

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF LA VERNE AND PARTICIPATING AGENCIES  
(CITIES OF CLAREMONT, POMONA, AND SAN DIMAS)

REGARDING THE ADMINISTRATION AND COST SHARING FOR DEVELOPMENT OF THE  
EAST SAN GABRIEL VALLEY WATERSHED MANAGEMENT PROGRAM (WMP) AND COORDINATED  
INTEGRATED MONITORING PROGRAM (CIMP)

This Memorandum of Understanding (MOU), made and entered into as of the date of the last signature set forth below by and between the CITY OF LA VERNE (Lead Agency), a municipal corporation, and PARTICIPATING AGENCIES (Cities of Claremont, Pomona, and San Dimas). Collectively, these entities shall be known herein as "Member Agencies" or individually as "Member Agency."

WITNESSETH

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

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

WHEREAS, the Member Agencies have agreed to collaborate on the compliance of certain elements of the MS4 Permit and have agreed to a cost sharing formula based on Land Area within the San Gabriel Watershed with a Base Fee, attached hereto as Exhibit A and made part of this MOU; and

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

WHEREAS, the Member Agencies collaboratively prepared a final Scope of Work and Request for Proposal to obtain a Consultant to assist the Member Agencies in complying with certain elements of the MS4 Permit; and

WHEREAS, the Member Agencies propose for the Consultant to prepare and deliver a Final Watershed Management Plan (WMP), and a Coordinated Integrated Monitoring Plan (CIMP) (collectively, PLANS) in compliance with certain elements of the MS4 Permit, at a total cost of approximately four hundred seventy thousand dollars (\$470,000); and

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

WHEREAS, the Lead Agency will act on behalf of the Member Agencies in the administration of the Consultant services agreements for the PLANS.

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

- (1) Recitals: The recitals set forth above are fully incorporated as part of this MOU.
- (2) Purpose: The purpose of this MOU is to cooperatively fund the preparation and submittal of the PLANS to the Regional Board.
- (3) Voluntary: This MOU is voluntarily entered into for the purpose of preparing and submitting the PLANS to the Regional Board.
- (4) Terms: This MOU shall become effective on the latest date of execution by a Member Agency and shall remain in effect until (i) the Regional Board's final approval date of the last outstanding portion of the PLANS, (ii) the Lead Agency has provided the Member Agencies with an accounting as set forth in paragraph (5)e, and (iii) the Member Agencies have paid all outstanding invoices.
- (5) The Lead Agency shall provide the services and performance as follows:
  - a. Upon final execution of this MOU, the Lead Agency shall invoice the Member Agencies for their share of the cost for the preparation and delivery of the PLANS as described in Exhibit A.
  - a.b. Invoicing by the Lead Agency to Member Agencies shall occur only when the Lead Agency receives invoice from the Consultant for an equal amount.
  - b.c. Solicit proposals for, award, and administer a Consultant contract(s) for the preparation and delivery of the PLANS in accordance with the Scope of Work.
  - c.d. Utilize the funds deposited by the Member Agencies only for the payment of the Consultant contract for the PLANS.
  - d.e. Provide the Member Agencies with an electronic copy of the draft and final PLANS within five (5) days of receipt from the Consultant.

e.f. Provide an accounting upon the early termination of this MOU pursuant to paragraph (6)p or 60 days after the date the Regional Board gives final approval for the last outstanding portion of the PLANS. The Lead Agency shall return the unused portion of all funds deposited with the Lead Agency in accordance with the cost allocation formula set forth in Exhibit A.

f.g. Notify the PARTIES if the actual cost of the preparation of the PLANS will exceed the cost estimates shown on Exhibit A and obtain approval of the increase from all Member Agencies. Upon approval of the cost increase by the all Member Agencies, the Lead Agency will invoice Member Agencies per cost allocation formulas in Exhibit A.

(6) THE MEMBER AGENCIES FURTHER AGREE:

a. To make a full faith effort to cooperate with one another to achieve the purposes of this MOU by providing information about project opportunities, reviewing deliverables in a timely manner, and informing their respective administrators, agency heads, and/or governing bodies.

b. To fund the cost of the preparation and delivery of the PLANS and to pay the Lead Agency for the preparation and delivery of the PLANS within thirty ( 60 30) days of receiving an invoice. Funding shall be as specified in Exhibit A.

c. To set up a Purchase Order for payment to the Lead Agency upon final execution of a contract agreement with selected consultant in accordance with the cost allocation formula in Exhibit A. Each Member Agency will also provide the Lead Agency a copy of said Purchase Order.

c.d.To grant reasonable access rights and entry to the CITY Lead Agency and the Consultant during the terms of this MOU to the Member Agency's facilities (i.e. storm drains, channels, catch basins, properties, etc.) (Collectively, THE FACILITIES) to achieve the purposes of this MOU, provided, however, that prior to entering any Member Agency's FACILITIES, the Lead Agency or their Consultant shall secure permission of entry from the applicable Member Agency.

d.e. The Lead Agency shall require the Consultant retained pursuant to this MOU to agree to indemnify, defend, and hold harmless each Member Agency, its special districts, elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert fees), arising from or connected with the Consultant's performance of its agreement with the Lead Agency. In addition, the Lead Agency shall require the Consultant to carry, maintain, and keep in full force and effect an insurance policy or policies, and each Member Agency, its

officers, employees, attorneys, and designated volunteers shall be named as additional insured's on the policy(ies) with respect to liabilities arising out of the Consultant's work.

- e.f. Each Member Agency shall indemnify, defend, and hold harmless each other Member Agency, including its special districts, elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the respective acts of each Member Agency arising from or related to this MOU; provided, however, that no Member Agency shall indemnify another Member Agency for that Member Agency's own negligence or willful misconduct.
- f.g. In light of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the Member Agencies hereto, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, shall assume the full liability imposed upon it or any of its officers, agents, or employees, by law for injury caused by any act or omission occurring in the performance of this MOU to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose, each Member Agency indemnifies, defends, and holds harmless each other Member Agency for any liability, cost, or expense that may be imposed upon such other Member Agency solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.
- g.h. The Member Agencies are, and shall at all times remain as to each other, wholly independent entities. No Member Agency to this MOU shall have power to incur any debt, obligation, or liability on behalf of any other Member Agency unless expressly provided to the contrary by this MOU. No employee, agent, or officer of a Member Agency shall be deemed for any purpose whatsoever to be an agent, employee, or officer of another Member Agency.
- h.i. Any notices, bills, invoices, or reports relating to this MOU, and any request, demand, statement, or other communication required or permitted hereunder shall be in writing and shall be delivered to the Member Agencies at the addresses set forth in Exhibit B.
- i.j. This MOU is governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

- j.k. If any provision of this MOU shall be determined by any court to be invalid, illegal, or unenforceable to any extent, the remainder of this MOU shall not be affected, and this MOU shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this MOU.
- k.l. All Member Agencies have been represented by counsel in the preparation and negotiation of this MOU. Accordingly, this MOU shall be construed according to its fair language. Any ambiguities shall be resolved in a collaborative manner by the Member Agencies and shall be rectified by amending this MOU as described in paragraph (6)m.
- l.m. Each of the persons signing below on behalf of a Member Agency represents and warrants that he or she is authorized to sign this MOU on behalf of such Member Agency.
- m.n. Each Member Agency shall have no financial obligation to the other Member Agencies of this MOU, except as herein expressly provided.
- n.o. The terms and provisions of this MOU may not be amended, modified, or waived, except by an instrument in writing signed by all Member Agencies.
- o.p. Early Termination or Withdrawal
1. This MOU may be terminated upon the express written agreement of all Member Agencies. If this MOU is terminated, all Member Agencies must agree on the equitable redistribution of remaining funds deposited, if there are any, or payment of invoices due at the time of termination. Completed work shall be owned by all Member Agencies. Rights to uncompleted work by the Consultant still under contract will be held by the Member Agency or Member Agencies who fund the completion of such work.
  2. A Member Agency may withdraw from this MOU upon sixty (60) days written notice to the other Member Agencies, subject to full payment of any current and future invoicing from Lead Agency prior to or during the 60-day notice period for its share of the cost set forth in Exhibit A. The effective withdrawal date shall be the sixtieth (60<sup>th</sup>) day after CITY receives the withdrawing Member Agency's notice to withdraw from this MOU. Withdrawal from this MOU does not release any Member Agency from the obligations set forth in the MS4 Permit.
  3. A withdrawing Member Agency will not be allowed refunds for tasks, projects or studies already underway in which funds have been obligated. Upon completion of tasks, projects or studies undertaken, if any funds are not expended, a refund

of the share of the balance shall be paid within sixty thirty (6030) days<sup>[A1]</sup> thereafter to the withdrawing PermitteeMember Agency.

4. Failure to comply with the terms of this MOU is a breach of the MOU. If a breach is not cured within sixty (60) days after receiving a notice to cure the breach by the Lead Agency, Member Agency's in breach may be terminated from this MOU by a majority vote of the Member Agencies.
5. A Member Agency terminated from this MOU will not be allowed refunds for tasks, projects or studies already underway in which funds have been obligated. Upon completion of tasks, projects or studies undertaken, if any funds are not expended, a refund of the share of the balance shall be paid within thirty (30) days thereafter to the Member Agency terminated from this MOU.
- 4.6. A Member Agency terminated from this MOU is liable for full payment of any current and future invoicing from Lead Agency, for costs incurred prior to termination, according to its share of the cost set forth in Exhibit A.
7. Non-compliance with MS4 Permit Requirements. Any Member Agency found in non-compliance with the conditions of the MS4 Permit within their jurisdictional responsibilities shall be solely liable for any assessed penalties, pursuant to Section 13385 of the Water Code.

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

CITY OF LA VERNE

By \_\_\_\_\_ Date \_\_\_\_\_  
DON KENDRICK, MAYOR

ATTEST:

By \_\_\_\_\_ Date \_\_\_\_\_  
LUPE ESTRELLA, DEPUTY CITY CLERK

APPROVED AS TO FORM:

By \_\_\_\_\_  
ROBERT KRESS, CITY ATTORNEY

DRAFT

CITY OF CLAREMONT

By \_\_\_\_\_ Date \_\_\_\_\_  
OPANYI NASIALI, MAYOR

ATTEST:

By \_\_\_\_\_ Date \_\_\_\_\_  
LYNNE FRYMAN, CITY CLERK

APPROVED AS TO FORM:

By \_\_\_\_\_ Date \_\_\_\_\_  
CITY ATTORNEY

DRAFT



CITY OF POMONA

By \_\_\_\_\_ Date \_\_\_\_\_  
ELLIOTT ROTHMAN, MAYOR

ATTEST:

By \_\_\_\_\_ Date \_\_\_\_\_  
ANTHONY J. MEJIA, CITY CLERK

APPROVED AS TO FORM:

By \_\_\_\_\_ Date \_\_\_\_\_  
ARNOLD ALVAREZ-GLASMAN, CITY  
ATTORNEY

DRAFT

CITY OF SAN DIMAS

By \_\_\_\_\_  
CURTIS W. MORRIS, MAYOR \_\_\_\_\_  
Date \_\_\_\_\_

ATTEST:

By \_\_\_\_\_  
KENNETH DURAN, ASSISTANT CITY  
MANAGER /TREASURER CITY CLERK \_\_\_\_\_  
Date \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_  
J. KENNETH BROWN, CITY ATTORNEY \_\_\_\_\_  
Date \_\_\_\_\_

DRAFT

**EXHIBIT A**

**East San Gabriel Valley Watershed WMP Funding Contributions**

**Total Contract Costs**

Project Component		Cost
Consultant Contract for WMP Development		\$ 370,875
WMP Subtotal		<b>\$ 370,875</b>
Consultant Contract for CIMP Development		\$ 98,820
CIMP Subtotal		<b>\$ 98,820</b>
Total		<b>\$ 469,695</b>

**Cost Allocation Formula**

The responsibility for payment of all shared costs of the PLANS shall be distributed among the PARTIES (i.e., the Cities of Claremont, La Verne, Pomona, and San Dimas) as follows:

<b>Cost Sharing Formula - Land Area Percentage in the SG Watershed plus base fee of 50%</b>					
<b>East San Gabriel Valley Watershed Management Area</b>					
Jurisdiction	Sq. Miles <sup>1</sup>	% Land Area	Base fee 50%	Distributed Area Costs <sup>2</sup>	Total
Claremont	9.047	0.2094	<b>\$58,711,0.88</b>	\$49,172.96	\$107,884.84
La Verne	8.43	0.1951	<b>\$58,711,0.88</b>	\$45,819.40	\$104,531.27
Pomona	12.389	0.2867	<b>\$58,711,0.88</b>	\$67,337.66	\$126,049.54
San Dimas	13.342	0.3088	<b>\$58,711,0.88</b>	\$72,517.48	\$131,229.36
Total	43.208	1.0000	<b>\$2340,847.50</b>	\$234,847.50	\$4069,695.00

**Sample Plan Cost is based on a \$469,695 estimated plan cost**

**Sample Plan Cost is \$234,847.50 after subtraction of the 50% base fee**

- (1) Excludes the U.S. Forestry in Claremont, La Verne, and San Dimas, and excludes the Santa Ana River Watershed in Claremont and Pomona (will be addressed in CBRP).
- (2) Total Cost minus Fifty-Percent (50%) Base Fee

Cost Allocation Formula is: Distributed Area Cost = Remaining Total Sample Cost After Subtraction of Base Fee x Agency Percent of Land Area

EXHIBIT B

East San Gabriel Valley Watershed WMP  
Responsible Agencies Representatives

1. City of Claremont  
207 Harvard Avenue  
Claremont, CA 91711  
Party Representative: Loretta Mustafa, Acting City Engineer  
E-mail: lmustafa@ci.claremont.ca.us  
Phone: (909) 399-5480
2. City of La Verne  
3660 "D" Street  
La Verne, CA 91750  
Party Representative: JR Ranells  
E-mail: jranells@ci.pomona.ca.us  
Phone: (909) 596-8710
3. City of Pomona  
505 South Garey Avenue  
Pomona, CA 91766  
Party Representative: Julie Carver  
E-mail: Julie\_Carver@ci.pomona.ca.us  
Phone: (909) 620-3628
4. City of San Dimas  
245 East Bonita Avenue  
San Dimas, 91773  
Party Representative: Latoya Cyrus  
E-mail: lcyrus@ci.san-dimas.ca.us  
Phone: (909) 394-6244