

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,
THE COUNTY OF LOS ANGELES, AND
THE CITY OF SANTA CLARITA**

**REGARDING THE ADMINISTRATION AND COST SHARING FOR DEVELOPMENT
OF THE ENHANCED WATERSHED MANAGEMENT PROGRAM AND
COORDINATED INTEGRATED MONITORING PROGRAM
FOR THE UPPER SANTA CLARA RIVER WATERSHED**

This Memorandum of Understanding (MOU), is made and entered into as of the date of the last signature set forth below by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT (LACFCD), a political subdivision of the State of California, the COUNTY OF LOS ANGELES (LA COUNTY), a political subdivision of the State of California, and the CITY OF SANTA CLARITA (CITY), a municipal corporation. Collectively, these entities shall be known herein as "PARTIES" or individually as "PARTY."

WITNESSETH

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

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

WHEREAS, the MS4 Permit identified the PARTIES as the MS4 permittees that are responsible for compliance with the MS4 Permit requirements pertaining to the upper Santa Clara River; and

WHEREAS, the PARTIES have agreed to collaborate in the development of an Enhanced Watershed Management Program (EWMP) and Coordinated Integrated Monitoring Plan (CIMP) for the Upper Santa Clara River watershed areas and facilities controlled by LACFCD, LA County and the City to comply with certain elements of the MS4 Permit; and

WHEREAS, the PARTIES collaboratively prepared a final Scope of Work to obtain a consultant (the Consultant) to assist the PARTIES with complying with certain elements of the MS4 Permit, as specified in the Scope of Work, which is incorporated into this MOU by reference; and

WHEREAS, the CITY solicited proposals and the PARTIES selected the Consultant, Larry Walker and Associates, to prepare and deliver a Final Work Plan, Draft Enhanced Watershed Management Program (EWMP) plan, Coordinated Integrated Monitoring Program (CIMP), and the Final EWMP plan (collectively, PLANS) in compliance with certain elements of the MS4 Permit; and

WHEREAS, the PARTIES have determined that hiring the Consultant to prepare and deliver the PLANS will be beneficial to the PARTIES and they have agreed to contribute funds to the CITY who will contract with the Consultant for the preparation of the PLANS. The PARTIES desire to participate and will provide funding in accordance with the cost allocation formula shown in Exhibit A; and

WHEREAS, the PARTIES have agreed that the total cost for developing the PLANS shall not exceed \$846,732 including project administration and 10% contingency; and

WHEREAS, the PARTIES agree each shall assume full and independent responsibility for ensuring its own compliance with the MS4 Permit and Total Maximum Daily Loads (TMDLs) despite the collaborative approach of this MOU.

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

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

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

Section 3. Voluntary: This MOU is voluntarily entered into for the purpose of preparing and submitting the PLANS to the Regional Board.

Section 4. Terms: This MOU shall become effective on the latest date of execution by a PARTY, and shall remain in effect until (i) the Regional Board's final approval date of the last outstanding portion of the PLANS, (ii) The City has provided the PARTIES with an accounting as set forth in section 5(f), and (iii) the PARTIES have paid all outstanding invoices.

Section 5. CITY AGREES:

- a. To solicit proposals for, award and administer the Consultant contract for the preparation and delivery of the PLANS in accordance with the Scope of Work. CITY will be compensated for the administration and management of the Consultant contract at a percentage of TEN percent (10 %) of the total contract cost for development of the PLANS as described in Exhibit A.

- b. To invoice the PARTIES after the execution of this MOU for their share of the cost for the preparation and delivery of the PLANS as described in Exhibit A. The PARTIES shall pay CITY the amount invoiced within sixty (60) days of receiving the invoice from CITY.
- c. Contingency: CITY will notify the PARTIES if actual expenditures are anticipated to require use of the contingency funds specified in Exhibit A and will obtain written approval of such expenditures from all PARTIES prior to expenditures. Expenditures that exceed the 10% contingency will require an amendment of this MOU.
- d. To utilize the funds deposited by the PARTIES only for the administration of the Consultant contract, project management, and the preparation and completion of the PLANS.
- e. To provide the PARTIES with an electronic copy of the technical memos, draft PLANS, and the completed PLANS within 7 business days after receipt from the Consultant.
- f. To provide an accounting upon the early termination of this MOU pursuant to section 8 or 60 days after the date the Regional Board gives final approval to the last outstanding portion of the PLANS, or June 20, 2016, whichever comes first. At the completion of the accounting, CITY shall return the unused portion of all funds deposited with CITY in accordance with the cost allocation formula set forth in Exhibit A.
- g. To instruct the Consultant to not submit any PLANS to the Regional Board unless and until the PLANS have been approved, in writing, for submittal by all PARTIES to this MOU, which approval will not be unreasonably withheld. If the PARTIES cannot agree upon the final language of the PLANS to be submitted to the Regional Board, then this MOU shall terminate and the PARTIES shall each be entitled to copies of the Consultant's materials prepared to date for use by each individual PARTY.

Section 6. THE PARTIES FURTHER AGREE:

- a. To make a full faith effort to cooperate with one another to achieve the purposes of this MOU by providing information about project opportunities, reviewing deliverables in a timely manner, and informing their respective administration, agency heads, and/or governing body.
- b. To fund the cost of the preparation and delivery of the PLANS and to pay CITY for the preparation and delivery of the PLANS based on the cost allocation set forth in Exhibit A.

- c. To grant reasonable access and entry to the Consultant, on an as needed basis during the term of this MOU, to the PARTIES' storm drains, channels, catch basins, and similar properties (FACILITIES) to achieve the purposes of this MOU, provided, however, that prior to entering any of the PARTIES' FACILITIES, the Consultant shall secure written authorization 72 hours in advance of entry from the applicable PARTY.
- d. The CITY shall require the Consultant retained pursuant to this MOU to agree to indemnify, defend and hold harmless each PARTY, its special districts, elected and appointed officers, employees, agents, attorneys, and designated volunteers 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 CITY. In addition, CITY shall require the Consultant to carry, maintain, and keep in full force and effect an insurance policy or policies, and each PARTY, its officers, employees, agents, attorneys, and designated volunteers shall be named as additional insureds on the policy(ies) with respect to liabilities arising out of the Consultant's work. These requirements will also apply to any subcontractors hired by the Consultant.

Section 7. Indemnification

- a. Each PARTY shall indemnify, defend, and hold harmless each other PARTY, including its special districts, elected and appointed officers, employees, agents, attorneys, and designated volunteers from and against any and all liability, including, but not limited to demands, claims, actions, fees, costs, and expenses (including reasonable attorney's and expert witness fees), arising from or connected with the respective acts of each PARTY arising from or related to this MOU; provided, however, that no PARTY shall indemnify another PARTY for that PARTY'S own negligence or willful misconduct.
- b. In light of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the PARTIES hereto, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, shall assume the full liability imposed upon it or any of its officers, agents, or employees, by law for injury caused by any act or omission occurring in the performance of this MOU to the same extent such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose, each PARTY indemnifies, defends, and holds harmless each other PARTY for any liability, cost, or expense that may be imposed upon such other PARTY solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

Section 8. Termination

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

Section 9. General Provisions


- a. Notices. Any notices, bills, invoices, or reports relating to this MOU, and any request, demand, statement, or other communication required or permitted hereunder shall be in writing and shall be delivered to the representatives of the PARTIES at the addresses set forth in Exhibit B attached hereto and incorporated herein by reference. Parties shall promptly notify each other of any change of contact information, including personnel changes, provided in Exhibit B. Written notice shall include notice delivered via email or fax. A notice shall be deemed to have been received on (a) the date of delivery, if delivered by hand during regular business hours, or by confirmed facsimile or by email; or (b) on the third (3) business day following mailing by registered or certified mail (return receipt requested) to the addresses set forth in Exhibit B.
- b. Administration. For the purposes of this MOU, the PARTIES hereby designate as their respective PARTY representatives the persons named in Exhibit B. The designated PARTY representatives, or their respective designees, shall administer the terms and conditions of this MOU on behalf of their respective PARTY. Each of the persons signing below on behalf of a PARTY represents and warrants that he or she is authorized to sign this MOU on behalf of such PARTY.
- c. Relationship of the Parties. The PARTIES are, and shall at all times remain as to each other, wholly independent entities. No PARTY to this MOU shall have power to incur any debt, obligation, or liability on behalf of any other PARTY unless expressly provided to the contrary by this MOU. No employee, agent, or officer of a PARTY shall be deemed for any purpose whatsoever to be an agent, employee, or officer of another PARTY.
- d. Binding Effect. This MOU shall be binding upon, and shall be to the benefit of the respective successors, heirs, and assigns of each PARTY; provided,

however, no PARTY may assign its respective rights or obligations under this MOU without the prior written consent of the other PARTIES.

- e. Amendment. The terms and provisions of this MOU may not be amended, modified, or waived, except by an instrument in writing signed by all non-delinquent PARTIES.
- f. Law to Govern. This MOU is governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.
- g. Severability. If any provision of this MOU shall be determined by any court to be invalid, illegal, or unenforceable to any extent, then 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.
- h. Entire Agreement. This MOU constitutes the entire agreement of the PARTIES with respect to the subject matter hereof.
- i. Waiver. Waiver by any PARTY to this MOU of any term, condition, or covenant of this MOU shall not constitute a waiver of any other term, condition, or covenant. Waiver by any PARTY to any breach of the provisions of this MOU shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this MOU.
- j. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute but one and the same instrument, provided, however, that such counterparts shall have been delivered to all PARTIES to this MOU.
- k. All PARTIES have been represented by counsel in the preparation and negotiation of this MOU. Accordingly, this MOU shall be construed according to its fair language. Any ambiguities shall be resolved in a collaborative manner by the PARTIES and shall be rectified by amending this MOU as described in Section 9(e).

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


COUNTY OF LOS ANGELES

By 
GAIL FARBER
Director of Public Works

8/19/13
Date

APPROVED AS TO FORM:

John F. Krattli
County Counsel

By 
Associate

8/5/2013
Date

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

By  8/19/13
GAIL FARBER Date
Chief Engineer


APPROVED AS TO FORM:

John F. Krattli
County Counsel

By  8/5/2013
Associate Date

CITY OF SANTA CLARITA

By


KENNETH STRIPLIN
City Manager

7/24/13
Date

ATTEST:

By


City Clerk

8/1/13
Date

APPROVED AS TO FORM:

By



JOSEPH M. MONTES
City Attorney

EXHIBIT A

Upper Santa Clara River Watershed EWMP and CIMP Funding Contributions

Table 1. Total Contract Costs

Deliverable	Cost
Meetings and Project Management	\$91,408
Develop EWMP Work Plan	\$141,030
Develop CIMP	\$99,930
Develop EWMP Plan	\$367,410
Base Contract Cost	\$699,778
10% Contract Contingency	\$69,978
Contract Cost	\$769,756

Table 2. Total Cost

Item	Total Cost
Contract Cost	\$769,756
City of Santa Clarita Contract Administration (10% of Contract Cost)	\$76,976
Estimated Total Cost	\$846,732

Table 3. Cost Allocation Formula

Party	Land Area (Acres)	Percent of Combined Land Area	Contribution per Land Area	Total Contribution
Los Angeles County Flood Control District	N/A	N/A	N/A	\$84,673
County of Los Angeles	81,972.1	67.5%	\$514,390	\$514,390
Santa Clarita	39,450.9	32.5%	\$247,669	\$247,669
Total	121,423.0	100.0%	\$762,059	\$846,732

Table 4. Total Project Contributions

Invoicing	1st Invoice (50%) Fiscal Year 2013-14	2nd Invoice (50%) Fiscal year 2014-15	Total
Los Angeles County Flood Control District	\$42,336	\$42,337	\$84,673
County of Los Angeles	\$257,195	\$257,195	\$514,390
City of Santa Clarita	\$123,835	\$125,834	\$247,669
Total	\$423,366	\$423,366	\$846,732

This payment plan as set forth in Table 4 is optional. Any Agency may pay the full amount in in the first payment.

EXHIBIT B

Upper Santa Clara River Watershed EWMP Responsible Agencies Representatives

1. County of Los Angeles
Department of Public Works
Watershed Management Division, 11th Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Angela George
E-mail: AGEORGE@dpw.lacounty.gov
Phone: (626) 458-4325
Fax: (626) 457-1526

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

3. City of Santa Clarita
Environmental Services Division
23920 Valencia Blvd
Santa Clarita CA 91355
Travis Lange
E-mail: tlange@santa-clarita.com
Phone: 661-286-4098
Fax: 661-255-4356