

Memorandum of Agreement Between the Los Angeles Department of Public Works Bureau of Sanitation and Environment, the City of Los Angeles Department of Recreation and Parks and the Los Angeles Department of Water and Power Regarding the Operation and Maintenance of the Caballero Creek Confluence Wetlands Park

This Memorandum of Agreement (Agreement) is made and entered into as of the date of the last signature set forth below (Effective Date) between and among Los Angeles Department of Public Works Bureau of Sanitation and Environment (LASAN), the City of Los Angeles Department of Recreation and Parks (RAP) and the Los Angeles Department of Water and Power (LADWP), collectively referred to herein as the Parties and individually as a Party, with respect to the following:

RECITALS

WHEREAS, the Parties seek to establish the operation and maintenance obligations of each Party for the Caballero Creek Confluence Wetlands Park (Project); and

WHEREAS, the Project is listed by RAP as one of the City of Los Angeles' (City) 50 Parks Initiative; and

WHEREAS, the Project is located at the confluence of the Los Angeles River (LAR) and Caballero Creek, the only tributary stemming from the ecologically-rich Santa Monica Mountains; and

WHEREAS, LASAN recognizes the need to improve water quality in the Los Angeles region, provide resilient clean water and resultant supplies for recharging aquifers, reduce flooding impacts, protect compatible beneficial uses, and improve neighborhood quality of life; and

WHEREAS, LASAN is responsible for collecting, cleaning, and recycling solid and liquid waste, including stormwater and dry weather urban runoff and flood management; and

WHEREAS, the Project is consistent with LASAN's goals of reduction of urban runoff pollution, enhancement of water resource by the collection and use of runoff for local non-potable uses, and improvement of the environment for the health of the City's respective citizens and visitors; and

WHEREAS, LASAN oversees the City's compliance with the Los Angeles Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit that regulates municipal discharges of stormwater and urban dry weather runoff, including but not limited to watershed management; and

WHEREAS, with LASAN's watershed management responsibilities that include but are not limited to efforts to capture and treat stormwater and urban runoff, there is an opportunity for the City to utilize recycled water produced by LASAN for beneficial reuse; and

WHEREAS, the City holds “a prior and paramount pueblo right to the surface waters of the Los Angeles River,” as set forth in the judgment entered on January 26, 1979, in *The City of Los Angeles v. City of San Fernando, et. al.*, Superior Court of the State of California for the County of Los Angeles, Case No. 650079; and

WHEREAS, Section 672(a) of the City of Los Angeles Charter (City Charter) grants the Board of Water and Power Commissioners possession, management and control of “all the water and water rights of the Los Angeles River, all other water or water rights of every nature and kind owned or controlled by the City, and all the lands, rights-of-way, sites, facilities and property used for the capture, transportation, distribution and delivery of water for the benefit of the City, its inhabitants and its customers;” and

WHEREAS, Section 677(c) of the City Charter grants the Board of Water and Power Commissioners the power “[t]o supply and distribute reclaimed water to consumers served by the City within its limits, to consumers outside the City for their use, and to public agencies outside of the City for public uses and for resale, disposal or distribution to consumers within the public agency’s jurisdiction;” and

WHEREAS, the Project will transform 1.5-acres of a currently paved asphalt lot into a multiple-benefit natural park; and

WHEREAS, the Project will assist LASAN in its efforts to improve water quality and to comply with the Los Angeles MS4 NPDES permit requirements by reducing the pollutant loads to Caballero Creek and LAR, including critical pollutants such as bacteria, heavy metals, nutrients, and other toxic substances; and

WHEREAS, the design of the Project utilizes an innovative mix of low-tech mechanical and biological methods that enhance watershed protection, including a bio-swale and a wetland component for stormwater treatment; and

WHEREAS, the Project will be a demonstration project for future projects in the watershed and a learning tool for three schools within walking distance; and

WHEREAS, once constructed, nearby Reseda High School will use the Project for hands-on learning and community service opportunities; and

WHEREAS, the Project budget for implementation is \$4,834,200 to cover the costs related to the pre-design, design (including preparation of the plans and specifications), the construction contract, and contract administration; and

WHEREAS, the Project is currently in the design phase; and

WHEREAS, RAP agrees to maintain the landscaping, trees and recreational improvements/amenities upon completion of Project; and

WHEREAS, LASAN agrees to conduct the operation and maintenance (O&M) of the water quality improvements for the Project; and

WHEREAS, LADWP agrees to allow RAP and LASAN to divert up to 462,000 gallons (1.41 acre feet) per year of the City's water rights for the Project, provided said diversions are in accordance with this Agreement and all applicable laws and permits.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by RAP, LASAN and LADWP, and of the promises herein contained, it is hereby agreed as follows:

TERMS

1. Project Information

a. Project Site

The Project Site is located in Tarzana within the City. The address is 6353 Lindley Avenue, Los Angeles, California 91335. The Los Angeles County Assessor Parcel Map Number (APN) is 2124-018-905. Exhibit A depicts the Project Site and delineates the areas of responsibilities between LASAN and RAP.

b. Scope

The Project will transform 1.5-acres of a currently paved asphalt lot into a multiple-benefit natural park. The Project will provide various park amenities and educational opportunities, including drought-tolerant native landscaping, smart irrigation, nature trails, wetland habitat, fencing and gateways, shade structure, cisterns, seating, fitness stations, drinking fountain, and interpretive panels.

Through stormwater capture and treatment, the Project has the potential to connect the public to California's diminishing riverine ecology and to improve and protect the local water quality along with its aquatic inhabitants. Additionally, the Project will operate with a net-zero use of potable water and energy.

The Project also will include the construction of several Best Management Practices (BMP) to treat offsite and onsite runoff and reduce loadings of several contaminants to Caballero Creek and the LAR. Proposed BMP include a stormwater trash separator unit, stormwater pump system, media pond filter, Ultraviolet (UV) disinfection, mixing tank, and wetland.

LASAN will pump up to 462,000 gallons (1.41 acre feet) per year of surface water (via solar power) from Caballero Creek and divert it on-site to create wetland habitat and to irrigate the Project Site. During warm months with no appreciable rainfall, water demands of the wetland habitat and the irrigation system will be

met by pumping dry weather flows from nearby Caballero Creek and circulating them through the wetland and bioswale. The swale will serve as an educational tool that re-creates a riparian habitat onsite to infiltrate and naturally filter 11-acres of street stormwater runoff. The Project will create native habitat for local wildlife and help to improve water quality within the LAR and provide new publicly accessible parkland for a park poor community.

c. Cost

The estimated Project construction cost is \$3,654,200. The total estimated Project total cost is \$4,834,200.

d. Schedule

At the time of signing of this Agreement, the Project is in the design phase. Construction is scheduled to start in 2020 and to be completed in 2021.

2. LASAN AGREES TO:

- a. Acquire a land easement or grant of right as applicable from RAP for the O&M of the Project.
- b. Own, operate, and maintain the structural, mechanical, and electrical stormwater quality management facilities installed as part of the Project. (See Exhibit A)
- c. Install a runtime data logger to automatically record the operational pumping flow rate and pump run times when diverting water from Caballero Creek.
- d. By the 15th day of the month, following the ending a quarterly cycle, report to LADWP the recorded data, as required by Section 2c for the preceding quarter. Quarters shall be defined as the periods from January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.
- e. By October 31 of each year, prepare and submit to LADWP an annual report containing the monthly recorded data for the preceding water year (October 1 thru September 30). Reported flow parameters shall include date, time, diversion flow rates, monthly total amounts of water diverted, and any additional information reasonably requested by LADWP.
- f. Store and maintain recorded data for a period of no less than five (5) years.
- g. Maintain the stormwater components at the Project Site that include in-channel grate, creek water extraction vault and pump, media pond filter, UV disinfection system, mixing tank, stormwater pump system, catch basins off Lindley Avenue, stormwater trash separator unit, filter in manhole vault, wetland and other

supporting features including overflow structures, underdrains, valves, instrumentation, electrical and mechanical elements of these components.

h. Provide RAP notification for pending O&M activities for these stormwater BMP.

3. RAP AGREES TO:

a. Allow LASAN access to and use of the Project Site for the purpose of O&M and monitoring of the stormwater quality management facilities.

b. Grant LASAN all necessary easements or grant of rights as applicable for O&M of the Project within the Project Site.

c. Assume responsibility for the O&M activities related to the landscaping, irrigation, recreational related activities of the Project. This shall include trash and graffiti removal. (See Exhibit A)

d. Maintain the Project amenities which shall include landscaping, irrigation, trails, fencing, gateways, shade structures, seating, fitness stations, drinking fountain, interpretive panels, and trash receptacles.

4. LADWP AGREES TO:

a. Allow RAP and LASAN to divert up to 462,000 gallons (1.41 acre feet) per year of the City's water rights, provided said diversions are in accordance with this Agreement and all applicable laws and permits.

b. Receive diverted water flow monitoring data from LASAN and report each water year, the total amounts of water diverted from Caballero Creek, to the Upper Los Angeles River Area Watermaster.

5. LASAN AND RAP MUTUALLY AGREE:

a. To cooperate for the implementation of the Project and its subsequent O&M.

b. That the operation of the Project is subordinate to the flood control purposes of the Caballero Creek channel and that activities covered in this Agreement shall in no way conflict with this purpose.

c. To make staff reasonably available, if requested, to participate and provide input at scheduled meetings, community meetings, workshops and other relevant events.

d. To include in all materials, publications, press releases, signage, and communications that RAP and LASAN are Project partners.

6. PARTIES MUTUALLY AGREE:

- a. No Party shall have a financial obligation to any other Party under this Agreement.
- b. No amendment or waiver of any provision of this Agreement, nor consent to any departure, shall be effective unless in writing and signed by each Party, and then such waiver or consent shall be effective only in the specific instances and for the specific purpose given.
- c. It is the intention of this Agreement that no Party shall be responsible for any liability, including third party claims, which arises by reason of the negligent acts, errors, omissions or willful misconduct of any of the other Parties. Each Party shall retain liability for the acts, errors, omissions or willful misconduct of its officers, agents, employees, contractors, or the contractor's officers, agents, employees or subcontractors of any tier.
- d. This Agreement shall be governed, interpreted under, construed and enforced in accordance with the laws of the State of California.
- e. If any provision of Agreement shall be determined by any court to be invalid, illegal, or unenforceable to any extent, the remainder of Agreement shall not be affected, and the Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.
- f. 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 and any ambiguities shall not be resolved against any Party.
- g. This Agreement is not intended, and will not be construed, to confer a benefit or create any right on a third party or the power or right to bring an action to enforce any of its terms.

7. TERM

This Agreement shall commence on the Effective Date and shall terminate thirty (30) years thereafter. Any Party may terminate this Agreement sooner for any reason or no reason at all by providing thirty (30) days' prior written notice to the other Parties.

8. NOTICES

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or by email or on the third business day after deposit in the United States mail, postage prepaid, registered or certified, addressed as follows:

LASAN: Wing Tam
Project Director and Watershed Protection Program Manager
Los Angeles Sanitation and Environment
1149 South Broadway, 10th Floor
Los Angeles, California 90015
Phone: (213) 485-3985
Email: Wing.Tam@LACity.org

RAP: Darryl Ford
Superintendent, Planning, Construction and Maintenance Branch
City of Los Angeles, Department of Recreation and Parks
221 North Figueroa Street 4th Floor
Los Angeles, California 90012
Phone: (213) 202-2607
Email: Darryl.Ford@lacity.org

LADWP: David Pettijohn
Director of Water Resources
Los Angeles Department of Water and Power
111 North Hope Street, Room 1460
Los Angeles, California 90012
Phone: (213) 367-0899
Email: david.pettijohn@ladwp.com

Each Party may change, by written notice to the other Parties, the name or address of the persons to receive, on behalf of that Party, notices, demands, requests or approvals to be given under this Agreement.

9. COMPLETE AGREEMENT

This Agreement supersedes any prior agreement, oral or written, and contains the full and complete Agreement between and among the Parties on the subject matter hereof. No subsequent agreement, representation, or promise made by a Party, or its officers, employees, agents, or representatives, shall be of any effect unless it is in writing and executed by the Party to be bound.

10. EXECUTION IN COUNTERPARTS.

This Agreement may be executed in counterparts, each of when so executed shall be deemed an original and all of which taken together shall constitute one and the same instrument.

[signature pages follow]

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed by its duly authorized representatives.

CITY OF LOS ANGELES
LOS ANGELES SANITATION AND ENVIRONMENT

CITY OF LOS ANGELES
BOARD OF PUBLIC WORKS

By _____
Enrique C. Zaldivar Date
Director and General Manager

By _____
Greg B. Good Date
President

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney

Adena M. Hopenstand Date
Deputy City Attorney

ATTEST:
Holly L. Wolcott, City Clerk

Deputy City Clerk Date

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed by its duly authorized representatives.

THE CITY OF LOS ANGELES, DEPARTMENT OF RECREATION AND PARKS

By: _____
MICHAEL A. SHULL
General Manager

Date: _____

APPROVED AS TO FORM:
Michael N. Feuer, City Attorney

Deputy City Attorney

Date: _____

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed by its duly authorized representatives.

DEPARTMENT OF WATER AND POWER
BY BOARD OF WATER AND POWER COMMISSIONERS
OF THE CITY OF LOS ANGELES

By: _____
MARTIN L. ADAMS
General Manager and Chief Engineer

Date: _____

And: _____
SUSAN A. RODRIGUEZ
Secretary