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Gary Jones
Director

Kerry Silverstrom
Chief Deputy

John Kelly
Deputy Director

Brock Ladewig
Deputy Director

ADOPTED

BOARD OF SUPERVISORS COUNTY OF LOS ANGELES

January 17, 2017

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

29 January 17, 2017

LORI GLASGOW
EXECUTIVE OFFICER

Dear Supervisors:

**APPROVAL OF A MEMORANDUM OF AGREEMENT WITH THE LOS ANGELES REGIONAL
WATER QUALITY CONTROL BOARD FOR THE DEVELOPMENT OF A CONTAMINATED
SEDIMENT MANAGEMENT PLAN FOR THE MARINA DEL REY HARBOR
(SUPERVISORIAL DISTRICT 4) (3 VOTES)**

SUBJECT

This action is to approve a Memorandum of Agreement with the Los Angeles Regional Water Quality Control Board for the development of a Contaminated Sediment Management Plan addressing the Marina del Rey Harbor Toxic Pollutants Total Maximum Daily Load for In-Harbor Sediments, and to delegate authority to the Director of the Department of Beaches and Harbors, or his designee, to sign on behalf of the County and approve any subsequent amendments.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that entering into a Memorandum of Agreement (MOA) with the Los Angeles Regional Water Quality Control Board (Regional Board) for the development of a Contaminated Sediment Management Plan (CSMP), addressing the Marina del Rey Harbor Toxic Pollutants Total Maximum Daily Load (Toxics TMDL) for In-Harbor Sediments, is exempt from the California Environmental Quality Act (CEQA) for the reasons stated in this Board letter and the record of the proposed project.
2. Approve executing an MOA with the Regional Board for the preparation and development of a CSMP, addressing the Toxics TMDL in substantially the same form as is attached hereto as Attachment 1.
3. Authorize the Director of the Department of Beaches and Harbors (Director), or his designee, to execute an MOA with the Regional Board for the preparation and development of a CSMP,

addressing the Toxics TMDL in substantially the same form as is attached hereto as Attachment 1, and authorize the Director or his designee to execute any subsequent amendments to the MOA that the Director deems necessary, but only to the extent that the amendment does not cause the County to incur any additional costs in the performance of the MOA.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to approve and authorize the execution of an MOA with the Regional Board for the preparation and development of a CSMP, addressing the Toxics TMDL in substantially the same form as is attached hereto as Attachment 1.

On October 6, 2005, the Regional Board adopted Resolution No. R05-012 and revisions to that resolution on February 6, 2014 as Resolution No. R14-04, which amended the Water Quality Control Plan (Basin Plan) for the Los Angeles Region by incorporating a Toxics TMDL in Marina del Rey Harbor. The Toxics TMDL requires that the County enter into an agreement with the Regional Board within one year of the October 16, 2015 effective date of the Toxics TMDL, detailing the voluntary efforts that will be undertaken by the County to attain the load allocations for toxic materials found in the harbor sediment. This agreement includes the development of the CSMP and establishes a cooperative understanding between the County and the Regional Board. The County is required to submit the CSMP by December 31, 2019. If the County does not enter into the MOA within one year of the effective date of the Toxics TMDL, the Regional Board may issue a cleanup and abatement order pursuant to California Water Code section 13304 or another appropriate regulatory order to implement the load allocations contained in the TMDL. Although the finalization of this agreement has gone beyond the mandated one year date, that additional time was required by the Regional Board to review the agreement, and the Regional Board has informed us that it still considers this agreement timely, and will not pursue a cleanup and abatement order or other regulatory order if this agreement is approved.

The Department of Public Works (DPW) oversees County Unincorporated Area efforts related to the Basin Plan and the associated TMDL's. DPW is partnering with DBH in addressing the Toxics TMDL. DPW has reviewed the MOA and concurs with the recommendation of this Board Letter.

Approval of this agreement will also delegate authority to the Director of the Department of Beaches and Harbors to approve amendments to the agreement, so long as the amendment does not result in additional costs to the County in the performance of the MOA.

Implementation of Strategic Plan Goals

This action is consistent with furthering Strategy II.3.1 to Improve Water Quality, Reduce Water Consumption, and Increase Water Supplies (Goal 2). Additionally, this action is consistent with furthering Strategy III.3 to Pursue Operational Effectiveness, Fiscal Responsibility, and Accountability (Goal 3) by preparing a plan to inform the approach the County will take on implementing actions to address requirements of the TMDL.

FISCAL IMPACT/FINANCING

The budget to prepare the CSMP identified in the MOA was previously provided and approved by your Board in 2014. Accordingly, approval of the MOA does not have any additional fiscal impact on

the County's budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Your Board's approval is required to authorize the Director of the Department of Beaches and Harbors to sign an MOA with the Regional Board in substantially similar form to Attachment I.

The final version of the MOA will be approved by County Counsel prior to execution.

ENVIRONMENTAL DOCUMENTATION

The proposed actions are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378, in that the proposed activities do not constitute a project as they consist solely of organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

Your Board will be asked to make another environmental determination and appropriate findings after the CSMP is completed and is brought to your Board for approval.

Upon your Board's approval of the recommended actions, the Department of Beaches and Harbors will file a Notice of Exemption with the County Clerk in accordance with Section 15062 of the State CEQA Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

This action will not have an impact on current services or projects.

CONCLUSION

Should you have any questions, please contact Michael Tripp at (310) 305-9512 or MTripp@bh.lacounty.gov.

The Honorable Board of Supervisors

1/17/2017

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Jones". The signature is stylized with a large, looped initial "G" and a long, horizontal stroke extending to the right.

GARY JONES

Director

GJ:mrt

Enclosures

c: Chief Executive Office (Sachi A. Hamai)
County Counsel (Mary C. Wickham)
Executive Office
Department of Public Works (Mark Pestrella)

MEMORANDUM OF AGREEMENT
BETWEEN
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
LOS ANGELES REGION
AND
COUNTY OF LOS ANGELES
REGARDING IMPLEMENTATION OF THE MARINA DEL REY HARBOR TOXIC
POLLUTANTS TOTAL MAXIMUM DAILY LOAD FOR
IN-HARBOR SEDIMENTS

This Memorandum of Agreement (“Agreement”) is made and entered into as of the date of the last Party signature set forth below by and among the County of Los Angeles, a body corporate and politic, through its Departments of Beaches and Harbors and Public Works (collectively referred to as the “County”); and the California Regional Water Quality Control Board, Los Angeles Region (“Regional Board”); (individually “Party” and collectively, “Parties”).

WHEREAS, on October 6, 2005, the Regional Board adopted Resolution No. R05-012 and revisions to the resolution on February 6, 2014 as Resolution No. R14-04, which amended the Water Quality Control Plan for the Los Angeles Region (“Basin Plan”) by incorporating a Total Maximum Daily Load (“TMDL”) for toxic pollutants in Marina del Rey Harbor (“MdrH”), herein referred to as “Toxics TMDL”; and

WHEREAS, the Toxics TMDL became effective on March 22, 2006 and the revisions became effective on October 16, 2015; and

WHEREAS, TMDLs are not self-executing and are, therefore, implemented through regulatory and non-regulatory programs appropriate to the source and nature of the pollutant discharges; and

WHEREAS, the Toxics TMDL addresses water quality impairments due to metals and organic compounds throughout MdrH, from both point sources and non-point sources; and

WHEREAS, the Toxics TMDL identifies stormwater as a point source and existing in-harbor sediments, boat hull paints, and atmospheric deposition as non-point sources; and

WHEREAS, the Toxics TMDL identified the County as the responsible jurisdiction assigned load allocations for non-point sources from existing in-harbor sediments; and

WHEREAS, the Toxics TMDL provides that the County enter into an Agreement with the Regional Board, detailing the voluntary efforts that will be undertaken by the County to attain the sediment load allocations as defined in the Toxics TMDL, including the development of a contaminated sediment management plan, and

WHEREAS, any future implementation of a contaminated sediment management plan designed to attain the in-harbor sediment load allocations will be subject to approval of the County Board of Supervisors and will be the subject of a subsequent memorandum of agreement or similar instrument; and

WHEREAS, the Agreement must be consistent with the requirements for development of a non-regulatory implementation program as presented in the *Water Quality Control Policy for Addressing Impaired Waterways: Regulatory Structure and Options* (State Water Resources Control Board Resolution 2005-0050) Section 2 (c) (ii).

NOW, THEREFORE, The Parties do hereby agree as follows:

AGREEMENT

Section 1. Recitals

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

Section 2. Purpose and Authority

1. It is the joint goal of the County and the Regional Board to protect and improve the sediment quality in MdRH.
2. This Agreement is entered into for the purposes of detailing the voluntary efforts that will be undertaken by the County to implement measures to address the in-harbor sediment load allocations as defined in the Toxics TMDL and shall include the development of a contaminated sediment management plan, which will be designed to attain in-harbor sediment load allocations.
3. This Agreement is intended to create an understanding between the County and the Regional Board regarding the County's implementation actions to address in-harbor sediment load allocations as described in the Toxics TMDL. As long as the County is fulfilling the responsibilities set forth in this Agreement, the Regional Board will not issue a Cleanup and Abatement Order or another regulatory order to implement the load allocations.
4. The Parties shall cooperate fully with one another to attain the purposes of this Agreement.
5. The Agreement satisfies the requirements of Regional Board Resolution R14-04 and the *Water Quality Control Policy for Addressing Impaired Waterways: Regulatory Structure and Options* (State Water Resources Control Board Resolution No. 2005-0050) part II, Section 2 (c) (ii) by certifying that a non-regulatory program is being implemented by another entity, and the program will correct the impairment.

6. The County has authority to enter into this Agreement, which is within the scope of its police powers. The Regional Board has authority to enter into this Agreement pursuant to California Water Code section 13225, subsection (j).

Section 3. County of Los Angeles Responsibilities

1. The County will work with other Municipal Separate Storm Sewer System (“MS4”) Permittees in the Marina del Rey watershed to implement the Marina del Rey Harbor Enhanced Watershed Management Program (“EWMP”) as documented in the *Marina del Rey Enhanced Watershed Management Program Plan* (April 26, 2016) and any updates to the program. The EWMP is designed to address sediment loading into MdrRH from the stormwater runoff in the watershed.
2. The County, along with other MS4 Permittees and the California Department of Transportation (Caltrans), shall implement the Marina del Rey Coordinated Integrated Monitoring Program (“CIMP”) dated February 29, 2016 and updates to the CIMP. The CIMP is designed to monitor the effectiveness of the EWMP and other programs designed to improve sediment and water quality in MdrRH.
3. The County, along with other MS4 Permittees and Caltrans, shall conduct a sediment stressor identification study in MdrRH and submit a report detailing the results of the stressor identification study to the Regional Board by December 15, 2016.
4. The County shall develop a contaminated sediment management plan that identifies areas of impairment and best management plans that potentially include approaches such as capping, dredging, natural attenuation, in-situ remediation and other applicable water quality measures to address sediment impairment, and the in-harbor sediment load allocations. The contaminated sediment management plan shall include a timeline for the implementation of management strategies. The timeline shall include interim milestones designed to ensure in-harbor sediment load allocations are achieved by the TMDL required deadline. The contaminated sediment management plan shall be submitted no later than December 31, 2019 for approval by the Regional Board Executive Officer.

Section 4. Regional Water Quality Control Board Responsibilities

1. Regional Board staff shall provide assistance to the County in the form of technical input and timely review and approval of all plans and programs and by providing available information relevant to the plans and programs.
2. The Regional Board shall solicit input from the County and other stakeholders regarding the TMDL reconsideration schedule if the Regional Board determines that a reconsideration of the TMDL is necessary according to the criteria defined in the TMDL.

Section 5. Term of Agreement

1. This Agreement shall become effective upon execution by all Parties listed in Exhibit A of this Agreement and it shall remain and continue in effect until completion of all projects and plans listed in Section 3, unless terminated earlier pursuant to Section 6. During the term of this Agreement, the Parties agree to negotiate, in good faith, modifications to the Agreement that may be reasonably necessary to assure implementation of the projects and plans in Section 3, including, but not limited to, the following changed circumstances:
 - a. A material change in the regulatory framework for the Toxics TMDL or water quality standards relevant to the implementation of the projects and plans in Section 3 that would require additional time to implement; or
 - b. A material change in the necessary resources or other impediment that warrants the Parties attention in order to assure successful implementation of the projects and plans in Section 3.

Section 6. Modification/Termination

1. This Agreement may be modified by mutual agreement of the Regional Board and the County.
2. Either Party may terminate this Agreement without cause upon thirty (30) days prior written notice in accordance with the notice provisions in Section 7(1) hereof.
3. If an evaluation shows that a Party is not carrying out its responsibilities as required by the Agreement, the Party initiating such evaluation shall provide written notice identifying the failure of the Agreement responsibilities. If, after notice and a reasonable amount of time, the Regional Board or the County does not amend its process per the Agreement to address the identified failures, the Regional Board or the County may terminate this Agreement for cause upon thirty-day written notice in accordance with the notice provisions in Section 7(1) hereof.
4. The Basin Plan provides that the implementation of this MOA must result in attainment of the TMDL in-harbor sediment load allocations. If this Agreement is not implemented or the contaminated sediment management plan is not developed, the Basin Plan requires that the Agreement shall be terminated by the Regional Board and the in-harbor load allocations shall be implemented through an appropriate regulatory order such as a cleanup and abatement order issued pursuant to California Water Code section 13304.

Section 7. General Provisions

1. 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 each Party at the addresses set forth below. The Parties shall promptly notify each other of any change to the contact information provided below. Written notice shall include

notice delivered via email. 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 return-receipt accompanied email; or (b) on the third business day following deposit in the United States mail, postage prepaid to the addresses set forth in Exhibit A.

2. Relationship of the 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 or otherwise act as an agent of another Party except as expressly provided by this Agreement.
3. Cooperation, Further Acts – The Parties shall cooperate fully with one another to attain the purposes of this Agreement.
4. Amendments – All amendments to this Agreement must be in writing, approved and executed by all Parties. The authorized signatories of this Agreement are authorized to execute any amendments that do not extend this Agreement by more than twelve (12) months.
5. Execution of Counterparts – This Agreement may be executed simultaneously in counterpart, each of which shall be deemed an original, but together, shall constitute but one and the same instrument.
6. Dispute Resolution – The Parties agree to attempt to informally resolve any disputes that arise with respect to this Agreement prior to terminating the Agreement by notifying the other Party if a dispute arises and identifying the issues in dispute. Each Party reserves its rights if informal dispute resolution is not effective.
7. Governing Law – This Agreement is governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.
8. Authorized Signatures – The Parties hereby represent and warrant that their respective signatory of this Agreement is duly authorized to execute and bind the agency for which he or she signs.
9. Severability – If any provision of this Agreement shall be determined by any court to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be affected and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this Agreement.

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

COUNTY OF LOS ANGELES a body corporate
and politic

By: _____

Gary Jones
Director, Department of Beaches and Harbors

APPROVED AS TO FORM:

MARY C. WICKHAM

County Counsel

By: _____

Deputy

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

By: _____

Samuel Unger
Executive Officer

APPROVED AS TO FORM:

FRANCES L. MCCHESENEY

Office of Chief Counsel, State Water
Resources Control Board

By: _____

Attorney IV

Exhibit A

Responsible Agencies and Contact Information

Exhibit A: Responsible Agencies and Contact Information

County of Los Angeles Department of Public Works

Watershed Management Division, 11th floor
900 South Fremont Avenue
Alhambra, California 91803-1331

Party Representative: Paul Alva
PAAlva@dpw.lacounty.gov
Phone No.: (626) 458-4325
Fax: (626) 457-1526

County of Los Angeles Department of Beaches and Harbors

13837 Fiji Way
Marina del Rey, California 90292

Party Representative: Michael Tripp
MTripp@bh.lacounty.gov
Phone No.: (310) 305-9512
Fax: (310) 821-8155

Los Angeles Regional Water Quality Control Board

320 W. 4th Street, Suite 200
Los Angeles, California 90013

Party Representative: Samuel Unger
Phone No.: (213) 576-6600
Fax No.: (213) 576-6640