

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the matter of:

The City of Los Angeles;  
Bureau of Street Services – Oro  
Vista Avenue

Order R4-2014-0033

SETTLEMENT AGREEMENT AND  
STIPULATION FOR ENTRY OF  
ADMINISTRATIVE CIVIL LIABILITY ORDER;  
ORDER

**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation" or "Stipulated Order") is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region ("Regional Board"), on behalf of the Regional Board Prosecution Staff ("Prosecution Staff") and the City of Los Angeles Bureau of Street Services ("Discharger")(collectively "Parties") and is presented to the Regional Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

**Section II: RECITALS**

1. The Discharger was responsible for the Big Tujunga Wash at Oro Vista Avenue Emergency Repair Project ("Project") located at the Big Tujunga Wash and Oro Vista Avenue intersection ("Site") in the community of Tujunga in the City of Los Angeles. Oro Vista Avenue is a paved by-road providing the only access to the residential community of Riverwood Ranch. Twin culverts and a bridge allow flow from Big Tujunga Wash ("Wash") to pass under Oro Vista Avenue and an at-grade Arizona crossing is intended to carry water over the road during major flood events.
2. Big Tujunga Wash is designated as critical habitat for the federally threatened Santa Ana sucker. The Wash is a water of the United States. The Regional Board's Water Quality Control Plan lists the beneficial uses for Upper Big Tujunga Canyon Creek as municipal and domestic supply, ground water recharge, water contact recreation (REC-1), non-contact water recreation (REC-2), warm freshwater habitat, cold freshwater habitat, wildlife habitat, and wetland habitat.
3. Periodic maintenance at the Site is required, particularly after large storm events, in order to clear the low-flow culverts and re-establish a low flow channel in the Wash redirecting flow under the Oro Vista Avenue bridge to its original direction. The 2009 Station Fire in Angeles National Forest and subsequent landslides, flood flows, and storm erosion were the impetus for this project.
4. On April 13, 2010, the Discharger submitted its pre-project notification application to the United States Army Corps of Engineers (Corps) to obtain coverage under the Regional General Permit No. 63 (RGP 63) which authorizes discharges of dredged or fill material into waters of the United States for necessary repair and protection measures associated with an emergency situation. Prior to initiating the emergency project, the Discharger must provide the State Water Resources Control Board and the Regional Board with a 48-hour emergency notification form as required by RGP 63 and the Technically Conditioned Water Quality Certification.

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5. On May 17, 2010, the Discharger submitted its 48-hour emergency notification form for the Project to the Regional Board. The notification lists the approximate temporary streambed impact as "0.344 acres or 30 feet wide by 500 feet long." This area of impact equates to approximately 15,000 square feet or 0.35 acres. The expected start date of the Project was April 20, 2010, but actual work did not commence until May 24, 2010.

6. Subsequent to initiating the Project, the Discharger requested a time extension to its April 13, 2010 application extending the project completion deadline to June 30, 2010. The Corps approved the time extension on May 27, 2010 and reiterated the activities that the Discharger was authorized to conduct pursuant to RGP 63. Specifically, the Discharger was authorized to "clear debris from existing culverts under Oro Vista Avenue" and "construct an approximately 30 feet wide by 500 feet long temporary diversion channel composed of earthen berms with 2:1 slopes starting approximately 1,000 feet upstream of Oro Vista Avenue to redirect the existing flow away from the at-grade crossing toward the bridge crossing."

7. During site inspections on June 7, 2010 and June 15, 2010, Regional Board staff determined that the grading at the Site went extensively beyond the area and approximate acreage previously approved in RGP 63. The total area the staff observed to have been impacted by the grading was approximately 500 feet wide by 1,000 feet long and impacted areas both upstream and downstream of Oro Vista Avenue. This total area of impact equates to approximately 500,000 square feet or 11.48 acres. Additionally, staff observed fill placed on the west side of Oro Vista Avenue covering the downstream portion of the Wash and noted that the culverts on the west side of Oro Vista Avenue were blocked with sediment and graded material.

8. The Discharger completed the Project on June 7, 2010. On July 22, 2010, the Discharger submitted its Final Report for the Project to the Corps. The Final Report indicated that the Project impacted approximately 700 meters of streambed north of Oro Vista Avenue and Big Tujunga Wash intersection. The earthen material removed from the area in front of the two culverts was used to fill in the downstream side of the crossing. The justification provided for placing fill in this area was to restore the as-built condition for public safety purposes to keep cars from driving off the road into the stream bed.

9. Section 301 of the Clean Water Act (33 U.S.C. §1311) and Water Code Section 13376 prohibit the discharge of pollutants to surface water except in compliance with a permit for dredged and fill material. RGP 63 is a dredge and fill permit.

10. The Prosecution Team alleges that the Discharger violated Section 301 of the Clean Water Act, and Water Code section 13376 for a period of 15 days, the Project period, for grading in waters of the United States exceeding the scope of the limits and impacts described in the Discharger's RGP 63 and the Technically Conditioned Water Quality Certification notification and for discharging fill to waters of the United States. Pursuant to Water Code section 13385 subdivision (c), the maximum administrative civil liability amount for the alleged violation of Section 301 of the Clean Water Act and Water Code section 13376 is \$150,000.

11. The Parties have engaged in settlement negotiations and agree to fully settle the alleged violations as described above without administrative or civil litigation and by presenting this Stipulation to the Regional Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The amount of administrative civil liability imposed pursuant to this Stipulated Order comports with the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) methodology (Attachment A)

and Policy on Supplemental Environmental Projects (SEP Policy) and takes into account the risks associated with proceeding to hearing. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged above, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

**Section III: STIPULATIONS**

The Parties stipulate to the following:

12. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

13. **Administrative Civil Liability:** The Discharger agrees to the imposition of administrative civil liability in the amount of NINTEY THOUSAND DOLLARS (\$90,000.00). Of that amount, the Discharger agrees to pay FORTY EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$48,750.00) in accordance with Paragraph 14, below. The remaining FORTY ONE THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$41,250.00) in liability will be suspended pending completion of a Supplemental Environmental Project (SEP) as set forth in Paragraph 16, below. The cost of the SEP will be referred to as the SEP Amount.

14. The Discharger shall pay FORTY EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$48,750.00) in administrative civil liability by check made payable to the "State Water Pollution Cleanup and Abatement Account," no later than 30 days following the Regional Board, or its delegee, executing this Order. The check shall reference the Order number indicated on page one of this Stipulation. The original signed check shall be sent to:

State Water Resources Control Board  
Division of Administrative Services  
Accounting Office  
1001 I Street, 18<sup>th</sup> Floor  
Sacramento, California 95814

A copy of the check shall be sent to Hugh Marley, Los Angeles Regional Water Quality Control Board, 320 West Fourth Street, Suite 200 Los Angeles, California 90013.

15. The Discharger agrees to diligently pursue the appropriate non-emergency permit(s) from the Corps and the applicable state water quality certification from the Regional Board for similar future maintenance activities at Big Tujunga Wash at Oro Vista Avenue Site that involve clearing the low-flow culverts and re-establishing a low flow channel. Should an emergency, as defined by Public Resources Code section 21000 et seq., arise as the Discharger is diligently pursuing an appropriate permit, the Parties acknowledge that the Discharger may submit RGP 63 Notification to the Corps for emergency repair activities.

16. The Discharger agrees to discharge its SEP obligations as described in Paragraphs A-J below:

#### A. DESCRIPTION OF THE SEP

The Discharger will contribute the SEP Amount to The River Project (Implementing Party), within 30 days of issuance of this Stipulated Order, to assist with the Water LA Parkway Retrofit Project. The SEP will design and implement 23 (twenty-three) Parkway Retrofits involving curb cuts and infiltration basins in the Upper Los Angeles River Watershed in order to gain a better understanding of the ability of these practices to improve water quality and increase groundwater recharge. This is part of an ongoing project called "The Los Angeles Rainwater Harvesting Project," (aka "Water LA") to facilitate urban runoff pollution reduction, increase local water supplies, mitigate peak flood flows, and enhance conservation through widespread distribution of stormwater infiltration strategies at the residential parcel-scale (aka "urban acupuncture"). The goal of the SEP is to gain a better understanding of the ability of these practices to improve water quality and increase groundwater recharge in the region. The project will also provide information on the potential cost effectiveness of broader-scale implementation and help the agencies size and consider an appropriate residential incentive program. Additionally, the projects will reduce storm flows, increase native habitat, improve neighborhood aesthetics, increase street tree canopy cover, foster a deeper appreciation of stormwater as a resource, and educate the community about the benefits of an urban acupuncture approach to green infrastructure. See Attachment C for a more detailed SEP Project proposal. Attachment C is incorporated herein by reference.

#### B. REPRESENTATION OF THE IMPLEMENTING PARTY

As a material consideration for the Regional Board's acceptance of this Stipulated Order, the Implementing Party has represented that it will: (1) utilize the funds provided to it by the Discharger to implement the SEP in accordance with the Schedule for Performance set forth in Attachment B, incorporated herein by reference; (2) provide certified, written reports to the Regional Board and the Discharger consistent with the terms of this Stipulated Order detailing the implementation of the SEP; and (3) comply with all other applicable requirements of the Implementing Party as provided herein. A Memorandum of Understanding between the Discharger and Implementing Party is included as Attachment D and is incorporated herein by reference.

#### C. PUBLICITY

Whenever the Discharger or its agents or subcontractors or the Implementing Party publicize one or more elements of the SEP, they shall state in a **prominent manner** that the Project is being undertaken as part of the settlement of an enforcement action by the Regional Board against the Discharger.

#### D. SITE INSPECTIONS

The Implementing Party shall permit Regional Board staff and the Discharger to inspect during normal business hours any location where the SEP is being implemented as well as review any documents associated with implementation of the SEP at any time without notice.

## **E. FINAL REPORT**

The implementation schedule of the SEP as described in Attachment B anticipates that this project will be completed in less than a quarter of a year. Therefore, the Discharger is not required to provide the Regional Board with quarterly monitoring reports on the performance of the SEP. Rather, once the SEP is completed, a Final Report describing and analyzing the effectiveness of the parkway retrofits examined as part of the study will be provided to the Regional Board. It is anticipated that this report will be completed by June 30, 2016, however, given the historic drought, it is possible that this schedule may be extended through June 2017 to ensure that enough water quality data can be gathered during the water year.

## **F. AUDITS AND CERTIFICATION OF ENVIRONMENTAL PROJECT**

### **1. Certification of Completion**

Within 30 days of completion of the SEP, the Discharger shall submit a certified statement of completion of the SEP (Certificate of Completion). The Discharger's authorized representative shall submit the Certification of Completion under penalty of perjury to the Designated Regional Board Representative:

Mr. Hugh Marley  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013  
(213) 620-6375  
[hugh.marley@waterboards.ca.gov](mailto:hugh.marley@waterboards.ca.gov)

The Certification of Completion shall include the following:

#### **i. Certification of Expenditures**

Certification documenting all expenditures by the Discharger and/or the Implementing Party. For the Discharger, the expenditures may be limited to documentation of payment of the SEP Amount to the Implementing Party. For the Implementing Party, the expenditures may include external payments to outside vendors or contractors implementing the SEP. If applicable, the expenditures may include the costs of internal Environmental Management resources and internal Business Unit resources, provided that such expenditures are directly related to development and implementation of the SEP. In making such certification, the official may rely upon normal company and project tracking systems that captures employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The Discharger/Implementing Party shall provide any additional information requested by the Regional Board staff which is reasonably necessary to verify SEP expenditures. The certification need not address any costs incurred by the Regional Board for oversight.

**ii. Certification of Performance of Work**

Certification that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other material reasonably necessary for the Regional Board to evaluate the completion of the SEP and the costs incurred by the Discharger/Implementing Party.

**iii. Certification that Work Performed on SEP Met or Exceeded Requirements of CEQA and other Environmental Laws [where applicable]**

Certification that the SEP meets or exceeds the requirements of CEQA and or other environmental laws. Unless the Implementing Party is exempted from compliance with CEQA, the Discharger and/or the Implementing Party shall, before the SEP implementation date, consult with other interested State Agencies regarding potential impacts of the SEP. Other interested State Agencies include, but are not limited to, the California Department of Fish and Game. To ensure compliance with CEQA where necessary, the Discharger and/or the Implementing Party shall provide the Regional Board with the following documents:

- a. Categorical or statutory exemptions;
- b. Negative Declaration if there are no "significant" impacts;
- c. Mitigated Negative Declaration if there are potential "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts;
- d. Environmental Impact Report (EIR) if there are "significant" impacts.

**2. Third Party Audit**

If the Designated Regional Board Representative obtains information that causes the representative to reasonably believe that the Discharger (or Implementing Party) has not expended money in the amounts claimed by the Discharger (or Implementing Party), or has not adequately completed any of the work in the SEP, the Designated Regional Board Representative may require, and the Discharger shall submit, at its sole cost, a report prepared by an independent third party(ies)'s, stating that in its professional opinion, the Discharger (and the Implementing Party) has expended money in the amounts claimed by the Discharger. In the event of such an audit, the Discharger (and the Implementing Party) agrees that they will provide the third party auditor with access to all documents which the auditor requests. Such information shall be provided to the Designated Regional Board Representative within three months of the

completion of the Discharger's SEP obligations. The audit need not address any costs incurred by the Regional Board for oversight.

**G. REGIONAL BOARD ACCEPTANCE OF COMPLETED SEP**

Upon the Discharger's satisfaction of its obligations under this Stipulated Order, the completion of the SEP and any audit, the Designated Regional Board Representative, with notice to the regional Enforcement Coordinator, shall request that the Regional Board, or the Regional Board's delegee, issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligation of the Discharger and/or the Implementing Party under this Stipulated Order.

**H. FAILURE TO EXPEND ALL SUSPENDED ADMINISTRATIVE CIVIL LIABILITY FUNDS ON THE APPROVED SEP**

In the event that the Discharger has contributed the SEP Amount to the Implementing Party pursuant to 16.A and the Implementing Party is not able to demonstrate to the reasonable satisfaction of the Designated Regional Board Representative that the entire SEP Amount has been spent for the completed SEP, the Discharger, and/or the Implementing Party on behalf of the Discharger, shall pay the difference between the SEP Amount and the amount the Discharger or the Implementing Party can demonstrate was actually spent on the SEP, as an administrative civil liability.

**I. FAILURE TO COMPLETE THE SEP**

If the SEP is not fully implemented within the SEP Completion Period required by this Stipulated Order or there has been a material failure to satisfy a Milestone Requirement, the Designated Regional Board Representative shall issue a Notice of Violation.

As a consequence, the Discharger shall be liable to pay the entire Suspended Liability or, some portion thereof. If the Discharger has contributed the entire SEP Amount to the Implementing Party pursuant to 16.A, then the Implementing Party may be held jointly and severally liable along with the Discharger to pay all or a portion of the Suspended Liability. Alternatively, the Implementing Party may be compelled to complete the SEP. The Prosecution Staff may act as follows:

1. The Prosecution elects for the payment of the Suspended Liability

The Discharger/Implementing Party might not be entitled to any credit, offset, or reimbursement from the Regional Board for expenditures made on the SEP prior to the date of the "Notice of Violation" by the Regional Board. The amount of the Suspended Liability owed shall be determined via a "Motion for Payment of Suspended Liability" before the Regional Board. In the event that the Discharger/Implementing Party is jointly and severally liable for payment of Suspended Liability, the Regional Board will not include that portion of the SEP amount found by the Regional Board to have been expended in a timely manner and in compliance with the attached SEP Workplan (Attachment B) in the amount of the

Suspended Liability owed. Upon a determination by the Regional Board of the amount of the Suspended Liability assessed, the amount owed shall be paid to the State Water Pollution Cleanup and Abatement Account within thirty (30) days after the service of the Regional Board's determination. In addition, the Discharger and/or Implementing Party in the event it is liable for Suspended Liability shall be liable of the Regional Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Discharger's obligation to implement the SEP.

2. Certification of Performance to Work

The Prosecution Staff shall file a Motion to Enforce the SEP before the Regional Board against the Discharger and/or the Implementing Party. Upon the identification by the Regional Board of the remaining work of the SEP to be performed, the Discharger agrees that the Regional Board may order the Discharger and/or Implementing Party to perform that work. In addition, the Implementing Party shall be liable for the Regional Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees.

3. Claims between the Discharger and the Implementing Party

Any claims for reimbursement, costs (other than the payment by the Discharger of the SEP Amount pursuant to Paragraph 16.A above), or disputed between the Discharger and the Implementing Party are outside the scope of this Stipulated Order and should be handled as between the Discharger and the Implementing Party although the obligation of the Discharger and the Implementing Party as set forth in this Stipulation may be considered in any such disagreement.

**J. REGIONAL BOARD IS NOT LIABLE**

Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to person or property resulting from acts or omissions by the Discharger (or the Implementing Party where applicable), its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, nor shall the Regional Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation.

The Discharger and the Implementing Party covenant not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the ACL, this Stipulation or the SEP. This provision does not preclude the Discharger and/or the Implementing Party from opposing a Notice of Violation or Motion brought under Paragraph 16.I.

17. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged above may subject it to further enforcement, including additional administrative civil liability.

18. **Party Contacts for Communications related to this Stipulation and Order:**

**For the Regional Board:**

Hugh Marley, Chief  
Compliance and Enforcement Section  
Regional Water Quality Control Board,  
Los Angeles Region  
320 W. 4th Street, Suite 200  
Los Angeles, California 90013  
(213) 620-6375  
[hugh.marley@waterboards.ca.gov](mailto:hugh.marley@waterboards.ca.gov)

**For the Discharger:**

Ron Olive, Assistant Director  
City of Los Angeles  
Bureau of Street Services  
1149 South Broadway, 4th Floor  
Los Angeles, California 90015  
(213) 847-3333  
[Ron.Olive@lacity.org](mailto:Ron.Olive@lacity.org)

19. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

20. **Matters Covered by this Stipulation:** Upon adoption by the Regional Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged above or which could have been asserted based on the specific facts alleged against the Discharger. The provisions of this Paragraph are expressly conditioned on the Discharger's full payment of administrative civil liability by the deadline specified in Paragraph 14 herein.

21. **Public Notice:** The Discharger and the Regional Board Prosecution Staff understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Board, or its delegee. In the event objections are raised during the public review and comment period, the Regional Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

22. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

23. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.

24. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Board or its delegee.

25. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- A. Objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in Exhibit A in this matter; or
- B. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

26. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Board prior to the adoption of the Order.

27. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

28. **The Discharger's Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

29. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

30. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

31. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Board or its delegee, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

California Regional Water Quality Control Board,  
Los Angeles Region Prosecution Team

Date: 9-9-2014

By:

Paula Rasmussen

Paula Rasmussen  
Assistant Executive Officer

City of Los Angeles, Bureau of Street Services

Date:

9/3/2014

By:

Nazario Saucedo

Nazario Saucedo  
Director

**HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, THE REGIONAL BOARD, OR ITS DELEGEE, FINDS THAT:**

32. The Regional Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 31 above, by this reference, as if set forth fully herein.

33. In accepting this Stipulation, the Regional Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e) (see Attachment A, incorporated herein by reference). The Regional Board's consideration of these factors is based upon information obtained by the Prosecution Staff in investigating the allegations in Paragraphs 7 through 10 or otherwise provided to the Regional Board. This settlement recovers the costs incurred by the Prosecution Staff in investigating and pursuing enforcement of the allegations set forth in Paragraphs 7 through 10 as "other matters as justice may require".

34. This is an action to enforce the laws and regulations administered by the Regional Board. The Regional Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

35. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Los Angeles Region.

\_\_\_\_\_  
Samuel Unger, P.E.  
Executive Officer

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

## ATTACHMENT A ENFORCEMENT POLICY METHODOLOGY CONSIDERATIONS

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code (CWC) section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf).

### **Summary of alleged violation: Unauthorized discharge of dredge and fill material to waters of the United States**

The Discharger obtained Clean Water Act section 404 permit coverage under Regional General Permit 63 (RGP 63) for emergency repair and maintenance activities at the intersection of Big Tujunga Wash and Oro Vista Avenue. Coverage under RGP 63 included a Technically Conditioned Clean Water Act section 401 Certification. The Discharger's grading and fill activities went outside the scope of the project description in Attachment C of RGP 63 and subsequent project modification approvals by the United States Army Corps of Engineers (Corps). Discharging dredge and fill material into waters of the United States in violation of Clean Water Act section 404 and 401 constitutes a violation of Clean Water Act section 301. Violations of Clean Water Act section 301 subject the Discharger to administrative civil liability pursuant to Water Code section 13385 subdivision (a)(5).

### **Step 1 - Potential for Harm for Discharge Violations**

The "potential harm to beneficial uses" factor considers the harm to beneficial uses that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential to harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

### **Factor 1: Harm or Potential Harm to Beneficial Uses**

A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0) to major (5). In this case, the potential harm to beneficial uses was determined to be **major** (i.e. a score of **5**), which is defined as a "high threat to beneficial uses (i.e., significant impacts to aquatic life or human health, long term restrictions on beneficial uses (e.g., more than five days), high potential for chronic effects to human or ecological health."

On April 15, 2010 this Regional Board received an email notice from Ms. Cherry Oo of the Corps, containing a RGP 63 Pre-Construction Notification for Big Tujunga Wash and Oro Vista Avenue intersection (SPL-2010-00399-CO) and stated that "a 75-foot length of the roadway floods to an approximate depth of 6 inches" and that "The work will be conducted in a manner to minimize the area disturbed to the extent feasible, and standard Best Management Practices (BMPs) would be employed." Figure 2 in the Pre-Construction Notification depicts the proposed project area with graphic overlays of pre-storm flow paths and post-storm flow paths. Additionally, Figure 5 in the same document depicts the proposed action with a graphic overlay depicting the manner in which wash flow will be restored to its original direction.

On May 18, 2010 this Regional Board received notice of 48-Hour Notification Form for the Regional General Permit 63 ("Attachment C") and a check for \$77.00. The submitted document

**ATTACHMENT A**  
**ENFORCEMENT POLICY METHODOLOGY CONSIDERATIONS**

contains some of the same language stated in the RPG 63 above. The "Project Description" contains, in part, the following narrative:

*[On Oro Vista] Dry weather flow floods a 75-foot length of roadway... Emergency maintenance after large storm events is necessary to clear the low-flow culverts... Standard earth-moving equipment will be used to create a shallow channel to reconnect the big Tujunga Wash to the bridge and the overflow culvert. All materials from the wash will remain in the wash and no material will be imported. Only trash, logs, brush, and other debris deposited in the work area by storm waters will be removed and properly disposed.*

Additionally, the RGP 63 Attachment C defines the area to be impacted as being limited to "0.344 acres, 30 feet wide by 500 feet long." The narrative provided indicates that Oro Vista Avenue will be cleared, and the Big Tujunga Wash will be avoided or if not, minimum measures will be taken if done so.

On May 27, 2010 the Corps issued a letter to the City of Los Angeles, received by this Regional Board on June 10, 2010 allowing them a time extension for completion of the project from May 28 to June 30, 2010.

Regional Board staff inspections conducted on June 7 and June 15, 2010 determined that the grading went extensively beyond the area listed in Attachment C of RGP 63 and subsequent project modification approvals by the Corps. The area that Staff observed to have been impacted by the grading was approximately 1,000 feet long by 500 feet wide. The grading impacted areas both upstream and downstream of Oro Vista Avenue.

The Water Quality Control Plan for the Los Angeles Region (Basin Plan) is designed to preserve and enhance water quality and protect the beneficial uses of all surface and ground waters in the Los Angeles Region. The Basin Plan includes the following beneficial uses for the Upper Big Tujunga Canyon Creek (405.23):

- 1) Municipal and Domestic Supply (MUN)
- 2) Ground Water Recharge (GWR)
- 3) Water Contact Recreation (REC-1)
- 4) Non-Contact Water Recreation (REC-2)
- 5) Warm Freshwater Habitat (WARM)
- 6) Cold Freshwater Habitat (COLD)
- 7) Wildlife Habitat (WILD)
- 8) Wetland Habitat (WET)

Big Tujunga Wash (Wash) is designated as critical habitat for the federally threatened Santa Ana sucker, which can be harmed by increased turbidity. Portions of the Wash are able to support self-sustaining populations of native fish species, such as the Santa Ana sucker, the arroyo chub, and the Santa Ana speckled dace, which could represent some of the last remaining populations within the Los Angeles River system. The Santa Ana sucker favors cool (< 22 degrees Celsius), clear, flowing water where gravel, rubble, and boulder substrates are present. Spawning typically occurs from mid-March until early June in riffle habitats possessing gravel substrates. The emergency project took place from May 24, 2010 to June 7, 2010, during the typical spawning period of the Santa Ana sucker.

**ATTACHMENT A**  
**ENFORCEMENT POLICY METHODOLOGY CONSIDERATIONS**

The grading increased turbidity, removed vegetated habitat, and potentially contributed to the exacerbation of non-native plant species (*Arundo donax*) in the Wash, thereby impacting the listed beneficial uses of wildlife habitat, cold freshwater habitat, and warm freshwater habitat, among others. The extensive area graded resulted in a threat to beneficial uses that was high resulting in significant impacts to aquatic habitat, and long term restrictions on beneficial uses that lasted more than 5 days.

**Factor 2: The Physical, Chemical, Biological, or Thermal Characteristics of the Discharge**

A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. In this case, a score of **2** was assigned, which means that the chemical and/or physical characteristics of the discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged materials have some level of toxicity or pose a moderate level of concern regarding receptor protection.) The grading operation and vegetation removal exposed, loosened, and mobilized sediment, creating a discharge which could or did at a minimum result in a moderate risk to increased turbidity, reduced light, reduced clarity and increased temperature in the stream flow.

**Factor 3: Susceptibility to Cleanup or Abatement**

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger. 50% or more of the discharge could have been cleaned up or abated, therefore a factor of **0** is assigned.

**Final Score – “Potential for Harm”**

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a final score of 8 was calculated. The total score of 7 is then used in Step 2 below.

**Step 2 – Assessment for Discharge Violations**

This step addresses penalties based on both a per-gallon and a per-day basis.

**Per Day Assessments for Discharge Violations**

When there is a discharge, the Regional Board is to determine the initial liability amount on a per day basis using the same Potential Harm score from Step 1 and the Extent of Deviation from Requirements.

To calculate the initial liability amount on a per day basis, a **Per Day Factor** is determined from Table 2 of the Enforcement Policy (page 15) by using the **Potential for Harm score** (step 1) and the extent of **Deviation from Requirements** (minor, moderate, or major) of the violation.

a. Deviation from Requirement

The RGP 63 specifically required the Discharger to “construct an approximate 30 feet wide by 500 feet long [15,000 square feet, or approximately 0.35 acres] temporary diversion channel...” The actual project area seen in the inspection on June 15, 2010 was approximately 1,000 feet by 500 feet (500,000 square feet, or approximately 11.48 acres). Therefore, the deviation from requirement is **Major**.

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ENFORCEMENT POLICY METHODOLOGY CONSIDERATIONS**

b. Per Day Factor (0.310)

A Per Day Factor of 0.310 is selected from Table 2 of the Enforcement Policy.

**Initial Liability Amount**

The initial liability amount for the violations calculated on a per day basis are as follows:

$$\$10,000 \times 0.310 \times 15 \text{ days of violation} = \$46,500$$

Total Initial Liability = \$46,500

**Step 3 – Per Day Assessments for Non-Discharge Violations**

This factor does not apply because the violations are related to the discharge of waste and the liability was determined in Step 2.

**Step 4 – Adjustment Factors**

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

**Culpability**

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of **1.4** because the City did not comply with the terms of the technically conditional 401 cert, and went outside of the scope of the project description that was submitted to the Regional Board in Attachment C. Furthermore, the City was aware that the grading action was in violation of the RGP 63 and met with Regional Board staff on February 10, 2011 to discuss the matter.

**Cleanup and Cooperation**

The Discharger met with Regional Board staff in the field and on February 10, 2011, after a Notice of Violation was issued to discuss the grading violations; there has been no further contact on this matter. While the need for a long-term plan or road maintenance plan, including permitting under CWA Sections 404 and 401, was established in the February 10, 2012 meeting, no plan has been shared with the Regional Board nor any application for Section 401 certification submitted for continued maintenance of the area. Therefore, a factor of **1.25** was selected.

**History of Violations**

The City has a history of similar violations including: Cleanup and Abatement Order R4-2009-0083 (File 06-104) for failure to follow the Conditions of the 401 Certification, and Civil Liability Complaint No. R4-2010-0112 (file 06-208) for violating the provisions of law pursuant to CWC (unpermitted grading and hydraulic fluid spill). Therefore, Staff selected **1.1**, which is the minimum multiplied where there is a history of violations. The total base liability increased to **\$89,512.50**.

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**Step 5 – Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Adjusted Initial Liability Amount determined in Step 2. After considering the Adjustment Factors, Staff calculated the Total Base Liability Amount as **\$89,512.50**.

<p><b><u>Total Base Liability Amount</u></b></p> <p>Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability</p> <p><u>Per Day Liability:</u></p> <p>Total base liability (\$46,500) x C (1.4) x C&amp;C (1.25) x HOV (1.1) = \$89,512.50</p> <p style="text-align: right;">Total Base Liability = \$89,512.50</p>
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**Step 6 – Ability to Pay and Ability to Continue in Business**

- a) Total Base Liability: **\$89,512.50**
  
- b) Discussion: The General Fund is the general operating fund of the City of Los Angeles. On June 30, 2011, the General Fund reported a total fund balance of \$520.1 million, composed of \$26.3 million non-spendable fund balance associated with inventories of \$16.6 million, and certain advances to other funds of \$9.7 million; \$239.9 million fund balance assigned to general government purposes; and \$253.9 million unassigned fund balance that include \$0.5 million for economic stabilization, and \$253.4 million for reserves, emergency, and contingency purposes. At the end of the fiscal year, the unreserved and undesignated fund balance of the General Fund Operating Account is transferred to the Reserve Fund and reported as "Reversion to Reserve Fund." Based on the City of Los Angeles' most recent Comprehensive Annual Financial report for the fiscal year ending June 30, 2011, the City has the ability to pay the proposed liability amount.

The Total Base Liability Amount will not affect the Discharger's ability to continue in business. Therefore, Staff selected 1, which is a neutral multiplier. Accordingly, the Total Base Liability Amount was not adjusted.

**Step 7 – Other Factors as Justice May Require**

- a) Total Base Liability: \$89,512.50 + \$7,500 (staff costs) = **\$97,012.50**
- b) Discussion: The costs of investigation and enforcement are "other factor as justice may require" and should be added to the Total Base Liability Amount. Staff costs incurred by the Regional Board to date are \$7,500. This represents approximately 50 hours of staff time devoted to investigating and drafting the complaint at \$150 an hour. In accordance with the Enforcement Policy, this amount was added to the Total Base Liability Amount, which equals **\$97,012.50**.

**Step 8 – Economic Benefit**

- a) Total Estimated Economic Benefit: **\$47,464**

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- b) Discussion: The economic benefit is estimated for every violation. It estimated economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. Staff estimates the cost-savings for non-compliance to be approximately (\$47,541 (11.48 acres) - \$77 (emergency permit – paid by the City) = **\$47,464**.

**Step 9 – Maximum and Minimum Liability Amounts**

- a) Minimum Liability Amount: Economic Benefit + 10% or **\$52,210.40**.  
Discussion: The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Staff estimate of the City's economic benefit obtained from the alleged violation is \$47,541. Therefore the minimum liability amount pursuant to the Enforcement Policy is \$52,210.40.
- b) Maximum Liability Amount: **\$150,000**  
Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code 13385. The City could be assessed up to \$150,000 in administrative civil liabilities for the alleged violation. The proposed liability falls within these maximum and minimum liability amounts.

**Step 10 – Final Liability Amount**

In accordance with the above methodology, Staff recommends a Final Liability Amount of **\$97,012.50**. Staff has determined that this Final Liability Amount is within the statutory minimum and maximum amounts.

## ATTACHMENT B

### Scope of Work

With funding from the State Coastal Conservancy, (SCC) The River Project (TRP) has completed a program of outreach and design for parkway retrofits in the Panorama City neighborhood adjacent to the Woodman Avenue Median Retrofit Project. There are twenty-three (23) potential parkway retrofits in the area. The vast majority of parkways in the area are 7' wide. Basin sizes depend on site conditions (utilities, existing trees, etc.) and vary from 8' to 25' in length. All but one is 5' wide. Projects are being installed per the specs created as part of our Los Angeles Rainwater Harvesting Program grant from the SCC (aka Water LA). The Parkway Retrofit specs and designs for each property are included as part of this attachment.

TRP will work with the Water LA team to install up to 23 Parkway retrofits. The total number will not be less than 18 or more than 23. The final figure is contingent on factors such as the removal of diseased street trees and the potential for related sidewalk repair. Notwithstanding these contingencies, TRP will maximize the final number of installations, utilizing funding from the Coastal Conservancy grant to supplement the balance if necessary.

Although technically not a part of this SEP, the results of our monitoring program, included as part of our Water LA program grant, will be provided to the Regional Water Quality Control Board at completion.

### Project Implementation Schedule

Copies of the Project Plans articulating basin locations, sizes and planting plans, are being provided with this agreement. Basin installations will be 50% complete by March 7, 2014 and 100% complete by March 25, 2014.

### Milestones and Deliverable Deadlines

Milestone	Deadline	Liability Excused Upon Completion
Copies of Project Plans	February 21, 2014	\$5,250
Photos of 50% completion	March 7, 2014	\$18,000
Photos of 100% completion	March 25, 2014	\$18,000

### BUDGET

Item	Average cost per installation	23 installations
Curb cuts & excavation	\$1,000	\$16,000
Disposal	\$ 200	\$ 3,200
Granite cobbles	\$ 300	\$ 4,800
Rock work	\$ 500	\$ 8,000
Plant material	\$ 100	\$ 1,600
TOTAL	\$2600	\$41,600

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## ATTACHMENT C – SEP PROPOSAL

Project Title: Water LA Parkway Retrofits

Organization: City of Los Angeles Bureau of Sanitation  
Contact: Shahram Kharaghani  
Shahram.Kharaghani@lacity.org  
213-485-0587

Organization: The River Project  
Contact: Melanie Winter  
winter@theriverproject.org  
818-980-9660

Project Name: Water LA Parkway Retrofits  
Location: Panorama City  
Watershed: Upper Los Angeles River Watershed

### *Project Description*

LABOS proposes to contribute the SEP Amount (\$41,250) to The River Project (TRP), the Implementing Party, for the Water LA Parkway Retrofit Project (SEP or Project), located in the Los Angeles River Watershed.

The Project will design and implement 23 (twenty-three) Parkway Retrofits involving curb cuts and infiltration basins in the Upper Los Angeles River Watershed in order to gain a better understanding of the ability of these practices to improve water quality and increase groundwater recharge. This is part of an ongoing project called "The Los Angeles Rainwater Harvesting Project," (aka "Water LA") to facilitate urban runoff pollution reduction, increase local water supplies, mitigate peak flood flows, and enhance conservation through widespread distribution of stormwater infiltration strategies at the residential parcel-scale (aka "urban acupuncture").

Under a grant from the State Coastal Conservancy, TRP is developing plans for 6 (six) residential LID strategies (rain gardens, rain barrels, parkway retrofits, greywater systems, infiltration trenches, and impervious surface reduction) that can be useful for single and multi-family property homeowners. A pilot subwatershed area in Panorama City will be monitored for water quality and water quantity using monitoring stations in the adjacent Woodman Avenue Median Retrofit, to which it drains.

### *Background*

The Los Angeles River receives drainage from an 834 square mile area of Los Angeles County and has a main channel length of approximately 51 miles; its headwaters originate in the Santa Monica Mountains and the Simi Hills, but the upper watershed receives significant

## ATTACHMENT C – SEP PROPOSAL

drainage from the San Gabriel Mountains. The river empties to the Pacific Ocean in Long Beach. The main tributaries to the river are Big and Little Tujunga Wash, Pacoima Wash, Arroyo Seco, Rio Hondo, and Compton Creek.

The existing beneficial use designations for the Los Angeles River Watershed include: Navigation (NAV), Municipal and Domestic Supply (MUN), Industrial Service Supply (IND), Industrial Process Supply (PROC), Groundwater Recharge (GWR), Water Contact Recreation (REC1), Non-Contact Water Recreation (REC2), Commercial and Sport Fishing (COMM), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Estuarine Habitat (EST), Marine Habitat (MAR), Wildlife Habitat (WILD), Protection of Rare and Endangered Species (RARE), Spawning (SPWN), Migratory (MIGR), and Wetland Habitat (WET). There is also a potential beneficial use designation of Shellfish Harvesting (SHELL) in the Los Angeles River Estuary.

Based on the 2010 Integrated Report for Clean Water Act Section 303(d) List and 305(b) Report, several water bodies within the watershed are impaired. The Tujunga Wash in the upper watershed is listed as impaired for ammonia, coliform bacteria, copper, and trash.

Significant issues in the Los Angeles River Watershed include the protection of groundwater recharge areas, trash in upper watershed, ambient toxicity, urban and storm water runoff quality, and nonpoint source loadings from nurseries and horse stables. A major contributing source of pollution in the Los Angeles River Watershed is from industrial and construction stormwater discharges as well as discharges to the Los Angeles County MS4.

### *Project Overview*

While the project will take place within Reach 4 of the Upper Los Angeles River Watershed, the SEP will benefit the entire Watershed downstream of the project by reducing urban stormwater runoff to surface waters and increasing infiltration to the groundwater within the watershed. This project will provide more data on the efficacy of this BMP by examining reductions in runoff volumes and pollutant loads over the course of two wet seasons.

### *Project Goals*

The goals of the project are to implement up to 23 (twenty-three) Parkway Retrofits involving curb cuts and infiltration basins in the Upper Los Angeles River Watershed in order to gain a better understanding of the ability of these practices to improve water quality and increase groundwater recharge in the region. The project will also provide information on the potential cost effectiveness of broader-scale implementation and help the agencies size and consider an appropriate residential incentive program. Additionally, the projects will reduce storm flows, increase native habitat, improve neighborhood aesthetics, increase street tree canopy cover, foster a deeper appreciation of stormwater as a resource, and educate the community about the benefits of an urban acupuncture approach to green infrastructure.

## ATTACHMENT C – SEP PROPOSAL

### Water Quantity and Quality Benefits of the SEP

Preliminary observations indicate that significantly greater volumes of stormwater are captured through parkway retrofits with curb cuts than with the smaller curb cores, such as were utilized at the Elmer Avenue Project. An associated increased reduction in pollutants is expected. The proposed SEP will enable TRP to quantify the water quality and water quantity benefits of Parkway Retrofits and other urban acupuncture projects within the upper Los Angeles River Watershed.

### *Public Benefits of the SEP*

The first pilot parkway retrofit was instrumental in creating a noticeable increase in interest among Panorama City neighbors in becoming involved in Water LA's urban acupuncture approach. Residents on Mammoth Avenue are pleased with the improved aesthetics, the walkability on their block and the ease of maintenance of the parkway retrofit. The project also educated and improved the residents' understanding of rainwater capture, and how it relates to water quality improvements and enhanced local water supply. The proposed SEP will enable TRP to quantify the public benefits of urban acupuncture projects in the Upper Los Angeles River Watershed.

### *Documented support by one or more of the following*

#### *a) Other Agencies:*

The SCC has provided the initial support for the Water LA program. The project is supported by the City of Los Angeles' Bureau of Sanitation and its Departments of Water & Power, Planning, Building & Safety, and Street Services. In addition, the Department of Water & Power has funded a smaller Water LA pilot in the RIO Zone area of Studio City.

#### *b) Public Groups*

The River Project is partnering with other non-profit organizations through the development of the Water LA program, including: Hollywood/Los Angeles Beautification Team; North East Trees; Heal the Bay; Surfrider Foundation; the Los Angeles Conservation Corps; and Million Trees Los Angeles.

### 7. Key personnel involved with the project

Melanie Winter, Project Director  
Joe Madden, Project Manager  
Johnathan Perisho, Researcher

### 8. Financing the SEP

Thirty (30) days following the State Water Board executing the Stipulated Order, the SEP Amount of \$41,250 shall be sent to TRP in support of the SEP project.

## ATTACHMENT C – SEP PROPOSAL

### 9. Project Implementation, Milestone, and Completion Deadlines

Attachment B sets forth the Project implementation schedule, milestone deadlines, and deadlines for deliverables. Attachment B is incorporated herein by reference.

### 10. Criteria to Assess SEP Success

Ultimately, the primary success criteria will be in the analysis of water quality benefits gleaned from the data that is collected during the two wet seasons. The Implementing Party is scheduled to complete a Final Report by June 30, 2015 that analyzes the effectiveness of the parkway retrofits examined as part of the monitoring study. Given the historic drought, it is possible that this schedule may be extended through June, 2017. When completed, this report, along with its supporting raw data will be furnished to LABOS and the State Water Board.

### 11. Maintenance Plan Beyond the SEP-funded Period

The SEP will not require maintenance by LABOS or the Implementing Party beyond the project period. Homeowners will be provided with instruction on proper stewardship, including a printed hand-out with a seasonal maintenance protocol.

ATTACHMENT D – Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING  
for  
WATER LA PARKWAY RETROFITS  
between  
CITY OF LOS ANGELES, DEPARTMENT OF PUBLIC WORKS  
and  
THE RIVER PROJECT

INTRODUCTION

This Memorandum of Understanding ("Agreement"), made and entered into the \_\_\_\_ day of \_\_\_\_\_ May, 2014, by and among the City of Los Angeles, a municipal corporation in the County of Los Angeles, hereinafter referred to as "City" and The River Project a nonprofit organization in the State of California hereinafter referred to as "TRP"

**WHEREAS**, the City of Los Angeles (City) and The River Project (TRP), a nonprofit organization in the State of California, recognize the need to improve water quality in the Los Angeles region, protect compatible beneficial uses, and help those receiving waters meet California State Water Resources Control Board (SWRCB) regulations; and

**WHEREAS**, Water LA (Project) was developed to create a suite of residential BMPs for single family and low-density residential properties that will enable rainwater capture and water conservation while enhancing the water quality of the Los Angeles River and to serve to test and inform the implementation of future distributed projects within the Los Angeles Region; and

**WHEREAS**, the goals of the project are to support larger citywide efforts such as the implementation of the Integrated Resources Plan (IRP), Enhanced Watershed Management Programs (EWMP), the Stormwater Capture Master Plan (SCMP), and the Mayor's initiative for making Los Angeles the greenest big city in United States; and

**WHEREAS**, this is a pilot project to validate the viability of a number stormwater best management practices (BMPs) in the City parkways to comply with stormwater mandates; and

**WHEREAS**, the stormwater BMPs tested under this pilot project have already been tested in Tucson, Arizona, Philadelphia, among other places; and

**WHEREAS**, the pilot project once implemented and proven effective will provide a great opportunity for the Citywide implementation to improve water quality in all the City's water bodies; and

**WHEREAS**, TRP is a non-profit environmental organization working to make the waters of Southern California safe and healthy for human, aquatic, plant and animal life, which will bring resources and expertise to the Project; and

**WHEREAS**, the Tujunga-Pacoima Watershed Management Plan relies on Project as one of the activities for implementation in the Upper LA River watershed; and

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## ATTACHMENT D – Memorandum of Understanding

**WHEREAS**, the Project cost is estimated at \$41,250; and

**WHEREAS**, TRP received a Prop 84 grant from State Coastal Conservancy for funding for the Project; and

**WHEREAS**, The City has agreed to implement a Supplemental Environmental Project (SEP) as a condition of the settlement agreement with the Regional Water Quality Control Board (RWQCB); and

**WHEREAS**, RWQCB has approved the project to be undertaken on behalf of the City; and

**WHEREAS**, Upon approval of the SEP by RWQCB, and completion of the agreed work, the City will transfer the payment amounts as invoiced by TRP for implementation expenses of the Project per the MOU (attached); and

**NOW, THEREFORE**, in consideration of promises, covenants, and agreements hereinafter set forth, the parties hereby agree as follows:

### ARTICLE 1 - PROJECT DESCRIPTION

The Project will be designed by TRP and implemented in the rights-of-way fronting up to 24 parcels in Reach 4 of the Upper Los Angeles River Watershed to benefit the downstream drainages by reducing stormwater volume and pollutants conveyed by urban runoff. The project will also encourage infiltration to groundwater, and reduce irrigation demands as outreach provides education to homeowners and the general public on stormwater issues. The subsequent project monitoring will provide data on the efficacy of the proposed BMP's by analyzing the benefits to stormwater volume and pollutant reduction by runoff conveyed over two rainy seasons.

### ARTICLE 2 - IMPLEMENTATION

The Project goal is to fulfill the requirements of the Settlement Agreement to be issued following this MOU, and between the City and Regional Water Quality Control Board (RWQCB). The key phases of the Project and the corresponding required dates of completion are:

1. Design – December 2012
2. Construction – May and June 2014
3. Monitoring – May 2016
4. Reporting – June 2016

### ARTICLE 3 - FUNDING

Pending local Regional Water Quality Control Board approval, the City has agreed to provide \$41,250 to TRP to satisfy the Oro Vista Settlement Agreement through the implementation of the proposed Project. Upon completion of the project, the City will provide as-needed

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## **ATTACHMENT D – Memorandum of Understanding**

assistance to evaluate, assess and report on the design and effectiveness of the Project and to consider the pilot tests for incorporation as standards.

Funding for projects implemented under this MOU is provided by the Public Works Trust Fund. This MOU may be amended or terminated at the discretion of the City upon written notice to TRP.

It is understood that the City makes no commitment to fund this MOU beyond the terms of this MOU and the expenditure is limited to specific line items as stated in the MOU (EXHIBIT A).

### **ARTICLE 4 – RESPONSIBILITIES OF TASKS TO BE PERFORMED BY THE CITY**

1. Enter into a Memorandum of Understanding with TRP regarding the implementation of the Project, waiving associated fees for projects implemented under this agreement.
2. Make payments to TRP for expenditures incurred and upon completion of the required tasks for a total amount not to exceed \$ 41,250.

### **ARTICLE 5 – RESPONSIBILITIES OF TASKS TO BE PERFORMED BY TRP**

1. Perform project management during the design and construction phases of the Project and adhere to all of the terms and conditions in the Settlement Agreement with RWQCB related to these tasks (EXHIBIT A).

Follow all of the relevant Standard Provisions for City Contracts (EXHIBIT B) and keep the required forms updated.

2. Perform all public outreach and obtain any and all necessary private permissions for the Project.
3. Submit all progress reports, invoices, Project deliverables, and all documents to City and RWQCB as required by the Settlement Agreement.
4. Compile Project deliverables on schedule and as required by the Settlement Agreement.
5. Prepare and conduct all associated work related to Project monitoring and reporting.
6. Provide the City with a detailed budget expense breakdown of all items related to the design and construction at 50% & 100% completion. The reports should:
  - a. be submitted on TRP letterhead; and
  - b. include the name, hours and rates of pay for all personnel to be paid; and
  - c. include evidence of the completed work; and
  - d. include supporting documentation for all approved purchases; and
  - e. be accompanied by a statement detailing the work completed for reporting period.

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- e. be accompanied by a statement detailing the work completed for reporting period.
7. Accept the transfers of funds from the City and perform the work necessary to adequately and timely complete the Project consistent with the scope of work described in the Settlement Agreement.
8. Complete the construction of the Project by June 30, 2014. In the event that construction is not completed by June 30, 2014, TRP shall be liable for any loss against the City for this project per Settlement Agreement.
9. Retain all records and supporting documentation pertaining to the performance of this MOU for at least four years after the completion of the Project. Allow the City and State auditors access to such records during normal business hours and allow interviews of any employee who might reasonably have information related to records.
10. Upon completion of the Project, TRP shall submit all project plans, specifications, as built drawings, computer files, and other documents in the formats as requested by the City to the City.
11. Provide the City with the deliverables as outlined in the scope of work for the Settlement Agreement and consisting of:
  - a. Item 1 – Project Description
  - b. Item 2 – Water Quantity and Quality Benefits of the SEP
  - c. Item 3 – Project Budget
  - d. Item 4 – Project Schedule
  - e. Item 5 – Monitoring Plan

### ARTICLE 6- INVOICING AND PAYMENT

1. Compensation: City shall compensate TRP on a lump sum basis with payment initiated upon the satisfactory completion of work at 50% and 100% construction.
2. Invoicing and Payment: TRP is responsible for the preparation of a complete and accurate invoice. Invoices shall be prepared in such form and supported by copies of third party invoices and supporting documents, as required by the City to establish the amount of such invoices being allowable. Invoices and supporting documentation shall be prepared at the sole expense and responsibility of TRP. The City will not compensate TRP for any cost incurred for invoice preparation. The City may request in writing changes to the content and format of the invoice and supporting documentation at any time.
3. Supporting Documentation: Original supporting documentation is preferred; however, photocopies of supporting documentation if marked "original", signed and dated by an authorized person, will be acceptable.

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4. Invoice Submittal: TRP shall submit all invoices to:

Shahram Kharaghani, Program Manager  
City of Los Angeles - Bureau of Sanitation  
Watershed Protection Division  
1149 S. Broadway Street, 10th floor, MS 1149/756  
Los Angeles, CA 90015-2213  
Tel: 213-485-0587

In order to ensure prompt processing, indicate clearly on the outside of the envelope the fact that the envelope contains invoices for The River Project: Parkway Retrofits.

5. Invoice Submittal Deadline: The City shall not be responsible for payments of invoices or supplemental invoices submitted to the City more than one year after the date of service.
6. Invoice Approval and Processing: Payments shall be made upon the submission of a complete and accurate invoice. The City shall review the TRP's invoice(s) and notify TRP in writing of exceptions within five (5) days of receipt. If an invoice is not properly submitted, then the new 5-day review period will begin upon receipt of a corrected invoice by the City. Once approved by the City, the City will make a good faith effort to process the payment in 30 days. No expedition of payment or explanation of payment progress shall be made within the 30-day processing period. To expedite the approval process, TRP is encouraged to submit draft invoices for review before submitting a final invoice.

City liability under this MOU shall only be to the extent of the present appropriation to fund the MOU. No action, statement, or omission of any officer, agent, or employee of City shall impose any obligation upon City, such officer, agent, or employee, except to the extent City has appropriated funds and otherwise in accordance with the terms of this MOU. TRP and City agree that no indebtedness for work performed which results in costs under this MOU shall arise against City until and unless there is an appropriation of funds to pay for such work.

7. Discounts: The City shall consider a shorter payment schedule should TRP offer a discount for more immediate payment.

TRP agrees to offer the City any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discounts to payments made under this MOU which meet the discount terms.

8. Late Charges: The City does not pay any late charges, penalties, or interest on outstanding invoices. The City is not responsible for the payment of any interest, late charges, or penalties incurred by the TRP from any Subcontractor or supplier for any items provided under the MOU.
9. Disputes: In the event that a dispute arises over an invoice, the City shall pay any undisputed portion of the amount due within the time period required for such payment,

## **ATTACHMENT D -- Memorandum of Understanding**

and any required payment of the disputed amount in accordance with existing City practices.

10. Past Expenses: Costs incurred by TRP prior to the actual date of full execution of this MOU shall only be payable to TRP if said costs were incurred in completing tasks specifically authorized by this MOU and said costs are reviewed and approved by the City and said approval for payment occurs after this MOU is fully executed.

### **ARTICLE 7- INDEPENDENT CONTRACTOR**

TRP is acting hereunder as an independent Contractor and not as an agent or employee of the City. TRP shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the City. The City shall not represent or otherwise hold itself or any of its directors, officers, partners, employees, or agents out to be an agent or employee of TRP.

### **ARTICLE 8 -- IDEMNIFICATION**

TRP will:

1. Indemnify, defend and hold the City harmless from and against any and all liability to any third party for or from loss, damage or injury to persons or property in any manner arising out of, or incident to, the performance of this work.
2. Indemnify and hold the City harmless and reimburse the State and the City as applicable if the Settlement Agreement requirements were violated.
3. Be solely responsible for any contracts entered into, or other obligations or liabilities incurred by TRP in connection with the project or otherwise relating to this MOU and the City shall have no obligation or liability whatsoever hereunder or with respect thereto.

### **ARTICLE 9 - CHANGES IN THE SCOPE OF SEP**

Changes in the scope of work for SEP as defined to be executed under this MOU will be made by amendment and require written approval by RWQCB.

### **ARTICLE 10 - TERM OF AGREEMENT**

The term of this MOU shall be from January 1, 2014 to June 30, 2016 unless terminated as provided under Article 18.

### **ARTICLE 11 - CHANGES OR MODIFICATIONS TO MOU**

Changes to this agreement may only be made by mutual written consent between representatives of the parties to this MOU.

### **ARTICLE 12 - FORCE MAJEURE**

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Oro Vista Avenue

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Notwithstanding any other provisions, the Bureau of Sanitation shall not be held responsible or liable for failure to meet its respective obligations under this MOU if such failure shall be due to causes beyond the Bureau's control. Such causes include, but are not limited to: strikes, fire, flood, civil disorder, acts of God or of the public enemy, acts of federal government or any unit of state or local government in either sovereign or contractual capacity, epidemics, quarantine restrictions, or delays in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

### **ARTICLE 13 - NON-WAIVER**

None of the provisions of this MOU shall be deemed waived unless expressly waived in writing. An omission or failure of either Party to demand or enforce strict performance of provisions of this MOU shall not be construed as a waiver or as a relinquishment of any rights. All provisions and rights shall continue and remain in full force and effect as if such omission or failure had not occurred.

### **ARTICLE 14 - SEVERABILITY**

Should any portion of this MOU be determined to be void or unenforceable, such shall be severed from the whole and the MOU will continue as modified.

### **ARTICLE 15 - DISPUTES**

Should a dispute or controversy arise concerning provisions of this MOU or the performance of work hereunder the parties may elect to submit such to representatives of the Board of Public Works and The River Project for resolution.

### **ARTICLE 16 - GOVERNING LAW**

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the City.

### **ARTICLE 17 - TRANSFER OF INTEREST**

Neither party shall assign or transfer this MOU in whole or in part without prior written consent of the other party. The consent to assign or transfer shall not be unreasonably withheld.

### **ARTICLE 18 - TERMINATION OF THE AGREEMENT**

This MOU should terminate no later than June 30, 2016. Either party may terminate this MOU for any reason in whole or in part by giving the other party, 30 calendar days written notice by certified mail with return receipt requested.

### **ARTICLE 19 - ENTIRE AGREEMENT**

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Oro Vista Avenue

## ATTACHMENT D – Memorandum of Understanding

This MOU contains all of the representation and understandings of the parties here to and supersedes and/or incorporates any previous understandings proposals, or commitments, whether oral or written, and may be modified or amended only as herein before provided.

### ARTICLE 20 - REPRESENTATIVES FOR THE PARTIES

All notices shall be made in writing and may be given by mail or by personal delivery. Such notices sent by mail should be registered or certified and sent to the designated contact person for each party and addressed as follows:

#### FOR THE DEPARTMENT OF PUBLIC WORKS

Shahram Kharaghani, Program Manager  
Watershed Protection Division, Bureau of Sanitation  
1149 S Broadway  
Los Angeles, CA 90015  
Phone: (213) 485-0587

#### FOR THE RIVER PROJECT

Melanie Winter, Executive Director  
3912 Laurel Canyon, #208  
Studio City, CA 91604  
Phone: (818) 980-9660

#### EXHIBITS

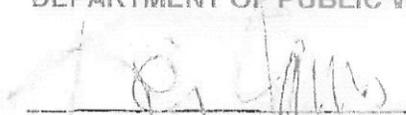
EXHIBIT A - Project Proposal

EXHIBIT B - Standard Provisions for City Contracts

ATTACHMENT D – Memorandum of Understanding

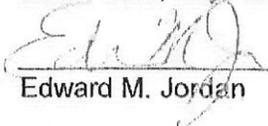
THE CITY OF LOS ANGELES  
DEPARTMENT OF PUBLIC WORKS

THE RIVER PROJECT

  
\_\_\_\_\_  
Kevin James, President Date  
Board of Public Works

  
\_\_\_\_\_  
Melanie Winter, Executive Director Date  
The River Project

APPROVED AS TO FORM:  
Mike Feuer, City Attorney

  
\_\_\_\_\_  
Edward M. Jordan Date

ATTEST:  
HOLLY L. WOLCOTT, INTERIM CITY CLERK

BY:   
\_\_\_\_\_  
Date: 6/13/14



C-124068

## ATTACHMENT B

### Scope of Work

With funding from the State Coastal Conservancy, (SCC) The River Project (TRP) has completed a program of outreach, research and design for parkway retrofits in the Panorama City neighborhood adjacent to the Woodman Avenue Median Retrofit Project. There are twenty-three (23) potential parkway retrofits in the area, which are in various stages of completion. The vast majority of parkways in the area are 7' wide. Basin sizes depend on site conditions (utilities, existing trees, etc.) and vary from 8' to 25' in length. All but one basin is 5' wide. Projects are being installed per the specifications created as part of a Los Angeles Rainwater Harvesting Program grant from the SCC (aka Water LA). The Parkway Retrofit specifications and designs for each property are included as part of this attachment.

TRP will work with our Water LA team to install up to 23 Parkway retrofits. The total number will not be less than 18 or more than 23. Final figure contingent on factors such as removal of diseased street trees and potential for related sidewalk repair. Notwithstanding these contingencies, TRP will maximize the final number of installations, utilizing funding from the Coastal Conservancy grant to supplement the balance as necessary.

Although not a part of the SEP, the results of the monitoring program, included as part of the Water LA program grant, will be provided to the Board at completion on June 30, 2016.

### Project Implementation Schedule

Copies of Project Plans articulating basin locations, sizes and planting plans, were provided with this agreement. Basin installations will be at least 50% complete by May 1, 2014 and 100% complete by June 6, 2014.

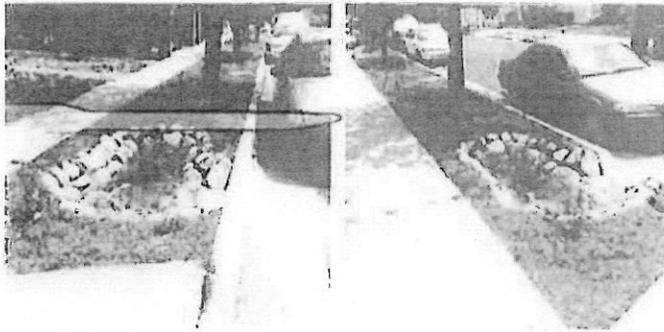
### Milestones and Deliverable Deadlines

Milestone	Deadline	Liability Excused Upon Completion
Copies of Project Plans	Included with Order	\$2,625
Photos of 50% completion	Included with Order	\$18,000
Photos of 100% completion	June 6, 2014	\$18,000
Monitoring program results, including success criteria	June 30, 2016	\$2,625

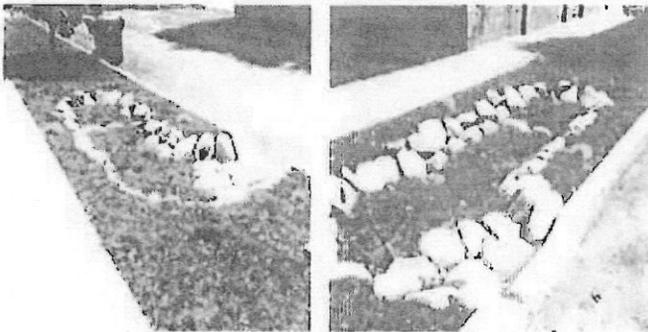
### BUDGET

Item	Average cost per installation	23 installations
Curb cuts & excavation	\$1,000	\$16,000
Disposal	\$ 200	\$ 3,200
Granite cobbles	\$ 300	\$ 4,800
Rock work	\$ 500	\$ 8,000
Plant material	\$ 100	\$ 1,600
TOTAL	\$2600	\$41,600

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City of Los Angeles; Bureau of Street Services  
Oro Vista Avenue



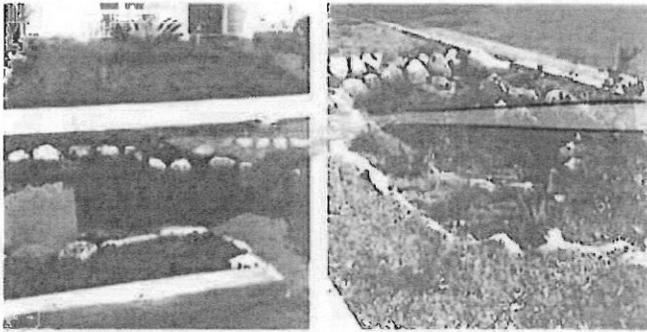
7860 Mammoth Ave.



8006 Matilija Ave.



4212 Rhodes Ave.



4229 Rohdes Ave.