

MEMORANDUM OF AGREEMENT
BETWEEN

CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, LOS ANGELES
COUNTY FLOOD CONTROL DISTRICT, AND THE CITIES OF BEVERLY
HILLS, CULVER CITY, INGLEWOOD, SANTA MONICA, AND WEST
HOLLYWOOD

REGARDING THE ADMINISTRATION AND COST SHARING OF
IMPLEMENTING THE COORDINATED INTEGRATED MONITORING
PROGRAM FOR THE BALLONA CREEK WATERSHED

This Memorandum of Agreement (“Agreement”) is made and entered into as of the date of the last signature set forth below by and between: the City of Los Angeles, a municipal corporation; the County of Los Angeles, a political subdivision of the State of California; the Los Angeles County Flood Control District (LACFCD), a body corporate and politic; the City of Beverly Hills, a municipal corporation; the City of Culver City, a municipal corporation; the City of Inglewood, a municipal corporation; the City of Santa Monica, a municipal corporation; and the City of West Hollywood, a municipal corporation. Collectively, these entities shall be known herein as “Parties” or individually as “Party”.

RECITALS

WHEREAS, the Regional Water Quality Control Board, Los Angeles Region (“LARWQCB”) adopted the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit No. R4-2012-0175 (“MS4 Permit”) on November 8, 2012; and

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

WHEREAS, the MS4 Permit identified the Parties as permittees that are responsible for compliance with the MS4 Permit requirements pertaining to the Ballona Creek watershed in the Santa Monica Bay Watershed Management Area; and

WHEREAS, the Parties have submitted a draft Coordinated Integrated Monitoring Program (CIMP) in accordance with the MS4 Permit for the Ballona Creek watershed to the LARWQCB on June 28, 2014; and

WHEREAS, the Parties revised and resubmitted the draft CIMP to the LARWQCB on July 1, 2015, which was conditionally approved by the LARWQCB on August 7, 2015; and

WHEREAS, the Parties have agreed to collaboratively implement certain requirements of the CIMP (“Monitoring Services”); and

WHEREAS, the Monitoring Services include sample collection, in-situ measurements, laboratory analyses, design and construction of automated water sampling stations, source investigations, and water quality data reporting as provided in the CIMP, as well as the preparation of Annual Reports for the MS4 Permit that are due in December 2017 and 2018; and

WHEREAS, the City of Los Angeles has the expertise and equipment to perform the Monitoring Services consistent with the CIMP; and

WHEREAS, the Parties have agreed to cooperatively share and fully fund the estimated costs for implementation of the Monitoring Services , as contained in Exhibit A of this Agreement; and

WHEREAS, the Parties have agreed to retain the City of Los Angeles to perform the Monitoring Services on their behalf, the Parties have agreed to pay the City of Los Angeles for their share of the estimated costs of the Monitoring Services, and the City of Los Angeles is willing to provide, perform, and be reimbursed for such Monitoring Services on behalf of the Parties as indicated in Exhibit A; and

WHEREAS, the City of Los Angeles may elect to use a professional services contract with a consultant (“Consultant”) to implement part or all of the Monitoring Services; and

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

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties do hereby agree as follows:

Section 1. Recitals. The recitals set forth above are fully incorporated as part of this Agreement.

Section 2. Purpose. The purpose of this Agreement is to cooperatively fund the implementation and to coordinate the payment of the Monitoring Services.

Section 3. Cooperation. The Parties shall fully cooperate with one another to attain the purposes of this Agreement.

Section 4. Voluntary Nature. This Agreement is voluntarily entered into for the implementation of the Monitoring Services.

Section 5. Term. This Agreement shall become effective on the date of final execution by the Parties and it shall remain and continue in effect until June 30, 2018.

Section 6. Cost sharing of Monitoring Services prior to Execution of this Agreement. The Parties agree that any substantiated costs incurred by the City of Los Angeles for performing Monitoring Services prior to the execution date of this Agreement be cost-shared under this Agreement according to the amounts specified in Exhibit A and shall be included in the first invoice.

Section 7. The City of Los Angeles agrees:

- a) Monitoring Services. – The City of Los Angeles will perform the Monitoring Services in accordance with the CIMP and its applicable provisions in the MS4 Permit. Any changes in the Monitoring Services as a result of new requirements of the LARWQCB or unforeseen challenges in the field will require approval by all Parties.
- b) Water quality data reporting. – The City of Los Angeles will submit water quality data to the LARWQCB as required by the MS4 Permit. In addition, the City of Los Angeles will submit to the Parties the data used to prepare the reports. This data will be transmitted electronically in a format that contains the table structure and syntax agreed upon by the Parties, e.g., California Environmental Data Exchange Network format.
- c) Annual Reports. – The City of Los Angeles will prepare two Annual Reports for the MS4 Permit on behalf of the Parties. The first Annual Report will be due to RWQCB in December 2016 and will cover the reporting period July 2015 – June 2016. The second Annual Report will be due to RWQCB in December 2017 and will cover the reporting period July 2016 – June 2017. The City of Los Angeles will distribute draft copies of the Annual Reports for review by all Parties prior to finalizing the reports for submittal to the LARWQCB.
- d) Invoicing. - The City of Los Angeles will annually invoice the Parties as shown in Table 4 of Exhibit A.

Section 8. The Parties agree:

- a) Payment. – The Parties agree to pay the City of Los Angeles for the Monitoring Services not exceeding the amounts shown in Table 4 of Exhibit A within sixty (60) days of receipt of the invoice from the City of Los Angeles.
- b) Documentation. – The Parties agrees to provide the City of Los Angeles at no cost with all requested information and documentation that is available for release and deemed necessary to perform the Monitoring Services by the City of Los Angeles.
- c) The Parties shall allow reasonable access and entry to the City of Los Angeles or its Consultant, on an as needed basis during the term of this Agreement, to their storm drains, channels, catch basins, and similar properties to achieve the purposes of this Agreement. Prior to entering any of a Party's facilities, the City of Los Angeles shall

obtain all necessary permits and provide that Party with a written notice 72 hours in advance of entry.

Section 9. Invoice and Payment.

- a) Annual Payment. – Each Party shall pay the City of Los Angeles for its proportional share of the estimated cost for Monitoring Services as shown in Table 4 of Exhibit A within sixty (60) days of receipt of the invoice from the City of Los Angeles. The cost estimates presented in Exhibit A have been agreed upon by all Parties, and are subject to changes in the CIMP and pursuant to new LARWQCB requirements and unforeseen challenges in the field. Any changes of annual invoices are subject to sections 9(c) and 12(e) of this Agreement.
- b) Invoice. – The City of Los Angeles will invoice the Parties as shown in Table 4 of Exhibit A. The annual payments for the period of July 2015 – June 2018 will be invoiced in January of each year starting January 2016 or upon the execution of this Agreement, whichever is later.
- c) Contingency. – The City of Los Angeles will notify the Parties a minimum of thirty (30) days in advance of invoicing if actual expenditures for Monitoring Services are anticipated to exceed the cost estimates contained in Table 1 of Exhibit A and obtain written approval of such expenditures from all Parties. Upon approval of the additional expenditures, the Parties agree to pay the City of Los Angeles for their proportional share of these additional expenditures in the next annual invoice at an amount not to exceed 10 percent of the original cost estimate for Monitoring Services as shown in Table 4 of Exhibit A. This 10 percent contingency will not be invoiced, unless actual expenditures exceed the original cost estimate for Monitoring Services. Expenditures that exceed the 10 percent contingency will require an amendment of this Agreement.
- d) Reconciliation of this Agreement. – The City of Los Angeles will provide an accounting upon termination of this Agreement within 90 days of said termination. At the completion of the accounting, the City of Los Angeles shall return any unused portion of all funds deposited with the City of Los Angeles for variable costs within 180 days of said termination. Fixed costs in Exhibit A are not subject to reconciliation. Subject to agreement by the City of Los Angeles, any funds which are to be reimbursed to a Party may be reimbursed through credits towards future invoices and agreements, if requested in writing by that Party. At the end of each fiscal year, the City of Los Angeles will provide the Parties with a statement of the actual expenditures.

Section 10. Indemnification.

- a) Each Party shall indemnify, defend, and hold harmless each other Party, including its special districts, elected and appointed officers, employees, and agents, from and

against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the respective acts of each Party arising from or related to this Agreement; 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 Agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose, each Party indemnifies, defends, and holds harmless each other Party for any liability, cost, or expense that may be imposed upon such other Party solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

Section 11. Early Withdrawal or Termination of Agreement.

- a) Each Party may withdraw from this Agreement for any reason, in whole or part, by giving the other Parties thirty (30) days written notice thereof. The withdrawing Party shall remain wholly responsible for its proportional share of the cost that were incurred up to the date of withdrawal. Completed work shall be owned by the Party or Parties who fund the completion of such work. 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) The City of Los Angeles shall notify in writing all Parties within fourteen (14) days of receiving written notice from any Party that elects to withdraw from cost sharing of Monitoring Services before the end of the term of this Agreement.
- c) The City of Los Angeles may notify the LARWQCB of any Party that has elected to withdraw from this Agreement before its end of the term. Each Party shall be responsible for the payment of its own fines, penalties, and costs incurred as a result of that Party's non-performance of the CIMP.
- d) This Agreement may be terminated before the end of the term if agreed upon by all Parties to this Agreement.

Section 12. General Provisions.

- a) Notices. Any notices, bills, invoices, or reports relating to this Agreement, and any request, demand, statement or other communication required or permitted hereunder shall be in writing and shall be delivered to the Representative of the Party at the address set forth in Exhibit B. Parties shall promptly notify each other of any change of contact information, including personnel changes, provided in Exhibit B. Written

notice shall include notice delivered via email or fax. A notice shall be deemed to have been received on (a) the date of delivery, if delivered by hand during regular business hours, or by confirmed facsimile or by email; or (b) on the third (3) business day following mailing by registered or certified mail (return receipt requested) to the addresses set forth in Exhibit B.

- b) Administration. For the purposes of this Agreement, 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 Agreement on behalf of their respective Party. Each of the persons signing below on behalf of a Party represents and warrants that they are authorized to sign this Agreement on behalf of such Party.
- c) Relationship of Parties. The Parties are and shall remain at all times as to each other, wholly independent entities. No Party to this Agreement shall have power to incur any debt, obligation, or liability on behalf of another Party unless expressly provided to the contrary by this Agreement. 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 Agreement shall be binding upon and inure to the benefit of each Party to this Agreement and their respective heirs, administrators, representatives, successors and assigns.
- e) Amendment. The terms and provisions of this Agreement may not be amended, modified or waived, except by an instrument in writing signed by all the non-delinquent Parties. For purposes of this subsection, a Party shall be considered delinquent if that Party fails to timely pay an invoice as required by Sections 8(a) and 9(a), or withdraws pursuant to Section 11(a). Such amendments may be executed by those individuals listed in Exhibit B or by a responsible individual as authorized by the governing body of each Party.
- f) Waiver. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party to any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement.
- g) Law to Govern; Venue. This Agreement shall be interpreted, construed, and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in the state trial courts shall lie exclusively in the County of Los Angeles.
- h) No Presumption in Drafting. The Parties to this Agreement agree that the general rule that an Agreement is to be interpreted against the Party drafting it, or causing it to be prepared shall not apply.

- i) Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, whether written or oral, with respect thereto.
- j) Severability. If any term, provision, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and this Agreement shall be read and constructed without the invalid, void, or unenforceable provision(s).
- k) Counterparts. This Agreement 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 Agreement.
- l) All Parties have been represented by counsel in the preparation and negotiation of this Agreement. Accordingly, this Agreement shall be construed according to its fair language. Any ambiguities shall be resolved in a collaborative manner by the Parties and shall be rectified by amending this Agreement as described in Section 12(e).

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on their behalf, respectively, as follows:

CITY OF LOS ANGELES

Date: _____

By: _____
Kevin L. James, President
Board of Public Works

ATTEST:

By: _____
Holly L. Wolcott
City Clerk

APPROVED AS TO FORM:

Michael N. Feuer
City Attorney

By: _____
Laurie Rittenberg
Assistant City Attorney

CITY OF BEVERLY HILLS

Date: _____

By: _____
Mahdi Aluzri, City Manager

ATTEST:

George Chavez
Assistant City Manager/
Director of Public
Works & Transportation

APPROVED AS TO FORM:

By: _____
Laurence Wiener
City Attorney

CITY OF CULVER CITY

Date: _____

By: _____

John Nachbar
City Manager

APPROVED AS TO CONTENT

Charles D. Herbertson, P.E. & L.S.
Public Works Director/City Engineer

APPROVED AS TO FINANCING:

Jeff Muir
Chief Financial Officer

APPROVED AS TO FORM:

By: _____
Carol Schwab
City Attorney

CITY OF INGLEWOOD

Date: _____

By: _____

James T. Butts
Mayor

ATTEST:

By: _____

Yvonne Horton
City Clerk

APPROVED AS TO FORM:

By: _____

Kenneth R. Campos
City Attorney

CITY OF SANTA MONICA

Date: _____

By: _____
Rick Cole, City Manager

ATTEST:

By: _____
Denise Anderson-Warren
Acting City Clerk

APPROVED AS TO FORM:

By: _____
Marsha Jones Moutrie,
City Attorney

CITY OF WEST HOLLYWOOD

Date: _____

By: _____

Paul Arevalo
City Manager

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____

Michael Jenkins
City Attorney

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

By _____
GAIL FARBER
Chief Engineer

_____ Date

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By _____
Deputy

_____ Date

COUNTY OF LOS ANGELES

By _____
GAIL FARBER
Director of Public Works

Date

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By _____
Deputy

Date

EXHIBIT A
Total Estimated Cost-Sharing for Ballona Creek CIMP and
Invoicing by City of Los Angeles

Table 1. Total Estimated Cost of Monitoring Services.

CIMP Component⁽¹⁾	Fiscal Year 15-16⁽⁴⁾	Fiscal Year 16-17	Fiscal Year 17-18	Total
Receiving Water Monitoring	\$ 424,000	\$ 371,500	\$ 371,500	\$1,167,000
Storm Water Outfall Monitoring	\$ 28,500	\$ 46,500	\$ 64,500	\$ 139,500
Non-Storm Water Outfall Monitoring	\$ 109,000	\$ 139,000	\$ 38,500	\$ 286,500
Reporting & Data Management ⁽²⁾ (15%)	\$ 84,000	\$ 83,500	\$ 71,000	\$ 238,500
Capital Expenses	\$ 174,000	\$ 81,000	\$ 81,000	\$ 336,000
Operation & Maintenance Expenses ⁽²⁾ (6%)	\$ 46,500	\$ 51,000	\$ 51,000	\$ 148,500
Contracted Services: Annual Report, Data Tools, On-call support	\$ 308,000	\$ 212,500	\$ 212,500	\$ 733,000
Program Management ⁽²⁾ (5%)	\$ 58,500	\$ 49,500	\$ 44,500	\$ 152,500
General Monitoring Cost (Sub-Total)	\$1,232,500	\$1,034,500	\$ 934,500	\$3,201,500
Annual Escalation ⁽²⁾ (2%, 2%, 2%) ⁽³⁾	\$ 24,500	\$ 42,000	\$ 57,000	\$ 123,500
Annual Monitoring Cost (Total)	\$1,257,000	\$1,076,500	\$ 991,500	\$3,325,000
⁽¹⁾ Costs not including contingency.				
⁽²⁾ Fixed costs are not subject to reconciliation.				
⁽³⁾ Cost estimates were developed in 2014 dollars.				
⁽⁴⁾ Cost incurred prior to execution of this Agreement are included in Fiscal Year 2015-16				

Table 2. LACFCD Contribution.

Cost⁽¹⁾	Fiscal Year 15-16	Fiscal Year 16-17	Fiscal Year 17-18	Total
Total Estimated Annual Cost	\$1,257,000	\$1,076,500	\$991,500	\$3,325,000
LACFCD contribution (5%)	\$62,850	\$53,825	\$49,575	\$166,250
Remaining cost for Ballona Creek Watershed Management Area	\$1,194,150	\$1,022,675	\$941,925	\$3,158,750
⁽¹⁾ Costs not including contingency.				

Table 3. Cost Allocation Formula and Total Cost for Other Agencies.

Agency	Acres ⁽¹⁾	% of Area	Total Cost ⁽²⁾
City of Los Angeles	65,272.89	83.22	\$2,628,712
County of Los Angeles	3,164.76	4.03	\$127,298
City of Beverly Hills	3,618.95	4.61	\$145,618
City of Culver City	3,125.00	3.98	\$125,718
City of Inglewood	1,907.72	2.43	\$76,758
City of West Hollywood	1,135.00	1.45	\$45,802
City of Santa Monica	217.31	0.28	\$8,845
Total	78,441.63	100	\$3,158,750
⁽¹⁾ Land areas as defined in the Balona Creek CIMP.			
⁽²⁾ Costs not including contingency.			

Table 4. Invoicing by City of Los Angeles and Contingency.

Agency	Fiscal Year 15-16 ⁽¹⁾	Fiscal Year 16-17 ⁽¹⁾	Fiscal Year 17-18 ⁽¹⁾	Total	Conti- gency ⁽²⁾
LACFCD	\$ 62,850	\$ 53,825	\$ 49,575	\$ 166,250	\$16,625
City of Los Angeles	\$ 993,772	\$ 851,070	\$ 783,870	\$2,628,712	\$262,871
County of Los Angeles	\$ 48,124	\$ 41,214	\$ 37,960	\$ 127,298	\$12,730
City of Beverly Hills	\$ 55,050	\$ 47,145	\$ 43,423	\$ 145,618	\$14,562
City of Culver City	\$ 47,527	\$ 40,702	\$ 37,489	\$ 125,718	\$12,572
City of Inglewood	\$ 29,018	\$ 24,851	\$ 22,889	\$ 76,758	\$7,676
City of West Hollywood	\$ 17,315	\$ 14,829	\$ 13,658	\$ 45,802	\$4,580
City of Santa Monica	\$ 3,344	\$ 2,863	\$ 2,637	\$ 8,845	\$884
Total	\$1,257,000	\$1,076,500	\$ 991,500	\$3,325,000	\$332,500
⁽¹⁾ Invoicing will be in January of each fiscal year or upon the execution of this agreement, whichever comes later.					
⁽²⁾ Contingency will not be invoiced unless there is a need for using it, as agreed upon by all Parties.					

EXHIBIT B
Ballona Creek Watershed
Party Representatives

1. City of Los Angeles
Watershed Protection Division
1149 South Broadway Blvd.
Los Angeles, CA 90015
Mail Stop: 1149-756
Party Representative: Hubertus Cox
hubertus.cox@lacity.org
Phone No.: (213) 485-3984
Fax: (213) 485-3939
2. County of Los Angeles,
Department of Public Works
Watershed Management Division, 11th floor
900 South Fremont Ave.
Alhambra, CA 91803-1331
Party Representative: Paul Alva, Principal Engineer
PALVA@dpw.lacounty.org
Phone No.: (626) 458-4325
Fax: (626) 457-1526
3. Los Angeles County Flood Control District Department
Department of Public Works
Watershed Management Division, 11th Floor
900 South Fremont Ave.
Alhambra, CA 91803-1331
Party Representative: Angela George
AGEORGE@dpw.lacounty.org
Phone No.: (626) 458-4300
Fax: (626) 457-1526
4. City of Beverly Hills
Environmental Compliance and Sustainability Programs
345 Foothill Road
Beverly Hill, CA 90210
Party Representative: Josette Descalzo
jdescalzo@beverlyhills.org
Phone No.: (310) 285-2554
Fax: (310) 278-1838

5. City of Culver City
9770 Culver Blvd., 2nd Floor
Culver City, CA 90232-0507
Party Representative: Charles D. Herbertson, Director of Public Works/City Engineer
charles.herbertson@culvercity.org
Phone No.: (310) 253-5630
Fax: (310) 253-5626
6. City of Inglewood
Public Works Department
1 Manchester Blvd.
Inglewood, CA 90301
Party Representative: Lauren Amimoto, Senior Administrative Analyst
lamimoto@cityofinglewood.org
Phone No.: (310) 412-5192
Fax: (310) 412-5552
7. City of West Hollywood
Department of Transportation and Public Works
8300 Santa Monica Blvd.
West Hollywood, CA 90069-6216
Party Representative: Sharon Perlstein, City Engineer
Sperlstein@weho.org
Phone No.: (323) 848-6368
Fax: (323) 848-6564
8. City of Santa Monica
Office of Sustainability & the Environment
1717 4th Street, Suite 100
Santa Monica, CA 90401
Party Representative: Neal Shapiro, Urban Runoff Management Coordinator
Neal.Shapiro@smgov.net, www.santa-monica.org/environment
Phone No.: (310) 458-8223
Fax: (310) 393-1279