

MEMORANDUM OF UNDERSTANDING

**BETWEEN THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,
THE COUNTY OF LOS ANGELES, AND THE CITIES OF BALDWIN PARK, COVINA,
GLEN DORA, INDUSTRY, AND LA PUENTE**

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

This Memorandum of Understanding (MOU), 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 body corporate and politic, the COUNTY OF LOS ANGELES (COUNTY), a political subdivision of the State of California, and the CITIES OF BALDWIN PARK, COVINA, GLEN DORA, INDUSTRY, AND LA PUENTE, municipal corporations. Collectively, these entities shall be known herein as PARTIES or individually as PARTY.

WITNESSETH

WHEREAS, the California Regional Water Quality Control Board – Los Angeles Region (Regional Board) adopted the 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 LACFCD, COUNTY, and 84 of the 88 cities (excluding Avalon, Lancaster, Long Beach, and Palmdale) within the Los Angeles County comply with the prescribed elements of the MS4 Permit; and

WHEREAS, the MS4 Permit identified the PARTIES as MS4 permittees that are responsible for compliance with the MS4 Permit requirements pertaining to the San Gabriel River Watershed Management Area; and

WHEREAS, the PARTIES have agreed to collaborate in the development of an Enhanced Watershed Management Program (EWMP) for portions of the San Gabriel River Watershed Management Area to comply with certain elements of the MS4 Permit; and

WHEREAS, the PARTIES collaboratively prepared a final Scope of Work to obtain a consultant (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 PARTIES propose engaging a Consultant as set forth in Section 5(a), below, to prepare and deliver a Final Work Plan, Draft EWMP Plan, Coordinated Integrated Monitoring Program (CIMP), and Final EWMP Plan (collectively, PLANS) in compliance with certain elements of the MS4 Permit; and

WHEREAS, the PARTIES have determined hiring the Consultant to prepare and deliver the PLANS will be beneficial to the PARTIES and they have agreed to contribute funds to COUNTY 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 Table 3 of Exhibit A; and

WHEREAS, the PARTIES have agreed that the total cost for developing the PLANS shall not exceed \$1,489,902.10 including the contract administration cost and a 10 percent contingency; and

WHEREAS, the PARTIES agree each shall assume full and independent responsibility for ensuring its own compliance with the MS4 Permit despite the collaborative approach of the 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 of the PLANS and submittal of the PLANS to the Regional Board.

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

Section 4. Term: This MOU shall become effective on the last date of execution by a PARTY or December 28, 2013, whichever comes first, and shall remain in effect until 1) COUNTY has provided the PARTIES with an accounting as set forth in Section 5(f), 2) the PARTIES have paid all outstanding invoices, and 3) the PLANS have been approved by the Regional Board.

Section 5. COUNTY AGREES:

- a. To select a Consultant from COUNTY's as-needed watershed engineering and water quality support Consultant services contracts for the preparation and delivery of the PLANS in accordance with the Scope of Work. COUNTY will be compensated for the administration of the Consultant contract at a percentage of five percent (5 percent) of each PARTY'S contract cost for development of the PLANS as described in Table 1 of Exhibit A. COUNTY will comply with all procurement requirements applicable to said selection.

- b. To invoice the PARTIES for their share in the cost for the preparation and delivery of the PLANS, as described in Tables 3 and 4 of Exhibit A. The first invoice will be sent upon the effective date of this MOU, as set forth in Section 4, or in January 2014, whichever comes first. The second invoice will be sent in July 2014. The PARTIES shall pay COUNTY the amount invoiced within sixty (60) days of receiving the invoice from COUNTY.
- c. Contingency: COUNTY will notify the PARTIES if actual expenditures are anticipated to exceed the cost estimates contained in Exhibit A and obtain approval of such expenditures from all PARTIES. Upon written approval, the PARTIES agree to reimburse COUNTY for their proportional share of these additional expenditures at an amount not to exceed 10 percent of the original cost estimate as shown in Table 4 of Exhibit A. This 10 percent contingency will not be invoiced, unless actual expenditures exceed the original cost estimate. Expenditures that exceed the 10 percent contingency will require an amendment to this MOU.
- d. To utilize the funds deposited by the PARTIES only for the administration of the Consultant contract, and the preparation and completion of the PLANS.
- e. To provide the PARTIES with an electronic copy of the technical memos, draft PLANS, and completed PLANS within seven (7) business days after receipt from the Consultant.
- f. To provide an accounting upon the early termination of this MOU pursuant to Section 8, sixty (60) days after the date the Regional Board gives final approval to the last outstanding portion of the PLANS, or three years after the execution of the MOU, whichever comes first. At the completion of the accounting, COUNTY shall return the unused portion of all funds deposited with COUNTY in accordance with the cost allocation formula set forth in Table 3 of Exhibit A.
- g. To not submit any PLANS to the Regional Board unless and until the PLANS have been approved for submittal by all PARTIES to this MOU.

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 COUNTY for the preparation and delivery of the PLANS based on the cost allocation set forth in Table 3 of Exhibit A.

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 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. 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. The 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 e-mail 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 e-mail; or (b) on the third (3rd) 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 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 nondelinquent 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.

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:

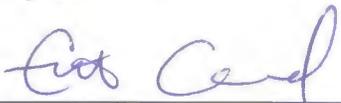
COUNTY OF LOS ANGELES

By 
GAIL FARBER

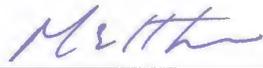
10/24/13
Date

APPROVED AS TO FORM:

John F. Krattli
County Counsel

By 
Associate

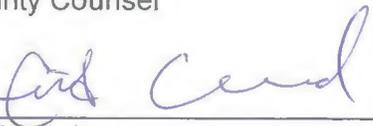
LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

By 
Chief Engineer

10/24/13
Date

APPROVED AS TO FORM:

John F. Krattli
County Counsel

By 
Associate

CITY OF BALDWIN PARK

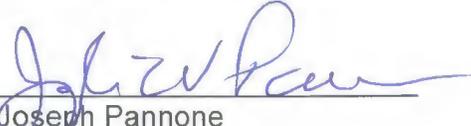
By 
Vijay Singhal
Chief Executive Officer

9/26/13
Date

APPROVED AS TO CONTENT:

By 
Daniel Wall
Public Works Director

APPROVED AS TO FORM:

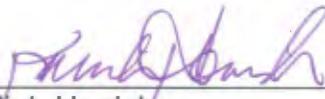
By 
Joseph Pannone
City Attorney

CITY OF COVINA

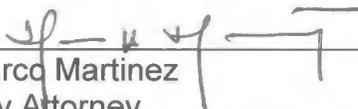
By 
Daryl Parrish
City Manager

9/4/13
Date

APPROVED AS TO CONTENT:

By 
Kalieh Honish
Interim Public Works Director

APPROVED AS TO FORM:

By 
Marco Martinez
City Attorney

CITY OF INDUSTRY

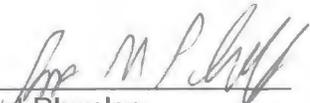
By 
Kevin Radecki
City Manager

August 8, 2013
Date

APPROVED AS TO FORM:

By 
Michelle Vadon
City Attorney

CITY OF LA PUENTE

By 
Bret Plumlee
City Manager

10/8/13
Date

APPROVED AS TO FORM:

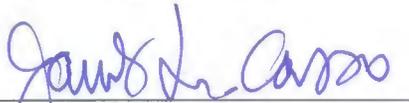
By 
James M. Casso
City Attorney

EXHIBIT A

Upper San Gabriel River EWMP and CIMP Funding Contributions

Table 1. Total Contract Costs

Deliverable	Cost
Project Management and Coordination of Meetings	\$173,230.00
EWMP Work Plan	\$234,710.00
CIMP	\$158,160.00
Final EWMP Plan	\$757,555.00
Contract Cost	\$1,323,655.00

Table 2. Total Cost to LACFCD

Item	Total Cost
Contract Cost	\$1,323,655.00
LACFCD Contract Contribution (10 percent)	-\$132,365.50
Remaining Contract Cost	\$1,191,289.50
Contract Administration (5 percent)	\$6,618.28
LACFCD Total Contribution	\$138,983.78

Table 3. Cost Allocation Formula

Party	Acres	Percent of Area	Allocated Cost	Contract Administration (5 percent)	Total Cost
County of Los Angeles	40,812	59.4	\$707,625.97	N/A	\$707,625.97
City of Baldwin Park	4,335	6.3	\$75,051.24	\$3,752.56	\$78,803.80
City of Covina	4,481	6.5	\$77,433.82	\$3,871.69	\$81,305.51
City of Glendora	9,307	13.5	\$160,824.08	\$8,041.20	\$168,865.28
City of Industry	7,647	11.1	\$132,233.13	\$6,611.66	\$138,844.79
City of La Puente	2,207	3.2	\$38,121.26	\$1,906.06	\$40,027.32
Total	68,789	100.0	\$1,191,289.50	\$24,183.17	\$1,215,472.67

EXHIBIT A

Upper San Gabriel River EWMP and CIMP Funding Contributions

Table 4. Invoicing Schedule

Invoice Date	January 2014	July 2014	Total Invoice Amount	Contingency (10 percent) ¹	Total Cost Including Contingency
LACFCD	\$69,491.89	\$69,491.89	\$138,983.78	\$13,898.38	\$152,882.16
County of Los Angeles	\$353,812.99	\$353,812.98	\$707,625.97	\$70,762.60	\$778,388.57
City of Baldwin Park	\$39,401.90	\$39,401.90	\$78,803.80	\$7,880.38	\$86,684.18
City of Covina	\$40,652.76	\$40,652.75	\$81,305.51	\$8,130.55	\$89,436.06
City of Glendora	\$84,432.64	\$84,432.64	\$168,865.28	\$16,886.53	\$185,751.81
City of Industry	\$69,422.40	\$69,422.39	\$138,844.79	\$13,884.48	\$152,729.27
City of La Puente	\$20,013.66	\$20,013.66	\$40,027.32	\$4,002.73	\$44,030.05
Total					\$1,489,902.10

1 – Contingency is 10 percent of the total invoice amount. Contingency will not be invoiced unless there is a need for its expenditure as agreed by all PARTIES.

EXHIBIT B

Upper San Gabriel River EWMP and CIMP 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, Unincorporated Area Stormwater Program Manager
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, Assistant Deputy Director
E-mail: ghildeb@dpw.lacounty.gov
Phone: (626) 458-4300
Fax: (626) 457-1526

3. City of Baldwin Park
14403 East Pacific Avenue
Baldwin Park, CA 91706-4297
Daniel Wall, Director of Public Works/City Engineer
E-mail: dwall@baldwinpark.com
Phone: (626) 813-5251
Fax: (626) 962-2625

4. City of Covina
125 East College Street
Covina, CA 91723
Vivian Castro, Environmental Services Manager
E-mail: vcastro@covinaca.gov
Phone: (626) 384-5480
Fax: (626) 384-5479

5. City of Glendora
116 East Foothill Boulevard
Glendora, CA 91741
David A. Davies, Director of Public Works
E-mail: ddavies@ci.glendora.ca.us
Phone: (626) 914-8246
Fax: (626) 914-9053

EXHIBIT B

Upper San Gabriel River EWMP and CIMP Responsible Agencies Representatives

6. City of Industry
15625 East Stafford Street, Suite 100
City of Industry, CA 917447
John D. Ballas, Director of Public Works/City Engineer
E-mail: jdballas@cityofindustry.org
Phone: (626) 333-2211
Fax: (626) 961-6795

7. City of La Puente
15900 East Main Street
La Puente, CA 91744
John Di Mario, Development Services Director
E-mail: jdimario@lapuente.org
Phone: (626) 855-1517
Fax: (626) 961-4626