

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITIES OF BEVERLY HILLS AND CULVER CITY  
TO JOINTLY DEVELOP THE CULVER BOULEVARD STORMWATER  
FILTRATION/RETENTION REGIONAL PROJECT**

This Memorandum of Understanding (MOU) is made and entered into by the City of Beverly Hills (“Beverly Hills”), a municipal corporation, and the City of Culver City (“Culver City”), a municipal corporation. Beverly Hills and Culver City are collectively referred to herein as the “parties.”

WITNESSETH

WHEREAS, both parties are under obligations to comply with the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System Permit (MS4 Permit) for Los Angeles County, NPDES Permit No. CAS004001, and the Enhanced Watershed Management Program Plan for the Ballona Creek Watershed (EWMP Plan) adopted by Beverly Hills, Culver City, the Cities of Inglewood, Los Angeles, West Hollywood, and Santa Monica, the County of Los Angeles and the Los Angeles County Flood Control District, and approved by the Los Angeles Regional Water Quality Control Board;

WHEREAS, the parties have agreed to jointly develop the Culver Boulevard Stormwater Filtration/Retention Regional Project (“Project”) in order to assist both parties to comply with their respective obligations under the MS4 Permit and the EWMP Plan by strategically intercepting runoff before it is discharged into the Ballona Creek channel;

WHEREAS, the Project will be designed to reduce sediments, bacteria, metals and other pollutants from entering Ballona Creek and will improve the water quality of the Ballona Creek Watershed;

WHEREAS, the parties estimate that the Project will capture and treat up to 19.51 acre-feet of stormwater in a 24-hour period from a 796-acre drainage area;

WHEREAS, Section 7.1 of the EWMP Plan measures compliance by the volume of stormwater captured and managed by the control measures implemented within each agency’s jurisdiction. The required volume is the amount of stormwater released over the course of a 24-hour period under the 90th percentile storm event. The volume of captured stormwater is attributed to each jurisdiction under the EWMP Plan’s implementation strategy;

WHEREAS, Beverly Hills is currently required to retain a total of 87 acre feet of stormwater, using both private and public best management practices (BMPs);

WHEREAS, on May 14, 2018, the Los Angeles Regional Water Quality Control Board (“Regional Board”) authorized a “Structural BMP Capacity” credit for Beverly Hills in exchange for Beverly Hills’ financial contribution toward the Project under Section 7.1 of the EWMP Plan. The credit provided to Beverly Hills is attributed to its retention

requirement under the EWMP Plan despite the Project's location outside of Beverly Hills' boundaries and subwatershed;

WHEREAS, 13.05 acre-feet (of a total of 19.51 acre-feet) represents the treatment volume required for the 297 acres within Culver City and, therefore, 6.46 acre-feet remain available for Structural BMP Capacity credit trading by Culver City;

WHEREAS, the Structural BMP Capacity credit provided to Beverly Hills under this Project is set forth by the formula outlined in this MOU and is expected to be approximately 4.4 acre feet;

WHEREAS, the Regional Board is expected to approve the Structural BMP Capacity credit attributable to Beverly Hills by way of an amendment to the EWMP Plan that exchanges the City's obligation to construct the equivalent of 4.4 acre feet of green streets with the 4.4 acre feet of capacity achieved by the City's financial participation in the Project under this Agreement.

WHEREAS, the Structural BMP Capacity credit provided to Beverly Hills under this Project is based on the actual sizing of the Project. This requirement is based on the Regional Board's letter dated May 14, 2018.

WHEREAS, the parties currently estimate that the total capital costs of the Project will be \$15,557,593;

WHEREAS, Beverly Hills desires to contribute \$3,500,000 to the Project's capital costs in exchange for Structural BMP Capacity credits from Culver City;

WHEREAS, Culver City has applied for and obtained grant funding for the Project in the amount of \$7,778,796 under the State Water Resources Control Board's Proposition 84 grant program;

WHEREAS, Culver City will provide the remaining funds for the Project's capital costs, currently estimated to be \$4,278,797;

WHEREAS, Beverly Hills will also be contributing its fair share of 23% toward the costs of operating and maintaining Project;

WHEREAS, Culver City, in its capacity as the Project's lead agency under the California Environmental Quality Act (CEQA), adopted a Mitigated Negative Declaration (State Clearinghouse No. 2018121033) and filed a Notice of Determination for the Project; and

WHEREAS, this MOU is intended to memorialize the parties' expectations and understanding of their obligations and benefits in pursuing the Project.

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 facilitate the parties meeting their respective obligations under the MS4 Permit and the EWMP Plan by jointly developing the Project.

Section 3. Cooperation. The parties shall fully cooperate with one another to achieve the purposes of this MOU. The parties agree to work together in good faith, using reasonable efforts to resolve any unforeseen issues and disputes arising out of the performance of this MOU.

Section 4. Project Components. The Project will consist of four Project components:

1. **Storm Drain Diversions**. Two storm drain diversions will be constructed to divert and capture flows from the storm drains.
2. **Pre-Treatment Units**. Pre-treatment unit will be installed for each storm drain diversion structure located at Sepulveda Blvd and Harter Avenue prior to discharge into the subsurface storage structure.
3. **Subsurface storage structure**. A 10' high, 0.8-acre area, underground stormwater capture vault (8 acre-feet or 2.6 million gallons) will be installed beneath the existing median between Sepulveda Blvd and Harter Ave. The vault is intended to store urban and stormwater run-off for future irrigation use and as a holding area for excess run-off for filtration.
4. **Post-Treatment Discharge Units**. Two cartridge filter structures will enable up to 5.76 cfs maximum discharge rate. The filtered water will be returned back to the Harter Avenue storm drain, which will convey it to Ballona Creek. A separate filtration system will be used to treat the captured run-off for irrigation re-use.

Section 5. Culver City's Responsibilities and Payment of Costs. Culver City will undertake and pay for the design, construction and operation of the Project, including all of the following responsibilities:

1. Procure one or more design and construction contractors for the Project in accordance with applicable contracting laws and regulations.
2. Provide staff, consultants, and contractors deemed necessary and appropriate to manage, administer, coordinate, and oversee engineering, design, and construction management of the Project.
3. Complete the Project in accordance with this MOU and all other applicable federal, state, and local laws and regulations.

4. Manage and control all funds dedicated to the Project in accordance with sound accounting principles and distribute such funds to consultants and contractors as necessary.
5. Maintain for the expected 50-year life of the project a functional retention capacity of 19.51 acre-feet of stormwater within the Project, provided that this obligation shall survive the expiration of the MOU

Section 6. Financial Terms. The anticipated total cost for constructing the Project is estimated to be \$15,557,593.00, and the Project’s anticipated funding sources are set forth below:

<b>Funding Source</b>	<b>Amount</b>
Prop 84 Stormwater & Clean Beaches Grant	\$4,478,7965
Prop 84 Santa Monica Bay Restoration Grant	\$3,300,000
<b>Sub-Total</b>	<b>\$7,778,796</b>
Beverly Hills share of total cost of Project	\$3,500,000
Culver City share of total cost of Project	\$4,278,797
<b>Sub-Total</b>	<b>\$7,778,797</b>
<b>Total</b>	<b>\$15,557,593</b>

Beverly Hills shall contribute, and deliver to Culver City, a total amount equal to \$3,500,000 as its contribution to the Project’s capital costs, in accordance with the payment schedule set forth in Section 7. In exchange for this financial participation, Beverly Hills will receive Structural BMP Capacity credits calculated pursuant to the provisions of Section 9 of this MOU.

Proposition 84 Stormwater & Clean Beaches and Proposition 84 Santa Monica Bay Restoration Grant funding will provide an additional amount equal to \$7,778,796.00 for the Project’s capital costs.

Culver City shall be responsible for paying for, or securing other funding sources, for all remaining Project capital costs necessary to complete the Project in excess of Beverly Hills’s contribution and the Proposition 84 grant funding.

Section 7. Payment Schedule. Beverly Hills will contribute a total of \$3,500,000 toward the Project’s capital costs.

The first installment in the amount of \$1,500,000 will be paid within thirty (30) days of upon the effective date of the Regional Board’s approval of the EWMP amendment jointly submitted by the Ballona Creek EWMP Group

dated October 7, 2020, that allows Beverly Hills to receive Structural BMP Capacity credits of at least 4.4 acre feet as a result of its financial commitment to the Project, subject to a final determination of the amount of credits in accordance with the formula set forth in Section 9 when the Project is complete.

The second installment shall be paid in the amount of \$1,500,000 eight months after the first installment payment.

The final installment shall be paid in the amount of \$500,000 upon completion and acceptance of the Project by Culver City's Department of Public Works.

Culver City shall submit an invoice to Beverly Hills for each payment installment with a projected summary of expenses incurred during that period at least 30 days prior to the Beverly Hills' scheduled payment date. Notwithstanding the foregoing, Beverly Hills shall not be required to provide its funding contribution until Culver City provides an invoice for the relevant installment to Beverly Hills.

Section 8. Change Orders. If there are any change orders which affect the total cost of developing and building the Project, Culver City will send copies of these change orders to Beverly Hills' for review; provided, however, that Culver City will have the right to make the final decision regarding any change orders. If the change orders affect the total cost above \$15,557,593, Beverly Hills' contribution will not exceed \$3,500,000 towards the Project.

Section 9. Beverly Hills' Right to Structural BMP Capacity Credits. Once Project construction has been completed, Culver City has accepted the Project, and Beverly Hills has finished making its \$3,500,000 contribution to Culver City, Beverly Hills will be entitled to receive Structural BMP Capacity credits. For the purposes of this Agreement, "BMP Capacity Credit" refers to an offset of the structural BMP capacity required to be achieved under the EMWP Plan or a similar watershed planning document authorized under an NPDES permit issued by the Regional Board to regulate municipal stormwater discharges. The BMP Capacity Credits will be proportional to Beverly Hills' contribution to the total cost of developing and building the Project and will be calculated using the following formula:

$$\text{Structural BMP Capacity Credit (measured in acre feet)} = (\$3,500,000 / \text{Project's total capital cost}) \times 19.51 \text{ acre feet}$$

For purposes of this section, the Project's "total capital cost" includes the final cost associated with the Project components identified in Section 4, including the design, engineering, project management, construction, and supplies and materials necessary for building the Project.

Notwithstanding the formula stated above, Beverly Hills shall receive a minimum of 4.4 acre-ft. of Structural BMP Capacity credits if the total cost of the Project does not exceed the current estimate of \$15,557,593.

Upon completion of the Project, Culver City shall provide written notice to the Regional Board confirming all of the following: (1) the Project's completion and operational status; (2) Beverly Hills's total financial contribution to the Project; and (3) the final amount of Structural BMP Capacity credits provided to Beverly Hills under this MOU. Beverly Hills and Culver City shall take all actions necessary to ensure that the Regional Board provides in writing the Structural BMP Capacity credits provided to Beverly Hills under this MOU, including but not limited to cooperating on a further amendment to the EWMP Plan to ensure it reflects the final BMP Capacity Credit provided to Beverly Hills. This paragraph shall survive termination of the MOU.

Section 10. Financial Participation by Beverly Hills in Operating & Maintenance Costs. The annual estimated Operating and Maintenance (O&M) costs of the Project is \$100,000. Culver City shall be solely responsible for operating and maintaining the Project upon its completion. Beverly Hills will participate financially in the costs of operating and maintaining the Project by paying Culver City, annually, 23% of its operating and maintenance costs upon the entire life expectancy of the Project. Culver City will prepare an O&M agreement that will be five (5) year terms, which will include the following general provisions:

1. The set total O&M costs of the Project for a full five-year MOU;
2. Beverly Hills annual O&M costs;
3. All maintenance recommended by Project's manufacturer performed by a maintenance contractor;
4. All Project maintenance performed pursuant to a five-year maintenance MOU; and
5. Select maintenance contractor using Culver City's procurement process.

1. Under no circumstances shall Culver City's failure to properly operate or maintain the Project affect Beverly Hills' receipt of the Structural BMP Capacity credits provided under this MOU.
2. If in any case, Culver City fails to properly operate or maintain the Project that affects Beverly Hills's BMP Capacity Credit, Culver City shall return funds to Beverly Hills on a prorated amount based on the terms listed in Section 9 of this agreement and the remaining life of the project based on an estimated 50-year life span.

The provisions of this Section shall survive the expiration of this MOU.

- Section 11. Amendments. This MOU may only be modified or amended upon written mutual consent of all parties. All modifications, amendments, changes and revisions of this MOU in whole or in part, shall be binding upon the parties, so long as the same shall be in writing and executed by the parties.
- Section 12. Compliance with Laws. This MOU shall be governed by all applicable federal, state and local laws. The parties warrant that in the performance of this MOU, each shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.
- Section 13. Indemnification. Each party agrees to defend, indemnify and hold harmless the other party, their officers, agents, elected officials and employees from all liability, claims, losses and demands, including defense costs and reasonable attorneys' fees, whether resulting from court action or otherwise, arising out of the negligent acts or omissions of the defending party, its officers, agents, or employees, in the performance of this MOU. The provisions of this paragraph shall survive the termination of this MOU.
- Section 14. Permitted Delay. Each party shall be excused from performing its obligations under this MOU during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire; flood; acts of God; commandeering of material, products, plants or facilities by federal, state or local government; national fuel shortage; or a material act of omission by any party; when satisfactory evidence of such cause is presented to the other party, and provided further such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.
- Section 15. Notices. Any notice sent by first class mail, postage paid, to the address and addressee, shall be deemed to have been given when in the ordinary course it would be delivered. The representatives of the parties who are primarily responsible for the administration of this MOU, and to whom notices, demands and communications shall be given are as follows:

City of Beverly Hills  
Attn: Public Works Director  
455 N. Rexford Drive  
Beverly Hills CA 90210

City of Culver City  
Attn: Public Works Director/City Engineer  
9770 Culver Boulevard  
Culver City, CA 90232

- Section 16. Time of Essence. Time is of the essence for every provision hereof in which time is a factor.
- Section 17. Entire Agreement. This Agreement contains the sole and entire agreement and understanding to which the Parties and any and all prior discussions, negotiations, commitments or understandings related hereto, if any, are merged herein and superseded hereby. No representations, warranties, promises, covenants, undertakings, commitments, restrictions, or other obligations, verbal, written or otherwise, expressed or implied, other than those expressly contained herein have been made by either Party to the other.
- Section 18. Parties' Remedies. Each Party expressly agrees that damages are an inadequate remedy for a breach of this Agreement and that all provisions of this Agreement shall be specifically enforceable by either affected party.
- Section 19. Term. The effective date of this MOU shall be the date that this MOU is fully executed by the parties. This MOU shall continue in full force and effect until a notice of completion is prepared for the Project and the Project is accepted by Culver City, unless terminated earlier by mutual written agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by their duly authorized representatives as of the dates fixed below:

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**CITY OF BEVERLY HILLS**

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

CITY OF BEVERLY HILLS  
A Municipal Corporation

\_\_\_\_\_  
LESTER FRIEDMAN  
Mayor of the City of Beverly Hills, California

ATTEST:

\_\_\_\_\_  
HUMA AHMED (SEAL)  
Assistant City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

\_\_\_\_\_  
GEORGE CHAVEZ  
City Manager

\_\_\_\_\_  
SHANA EPSTEIN  
Director of Public Works

\_\_\_\_\_  
SHARON L'HEUREUX DRESSEL  
Risk Manager

**CITY OF CULVER CITY**

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

By: \_\_\_\_\_

John M. Nachbar  
City Manager

APPROVED AS TO CONTENT:

By \_\_\_\_\_

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

APPROVED AS TO FINANCING:

By \_\_\_\_\_

Onyx Jones  
Chief Financial Officer

APPROVED AS TO FORM:

By \_\_\_\_\_

Carol Schwab  
City Attorney