



JAMES A. NOYES, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

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IN REPLY PLEASE

REFER TO FILE: **WM-9**

June 17, 2004

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**STORMWATER EXECUTIVE ADVISORY COMMITTEE  
TOTAL MAXIMUM DAILY LOAD CONSULTANT  
COST-SHARING AND RETENTION AGREEMENT  
ALL SUPERVISORIAL DISTRICTS  
3 VOTES**

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY  
OF THE COUNTY OF LOS ANGELES AND THE COUNTY FLOOD CONTROL  
DISTRICT:**

1. Authorize the Director of Public Works to sign the Executive Advisory Committee's (EAC) Total Maximum Daily Load (TMDL) Consultant Cost-Sharing and Retention Agreement to participate with interested cities in the procurement of professional services to perform TMDL-related studies.
2. Authorize the Auditor-Controller to establish an interest-bearing trust fund for the EAC to serve as an escrow account to fund TMDL-related studies authorized by the agreement.
3. Authorize the Chief Engineer of the Los Angeles County Flood Control District to make a contribution of \$7,500 from the District to the trust fund established for the EAC.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The EAC is comprised of representatives from the County, the City of Long Beach, and 84 municipalities that are subject to the County of Los Angeles National Pollutant Discharge Elimination System (NPDES) Permit for municipal separate storm sewer systems. In addition to matters related to the NPDES Permit, the EAC also meets regularly to discuss the ongoing development of TMDLs by the Los Angeles Regional Water Quality Control Board.

TMDL development involves extensive scientific analysis, data collection, and evaluation for a variety of control technologies. The EAC identified a need to procure professional services to assist with this scientific analysis and development of TMDLs so that permittees have a better understanding of the science and subsequent implementation strategies.

In the past, Public Works has reviewed TMDL development data and findings with little, if any, participation by others in the regulated community. Participating with a group of municipalities on TMDL issues allows us to provide our input to the process and direct the work so that it is complementary to our own research on TMDL issues. This involvement with the cities will also enable Public Works and cities to establish a more unified position on regulations proposed by the Los Angeles Regional Water Quality Control Board.

To date, 21 cities have signed this agreement to retain and fund TMDL-related consultant services. The agreement requires a \$7,500 contribution from each of the parties to be deposited in a trust fund administered by the County and provides that additional contributions can be assessed in the future. If any such additional dollar contributions are assessed at a future date, Public Works will bring a request to your Board for its approval at that time. Your Board would then have the option of approving the additional contribution, or withdrawing from the agreement.

### **Implementation of Strategic Plan Goals**

This action is consistent with the County's Strategic Plan Goal of Organizational Effectiveness. Public Works' participation through the Agreement will provide the County and your Board with specialized, technical information on TMDL-related issues required for decision-making and policy formulation which are not readily available from in-house resources.

### **FISCAL IMPACT/FINANCING**

Sufficient funding is available in the Fiscal Year 2003-04 Flood Control District Budget for the \$7,500 contribution. There is no impact to the County General Fund.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The agreement has been reviewed and approved as to form by County Counsel and is enclosed for your review.

### **ENVIRONMENTAL DOCUMENTATION**

A finding of environmental impact is not required for adoption of this agreement since it does not constitute a "Project" under the California Environmental Quality Act.

### **CONTRACTING PROCESS**

Upon execution of the proposed agreement, a steering committee appointed by the parties to the agreement will develop a scope of work, prepare an RFP, select a consultant and supervise the work of the consultant. The County will be the contracting party and the consultant selection and service contracts will be in full compliance with County requirements including the Child Support Compliance Program, and the Contractor Employee Jury Service Program except that the selection of the consultant will be made by the steering committee rather than your Board. The standard Board-directed clauses that provide for termination of services, renegotiations, and hiring qualified displaced County employees will be included. Your Board will be requested to approve and authorize the Chief Engineer to enter into a consultant contract at that time. If the Board chooses not to contract with the consultant selected by the steering committee, it may withdraw from the agreement, provided another entity agrees to take over the County's contracting duties under the agreement.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There will be no adverse impact on the current County services or projects in the execution of the proposed agreement and subsequent related consultant contract(s).

The Honorable Board of Supervisors  
June 17, 2004  
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**CONCLUSION**

Please return three approved copies of this letter to Public Works.

Respectfully submitted,

JAMES A. NOYES  
Director of Public Works

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Enc.

cc: Chief Administrative Office  
County Counsel

**TMDL CONSULTANT COST-SHARING  
AND RETENTION AGREEMENT**

This Total Maximum Daily Load (“TMDL”) Consultant Cost-Sharing and Retention Agreement (“Agreement”) is entered into by and between those entities that have signed this Agreement (individually, “Municipal Participant” and collectively, “Municipal Participants”) with respect to the following:

WHEREAS, the Executive Advisory Committee (“EAC”) is comprised of twelve individuals who represent the County of Los Angeles, the Los Angeles County Flood Control District and 84 municipalities in Los Angeles County that are subject to California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182 dated December 13, 2001 and the City of Long Beach, which is subject to California Regional Water Quality Control Board, Los Angeles Region, Order No. 99-060 dated June 30, 1999 (individually, “EAC Municipality” and collectively, “EAC Municipalities”);

WHEREAS, certain EAC Municipalities wish to retain a consultant (“Consultant”) to advise those EAC Municipalities on issues relating to the development and implementation of TMDLs for various pollutants in water bodies within Los Angeles County and in the Pacific Ocean and associated bays and inlets adjacent to Los Angeles County; and,

WHEREAS, certain EAC Municipalities desire to create a mechanism by which said Consultant may be retained, paid and directed to advise those EAC Municipalities with respect to TMDL issues.

NOW, THEREFORE, the parties hereto agree as follows

Effectiveness of Agreement Each EAC Municipality wishing to become a Municipal Participant shall return to the EAC Chair an executed signature page of this Agreement within thirty (30) days of receipt of notice from the EAC Chair. Upon the receipt of at least twenty (20) executed signature pages, this Agreement shall take effect.

2. Funding – Upon this Agreement taking effect, the EAC Chair shall direct the sending of invoices to all EAC Municipalities for an initial payment of seven thousand five hundred dollars (\$7,500) (“Initial Payment”), which payment shall be due within thirty (30) days of receipt of the invoice. In the event that additional sums are required, such assessments will be made upon approval of a vote by the majority of the Municipal Participants and shall be due and payable within thirty (30) days of the date of receipt of notice of such assessment (“Additional Assessment”). The amount of the Additional Assessment to be charged each Municipal Participant is subject to modification by majority vote of the Municipal Participants.

3 Trust Fund – The County of Los Angeles (“County”) shall establish and administer, on behalf of the Municipal Participants, a dedicated interest-bearing trust fund within the County accounting system (“Trust Fund”) to receive the funds collected from the Municipal Participants and from which to make the payment of fees and costs submitted by the Consultant, as set forth in Paragraph 8 of this Agreement. The County also shall prepare and send the invoices to be submitted pursuant to Paragraph 2.

4. Steering Committee – The Municipal Participants shall appoint a Steering Committee to develop a scope of work, identify and select a Consultant, and supervise the Consultant’s work. Steering Committee members shall meet from time to time as appropriate to review the Consultant’s work, approve invoices and otherwise carry out

the Steering Committee's obligations under this Agreement. A quorum of the Steering Committee shall be established if a simple majority of the members are present at a meeting or by conference call. Any decision required of the Steering Committee shall be made by a simple majority of the quorum. The Steering Committee shall include at least one Municipal Participant from each watershed. Steering Committee membership shall be open to officials, Municipal Participant employees and contract consultants representing a Municipal Participant. No Municipal Participant shall appoint more than one representative on the Steering Committee. The Steering Committee shall also appoint a Chair and designate the duties of such Chair, which shall include the power to call meetings of the Steering Committee. The Steering Committee may also conduct its business through such subcommittees as it may appoint.

5. Selection of Consultant – The Steering Committee shall prepare an appropriate Request for Proposal or other bid documents (“RFP”), determine the scope of services to be required of the Consultant, solicit and evaluate any responses to the RFP and, by majority vote of the Steering Committee, choose a Consultant. No consulting firm representing a Municipal Participant on the Steering Committee shall be eligible for consideration as a Consultant.

6. Contract With Consultant – The County shall be the contracting party with the Consultant. The contract shall incorporate pertinent County contracting requirements and policies, which requirements and policies may be attached to the RFP. The contract shall recite, however, that it is for the benefit of the Municipal Participants and shall be paid for by the Municipal Participants. The County shall present such contract to the Steering Committee for review and approval prior to execution. The contract shall expressly

provide appropriate indemnification provisions in favor of the Municipal Participants. The contract shall also provide that it may be terminated upon written notice by the County, and otherwise in compliance with County regulations and policies. No Municipal Participant, including the County, shall be obligated hereunder to bring any action against Consultant for breach of its obligations under the contract.

7 Supervision of Consultant – The Steering Committee shall be responsible for coordinating the activities of Consultant, including the scope of work to be performed by the Consultant, and shall have sole responsibility for interacting with Consultant regarding the work being performed, including the authority to contact Consultant with respect to its work and to review any invoices submitted by Consultant. In order to reduce expense and to avoid confusion as to instructions, no one except Steering Committee members shall contact Consultant, except with permission of a member of the Steering Committee. Municipal Participants shall, however, be entitled to directly receive work product, both written and non-written, from Consultant.

8. Payment of Invoices – The County shall forward all invoices submitted by the Consultant to the Steering Committee for approval. The County shall make no payments to Consultant unless approval is first obtained in writing from an authorized Steering Committee representative. The County shall report monthly in writing to the Steering Committee Chair the then-current status of the trust fund’s cash balance, as well as the previous month’s and cumulative expenses paid to Consultant. The County may terminate its administration of the trust fund upon sixty (60) days’ written notice to the Steering Committee Chair.

9. Waiver of Conflict of Interest – The Municipal Participants agree that, with respect to any Consultant performing work for the Municipal Participants and that is to be compensated pursuant to this Agreement (the “Work”): (1) they will not claim or assert that, based solely on said Consultant’s past or prior work for a Municipal Participant or Participants, said Consultant has a conflict of interest in performing the Work; (2) they will not claim or assert that, based solely on the Work, said Consultant has a conflict of interest in connection with any work for any Municipal Participant unrelated to the matters for which the Consultant has been retained; and (3) they will not claim or assert that, based solely on the Work, said Consultant has a conflict of interest in any future representation of any person or entity. This Paragraph shall survive the termination of this Agreement.

10. Repayment of Trust Fund Monies – If, upon termination of this Agreement and following the satisfaction of any payment obligations owed to the Consultant or other parties under this Agreement, any funds remain in the trust fund account established pursuant to Paragraph 3, the County shall distribute to each then-current Municipal Participant within thirty (30) days of the date of termination of this Agreement or the final satisfaction of any payment obligations owed to the Consultant or other parties under this Agreement (whichever shall come last) a percentage of the remaining funds in an amount reflecting the percentage of the funds contributed by such Municipal Participant to the total amount of funds contributed by all then-current Municipal Participants.

11. Confidentiality – The Municipal Participants agree to treat as confidential and not disclose to third parties (including to EAC Municipalities that are not Municipal

Participants or to their employees and representatives), to the fullest extent permitted by law, any drafts of any written work product produced by Consultant pertaining to the Work, and to advise the Steering Committee in the event that any third party seeks to obtain a copy of such drafts. The Steering Committee is authorized to take whatever action it believes appropriate to protect such drafts from disclosure to third parties, commensurate with obligations under law. The confidentiality obligations of Municipal Participants under this Agreement shall remain in full force and effect, without regard to whether this Agreement is terminated. The confidentiality provisions shall not apply to information which now or hereafter becomes public knowledge without violation of this Agreement, or which is sought and obtained from a Municipal Participant or other person or entity pursuant to applicable discovery procedures and not otherwise protected from disclosure.

12. Late-Joining Municipal Participants – Any EAC Municipality wishing to become a Municipal Participant after the deadline for submittal of the Initial Payment (“Late-Joining Municipal Participant”) may do so by submitting a signed signature page to this Agreement to the Steering Committee Chair, as well as the Initial Payment plus all Additional Assessments authorized to date by the Municipal Participants pursuant to Paragraph 2 hereof.

13. Opt-Out Provision – Any Municipal Participant that desires to terminate its participation under this Agreement may do so upon providing written notice to the Steering Committee Chair, who shall in turn notify the County. Such termination shall be effect upon receipt of the notice by the Chair. Such municipality shall not be liable for any Additional Assessment due and owing after the effective date of the Municipal

Participant's notice of termination, but such municipality shall not be eligible for a refund of the Initial Payment or any Additional Assessments. Any Steering Committee member appointed by a Municipal Participant that terminates its participation in this Agreement shall be considered to have left the Steering Committee as of the effective date of the Municipal Participant's notice of termination.

14. Amendment and Termination – This Agreement may be amended only in a writing approved by a simple majority vote of the Municipal Participants, and will terminate upon a simple majority vote of the Municipal Participants.

15. Severability – If any portion, provision, or part of this Agreement is held, determined or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement, and (to the extent equitable) shall not affect the validity or enforceability of such remaining portions, provisions or parts.

16. Rules Of Interpretation – This Agreement is deemed to have been prepared by each of the parties hereto, and any uncertainty and ambiguity herein shall not be interpreted against the drafter(s), but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California and not the substantive law of another state or the United States or federal common law.

17. Integration and Modification – This Agreement contains all of the terms and conditions agreed upon by the parties. No other agreements, oral or otherwise, shall be deemed to exist or to bind any of the parties hereto. No representative of any party hereto had or has any authority to make any representation or promise not reflected or contained

in this Agreement, and each of the parties acknowledges that it has not executed this Agreement upon any such promise.

18. Authority to Bind – Each person signing this Agreement on behalf of a Municipal Participant warrants and represents that he or she has authority to so sign on behalf of that Municipal Participant.

19. Notices – Any notices or invoices required to be sent to any Municipal Participant under this Agreement shall be sent to the individual designated on the signature block for each Municipal Participant, either by first-class mail or facsimile. Any notices required to be given to the Steering Committee Chair shall be made to the Steering Committee Chair, care of Susan Woods, Watershed Management Division, Los Angeles County Department of Public Works, 900 Fremont Avenue, Alhambra, California 91803-1331, facsimile, 626-458-3534. Notice shall be deemed completed the same day as confirmed facsimile receipt or three business days after sending by first-class mail. The names of persons designated to receive notice may be freely changed upon written notice to the Steering Committee Chair.

Counterparts – This Agreement may be signed in counterparts, and each counterpart shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties enter into this Agreement as of the date shown below.

Dated: \_\_\_\_\_ Municipality or District:

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

Title: \_\_\_\_\_

**Designated Representative for Receipt of Notice:**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone Number:**

**Facsimile Number:** \_\_\_\_\_

**E-mail address:** \_\_\_\_\_