within sixty (60) days of receiving the invoice from the City of Los Angeles.
- b. **Invoice:** The City of Los Angeles will invoice Parties in two installments in the amounts shown in Table (4) of Exhibit A. The first invoice will be sent upon execution of this MOU or in January 2014, whichever comes first. The second invoice will be sent in July 2014.
- c. **Contingency:** The City of Los Angeles will notify the Parties if actual expenditures are anticipated to exceed the cost estimates contained in Exhibits A and obtain written approval of such expenditures from all Parties. Upon approval, the Parties agree to reimburse the City of Los Angeles for their proportional share of these additional expenditures at an amount not to exceed 10% of the original cost estimate as shown in Exhibit A. This 10% contingency will not be invoiced, unless actual expenditures exceed the original cost estimate. Expenditures that exceed the 10% contingency will require an amendment of this MOU.

#### Section 10. Indemnification

- a. Each Party shall indemnify, defend, and hold harmless each other Party, including its special districts, elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the respective acts of each Party arising from or related to this MOU; provided, however, that no party shall indemnify another party for that party's own negligence or willful misconduct.
- b. 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 or omission occurring in the performance of this MOU 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 Party 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

- a. This MOU may be terminated upon the express written agreement of all Parties. If this MOU is terminated, all Parties must agree on the equitable redistribution of remaining funds deposited, if there are any, or payment of invoices due at the time of termination. Completed work shall be owned by all Parties. Rights to uncompleted work by the Consultant still under contract will be held by the Party or Parties who fund the completion of such work.
- b. If a Party fails to substantially comply with any of the terms or conditions of this MOU, that Party shall forfeit its rights to work completed through this MOU, but no such forfeiture shall occur unless and until the defaulting Party has first been given notice of its default and a reasonable opportunity to cure the alleged default.

#### Section 12. General Provisions

- a) Notices. Any notices, bills, invoices, or reports relating to this MOU, 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 (3) 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 MOU, 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 MOU 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 MOU 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 MOU shall have power to incur any debt, obligation, or liability on behalf of another Party unless expressly provided to the contrary by this MOU. 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 MOU shall be binding upon and inure to the benefit of each Party to this MOU and their respective heirs, administrators, representatives, successors and assigns.

- e) Amendment. The terms and provisions of this MOU may not be amended, modified or waived, except by an instrument in writing signed by all the Parties. This section applies to, but is not limited to, amendments proposed to address regulatory changes in the MS4 permit, modifications to the Scope of Work, or changes in the number of Parties to this MOU. For the City of Los Angeles, the Director of Bureau of Sanitation or his/her designee is authorized to execute such amendments.
- f) Waiver. Waiver by any Party to this MOU of any term, condition, or covenant of this MOU shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party to any breach of the provisions of this MOU shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this MOU.
- g) Law to Govern; Venue. This MOU 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 MOU agree that the general rule that an MOU is to be interpreted against the Party drafting it, or causing it to be prepared shall not apply.
- i) Entire Agreement. This MOU 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 MOU is declared or determined by any court or competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this MOU shall not be affected thereby and this MOU shall be read and constructed without the invalid, void, or unenforceable provision(s).
- k) Counterparts. This MOU 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 MOU.
- l) All Parties have been represented by counsel in the preparation and negotiation of this MOU. Accordingly, this MOU shall be construed according to its fair language.

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by their duly authorized representatives and affixed as of the date of signature of the Parties:

CITY OF LOS ANGELES

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

By: \_\_\_\_\_  
Kevin James, President  
Board of Public Works

ATTEST:

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

APPROVED AS TO FORM:

Michael N. Feuer  
City Attorney

By: \_\_\_\_\_  
John A. Carvalho  
Deputy City Attorney

CITY OF BEVERLY HILLS

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

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

ATTEST:

\_\_\_\_\_  
Mahdi Aluzri  
Acting Director of Public  
Works & Transportation

APPROVED AS TO FORM:

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

CITY OF CULVER CITY

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

By: \_\_\_\_\_

P. Lamont Ewell  
City Manager

APPROVED AS TO CONTENT

\_\_\_\_\_  
Charles Herbertson,  
Public Works Director

APPROVED AS TO FINANCING:

\_\_\_\_\_  
Chief Financial Officer

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Carol Schwab  
City Attorney

CITY OF INGLEWOOD

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

By: \_\_\_\_\_

James T. Butts  
Mayor

ATTEST:

By: \_\_\_\_\_

Yvonne Horton  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_

Cal Saunders  
City Attorney

CITY OF SANTA MONICA

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

By: \_\_\_\_\_  
Rod Gould, City Manager

ATTEST:

By: \_\_\_\_\_  
Sarah P. Gorman  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Marsha Jones Moutrie,  
City Attorney

CITY OF WEST HOLLYWOOD

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

By: \_\_\_\_\_

Paul Arevalo  
City Manager

ATTEST:

By: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Michael Jenkins  
City Attorney

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

By \_\_\_\_\_  
GAIL FARBER  
Chief Engineer

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

John F. Krattli  
County Counsel

By \_\_\_\_\_  
Associate

\_\_\_\_\_  
Date

COUNTY OF LOS ANGELES

By \_\_\_\_\_  
GAIL FARBER  
Director of Public Works

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

John F. Krattli  
County Counsel

By \_\_\_\_\_  
Associate

\_\_\_\_\_  
Date

**EXHIBIT A**

Total estimated cost, cost-sharing and City of Los Angeles invoicing for Ballona Creek Enhanced Watershed Management Program: development of Work Plan, Coordinated Integrated Monitoring Program, EWMP Plan

**Table 1. Estimated Consultant Contract Cost**

<b>Deliverable</b>	<b>Due Date</b>	<b>Estimated Cost</b>
Work Plan	June 28, 2014	\$269,300
CIMP	June 28, 2014	\$154,045
EWMP Plan	June 28, 2015 (draft plan) January 28, 2016 (final plan)	\$659,495
Project Management, Coordination & Meetings	Ongoing	\$234,210
<b>Estimated Contract Cost</b>	-	<b>\$ 1,317,050</b>

**Table 2. Estimated Total Cost and LACFCD Contribution**

<b>Item</b>	<b>Estimated Cost</b>
Contract	\$1,317,050
Project Administration & Management (5%)	\$65,853
<b>Estimated Total Cost</b>	<b>\$1,382,903</b>
LACFCD Contribution (10%)	-\$138,290
<b>Cost for area cost sharing</b>	<b>\$1,244,613</b>

**Table 3. Cost Allocation Formula for Area Cost Sharing and Estimated Total Cost by Party**

<b>Party</b>	<b>Acres</b>	<b>Percent of Area<sup>(1)</sup></b>	<b>Total Cost</b>
City of Los Angeles	65,272.89	83.21	\$1,035,642
City of Beverly Hills	3,618.95	4.62	\$57,501
City of Culver City	3,125.00	3.98	\$49,536
City of Inglewood	1,907.72	2.43	\$30,244
City of Santa Monica	217.31	0.28	\$3,485
City of West Hollywood	1,135.00	1.45	\$18,047
County of Los Angeles	3,164.76	4.03	\$50,158
LACFCD	NA	NA	\$138,290
<b>Total</b>	<b>78,441.63</b>	<b>100</b>	<b>\$1,382,903</b>

<sup>1</sup> Areas owned by Caltrans, State Parks, and U.S. Government have been excluded from the total area of the Ballona Creek watershed.

**Table 4. City of Los Angeles Invoicing Schedule and Invoice Amounts to Parties**

<b>Party</b>	<b>First Invoice (Jan 2014)</b>	<b>Second Invoice (Jul 2014)</b>	<b>Total Invoice Amount</b>	<b>Contingency (10%)<sup>1</sup></b>	<b>Total Cost including Contingency</b>
City of Beverly Hills	\$28,750.50	\$28,750.50	\$57,501.00	\$5,750.10	\$63,251.10
City of Culver City	\$24,768.00	\$24,768.00	\$49,536.00	\$4,953.60	\$54,489.60
City of Inglewood	\$15,122.00	\$15,122.00	\$30,244.00	\$3,024.40	\$33,268.40
City of Santa Monica	\$1,742.50	\$1,742.50	\$3,485.00	\$348.50	\$3,833.50
City of West Hollywood	\$9,023.50	\$9,023.50	\$18,047.00	\$1,804.70	\$19,851.70
County of Los Angeles	\$25,079.00	\$25,079.00	\$50,158.00	\$5,015.80	\$55,273.80
LACFCD	\$69,145.00	\$69,145.00	\$138,290.00	\$13,829.00	\$152,119.00

<sup>1</sup>Contingency is 10% of the total invoice amount. Contingency will not be invoiced unless there is a need for its expenditure as agreed by all Parties.

## EXHIBIT B

### Ballona Creek Watershed Party Representatives

1. City of Los Angeles  
Department of Public Works  
Bureau of Sanitation, Watershed Protection Division  
1149 S. Broadway  
Los Angeles, CA 90015  
Party Representative: Shahram Kharaghani, Division Manager  
E-mail: [Shahram.Kharaghani@Lacity.org](mailto:Shahram.Kharaghani@Lacity.org)  
Phone: (213) 485-0587  
Fax: (213) 485-3939
  
2. City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, CA90210  
Party Representative: Daniel Cartagena, Senior Management Analyst  
[dcartagena@beverlyhills.org](mailto:dcartagena@beverlyhills.org)  
Phone No.: (310) 285-1189  
Fax: (310) 278-1838
  
3. City of Culver City  
9770 Culver Blvd., 2<sup>nd</sup> Floor  
Culver City, CA90232-0507  
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
  
4. City of Inglewood  
Public Works Department  
1 Manchester Blvd.  
Inglewood, CA90301  
Party Representative: Lauren Amimoto, Senior Administrative Analyst  
[lamimoto@cityofinglewood.org](mailto:lamimoto@cityofinglewood.org)  
Phone No.: (310) 412-5192  
Fax: (310) 412-5552
  
5. City of Santa Monica  
Public Works Department  
Civil Engineering Division  
1437 4<sup>th</sup> Street, Suite 300  
Santa Monica, CA90401  
Rick Valte  
[Email: rick.valte@smgov.net](mailto:rick.valte@smgov.net)

Phone No.: (310) 458-8234

Fax: (310) 393-4425

6. City of West Hollywood  
Department of Transportation and Public Works  
8300 Santa Monica Blvd.  
West Hollywood, CA 90069-6216  
Party Representative: Sharon Perlstein, City Engineer  
[Perlstein@weho.org](mailto:Perlstein@weho.org)  
Phone No.: (323) 848-6368  
Fax: (323) 848-6564

7. County of Los Angeles  
Department of Public Works  
Watershed Management Division, 11<sup>th</sup> Floor  
900 South Fremont Avenue  
Alhambra, CA 91803-1331  
Party Representative: Gary Hildebrand  
E-mail: [GHILDEB@dpw.lacounty.gov](mailto:GHILDEB@dpw.lacounty.gov)  
Phone: (626) 458-4300  
Fax: (626) 457-1526

8. Los Angeles County Flood Control District  
Department of Public Works  
Watershed Management Division, 11<sup>th</sup> Floor  
900 South Fremont Avenue  
Alhambra, CA 91803-1331  
Party Representative: Gary Hildebrand  
E-mail: [GHILDEB@dpw.lacounty.gov](mailto:GHILDEB@dpw.lacounty.gov)  
Phone: (626) 458-4300  
Fax: (626) 457-1526