

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF LOS ANGELES AND THE CITY OF SAN FERNANDO

REGARDING THE ADMINISTRATION AND COST SHARING FOR DEVELOPMENT OF  
THE ENHANCED WATERSHED MANAGEMENT PROGRAM AND THE COORDINATED  
INTEGRATED MONITORING PROGRAM FOR THE UPPER LOS ANGELES RIVER  
WATERSHED GROUP

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 and the City of San Fernando, a municipal corporation. 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 MS4 permittees that are responsible for compliance with the MS4 Permit requirements pertaining to the Los Angeles River Watershed Management Area; and

WHEREAS, the Parties have agreed to collaborate on the development of an Enhanced Watershed Management Program (EWMP) for the Upper Los Angeles River Watershed as shown in Exhibit C of this MOU to comply with certain elements of the MS4 Permit; and

WHEREAS, the Upper Los Angeles River Watershed participating agencies are: the City of Los Angeles, a municipal corporation; the City of Alhambra, a municipal corporation; the City of Burbank, a municipal corporation; the City of Calabasas, a municipal corporation; the City of Glendale, a municipal corporation; the City of Hidden Hills, a municipal corporation; the City of La Canada Flintridge, a municipal corporation; the City of Montebello, a municipal corporation; the City of Monterey Park, a municipal corporation; the City of Pasadena, a municipal corporation; the City of Rosemead, a municipal corporation; the City of San Gabriel, a municipal corporation; the City of San Marino, a municipal corporation; the City of South Pasadena, a municipal corporation; the City of Temple City, a municipal corporation; the City of San Fernando, 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.

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 Plan ("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 \$1,582,344.50 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 April 30, 2014, whichever comes first, and shall remain in effect until June 30, 2016.

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 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 10% 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 notify the Parties if the actual cost for the preparation of the Plans will exceed the cost estimates shown on Exhibit A and obtain approval of the increase from the Parties. Upon approval of the cost increase by the Parties, the City of Los Angeles will invoice the Parties per the cost allocation formula on Exhibit A.
- e. To ensure all comments and concerns raised by the Parties during the preparation of the Plans are addressed to the satisfaction of the simple majority of the Parties.
- f. To invoice the Parties in the amounts and according to the schedule shown in Table 4 of Exhibit A.
- g. To provide an accounting summary 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 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 the 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 a 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:

**THE CITY OF LOS ANGELES**

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

By: \_\_\_\_\_  
Enrique C. Zaldivar, Director  
LA Sanitation

ATTEST:

By: \_\_\_\_\_  
Holly Wolcott  
Interim City Clerk

APPROVED AS TO FORM:

Michael N. Feuer  
City Attorney

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



**THE CITY OF SAN FERNANDO**

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

By: \_\_\_\_\_  
Fred Ramirez  
Interim City Manager

ATTEST:

By: \_\_\_\_\_  
Elena G. Chávez  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Rick R. Olivarez  
City Attorney

## EXHIBIT A

**Table 1. Estimated Consultant Contract Cost**

Item		Total Cost
Contract Cost	(a)	\$ 1,438,495.00
City of Los Angeles Contract Management Fee (10%)	(a) X 10% = (b)	\$ 143,849.50
<b>SUB-TOTAL COST</b>	(a)+(b)=(c)	<b>\$1,582,344.50</b>
LACFCD Allocation (10%) <sup>1</sup>	(c) x 10% = (d)	\$158,234.45
<b>TOTAL COST TO BE DISTRIBUTED</b>	(c)-(d)=(e)	<b>\$1,424,110.05</b>

Note:

1. The Los Angeles Flood Control District (LACFCD) has committed to contributing 10% of the Total Cost, including contract management fee, as their allocation in the development of the Plans.

**Table 2. Distribution of Estimated Total Cost**

Agency	Acres <sup>1,2</sup>	Percent of Area <sup>3</sup>	Distributed Total Cost <sup>4</sup>
Alhambra	4,884.31	1.585%	\$22,571.79
Burbank	11,095.20	3.600%	\$51,274.09
Calabasas	4,005.68	1.300%	\$18,511.39
Glendale	19,587.50	6.356%	\$90,519.44
Hidden Hills	961.03	0.312%	\$4,441.19
La Canada Flintridge	5,534.46	1.796%	\$25,576.32
Los Angeles	181,288.00	58.829%	\$837,783.67
Los Angeles County	41,048.07	13.320%	\$189,694.86
Montebello	5,356.38	1.738%	\$24,753.36
Monterey Park	4,951.51	1.607%	\$22,882.34
Pasadena	14,805.30	4.804%	\$68,419.52
Rosemead	3,310.87	1.074%	\$15,300.48
San Gabriel	2,644.87	0.858%	\$12,222.70
San Marino	2,409.64	0.782%	\$11,135.64
South Pasadena	2,186.20	0.709%	\$10,103.06
Temple City	2,576.50	0.836%	\$11,906.74
San Fernando	1,517.64	0.492%	\$7,013.45
<b>TOTAL</b>	<b>308,163.16</b>	<b>100.00%</b>	<b>\$1,424,110.05</b>

Note:

1. The areas owned by Caltrans, State Parks, and U.S. Government have been excluded from the total area of the Upper Los Angeles River watershed.
2. Area (acres) determined by GIS analysis as shown in EXHIBIT C
3. Percent Area = Agency Area / Total Area
4. Total Cost = \$1,424,110.05 X Agency Percent of Area

**Table 3. Cost Allocation Formula**

$$\text{Distributed Total Cost} = \text{Total Cost} \times \text{Agency Percent of Area}$$

**Table 4. City of Los Angeles Invoicing for the City of San Fernando**

Agency	Jul. 2014 (b)	Distributed Total Cost (a)+(b)=(c)	Contingency (10%) <sup>1</sup> (c)x0.1=(d)	TOTAL COST INCLUDING CONTINGENCY (c)+(d)=(e)
San Fernando	\$7,013.45	\$7,013.45	\$701.35	\$7,714.80
<b>TOTAL</b>	<b>\$7,013.45</b>	<b>\$7,013.45</b>	<b>\$701.35</b>	<b>\$7,714.80</b>

Note:

1. 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

### UPPER LOS ANGELES RIVER WATERSHED EWMP/CIMP GROUP Responsible Agencies Representatives

Agency Address	Agency Contact
City of Los Angeles Department of Public Works Bureau of Sanitation, Watershed Protection Division 1149 S. Broadway Los Angeles, CA 90015	Shahram Kharaghani E-mail: Shahram.Kharaghani@Lacity.org Phone: (213) 485-0587 Fax: (213) 485-3939
City of San Fernando Department of Public Works 117 Macneil Street San Fernando, CA 91340	Fred Ramirez, Interim City Manager E-mail: FRamirez@ci.san-fernando.ca.us Phone: (818) 898-1204 Fax:

# **EXHIBIT C** **UPPER LOS ANGELES RIVER WATERSHED** **EWMP/CIMP GROUP**



