



GAIL FARBER, Director

**COUNTY OF LOS ANGELES  
DEPARTMENT OF PUBLIC WORKS**

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

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331

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ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

August 12, 2014

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

Dear Supervisors:

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

19 August 12, 2014

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

**MARINA DEL REY HARBOR TOXIC POLLUTANTS TOTAL MAXIMUM DAILY LOAD  
COORDINATED MONITORING PLAN MEMORANDUM OF AGREEMENT BETWEEN  
THE COUNTY OF LOS ANGELES, THE LOS ANGELES COUNTY FLOOD  
CONTROL DISTRICT, CITIES OF CULVER CITY AND LOS ANGELES, AND THE  
STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION  
(SUPERVISORIAL DISTRICTS 2, 3, AND 4)  
(3 VOTES)**

**SUBJECT**

This action is to enter into a cooperative Memorandum of Agreement between the County of Los Angeles, the Los Angeles County Flood Control District, the Cities of Culver City and Los Angeles, and the State of California Department of Transportation to share the cost to revise and implement the Coordinated Monitoring Plan required by the Marina del Rey Harbor Toxic Pollutants Total Maximum Daily Load, and to transfer unused deposits from Memorandum of Agreement participants, held by the Los Angeles County Flood Control District, to the County of Los Angeles for contract administration. The estimated total cost of the Memorandum of Agreement for the County of Los Angeles shall not exceed \$1,662,040.58. There is no net cost to the Los Angeles County Flood Control District.

**IT IS RECOMMENDED THAT THE BOARD:**

1. Find that the proposed Marina del Rey Harbor Toxic Pollutants Total Maximum Daily Load Coordinated Monitoring Plan Memorandum of Agreement is exempt from the California Environmental Quality Act for the reasons stated in this letter and in the record of the project.
2. Authorize the Director of Public Works or her designee to execute the Memorandum of Agreement to become effective on the date of final execution by the County of Los Angeles, the Los

Angeles County Flood Control District, the Cities of Culver City and Los Angeles, and State of California Department of Transportation until July 7, 2016, for an estimated total County of Los Angeles cost not to exceed \$1,662,040.58.

3. Authorize the Director of Public Works or her designee to execute any necessary amendments to this Memorandum of Agreement, provided that any amendments that relate to costs are budgeted and do not increase the County of Los Angeles' annual cost by more than 10 percent.

4. Authorize the Director of Public Works or her designee to accept the transfer of \$119,497.51 to the County of Los Angeles in unused deposits being held by the Los Angeles County Flood Control District, which acted as the contract administrator under the previous Memorandum of Agreement.

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

1. Find that the proposed Marina del Rey Harbor Toxic Pollutants Total Maximum Daily Load Coordinated Monitoring Plan Memorandum of Agreement is exempt from the California Environmental Quality Act for the reasons stated in this letter and in the record of the project.

2. Authorize the Chief Engineer or her designee, to execute the Memorandum of Agreement for the Los Angeles County Flood Control District to transfer \$119,497.51 in unused deposits to the County of Los Angeles, which will act as the contract administrator under the new Memorandum of Agreement.

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

The purpose of the recommended actions is to find the proposed Memorandum of Agreement (MOA), in a form substantially similar to Enclosure A, exempt from the California Environmental Quality Act (CEQA); and to authorize the Director of Public Works and Chief Engineer of the Los Angeles County Flood Control District, or her designees, to execute the MOA between the County of Los Angeles (County), the Los Angeles County Flood Control District (LACFCD), the Cities of Culver City and Los Angeles (Cities), and the State of California Department of Transportation (Caltrans), collectively known as parties, for the purpose of revising and implementing the monitoring required by the Marina del Rey Harbor Toxic Pollutants Total Maximum Daily Load (MdrRH Toxics TMDL) Coordinated Monitoring Plan (CMP); to transfer \$119,497.51 in unused deposits from the LACFCD to the County, which will act as the contract administrator under the new Memorandum of Agreement; and to execute any necessary amendments to the MOA. The MOA shall be effective on the date of final execution by all parties, and shall remain in effect until July 7, 2016, for a total County cost not to exceed \$1,662,040.58, and no net cost to the LACFCD.

Under this MOA, the County, Cities, and Caltrans will continue to jointly fund the implementation of the required CMP based on available funding appropriations. Each agency's share of the project cost was determined based on its jurisdictional land area within the Marina del Rey Watershed at the time the MOA was negotiated. The County, which was designated as the primary jurisdiction under the MdrRH Toxics TMDL, will assume the role of contract administrator, previously performed by the LACFCD. The County will be reimbursed for contract administration for up to 5 percent of the cost to perform the work under the MOA.

The Regional Board adopted the MdrRH Toxic TMDL on October 6, 2005, as Resolution No. 2005-012, and it became effective on March 22, 2006. The MdrRH Toxics TMDL identifies

the County, the Cities, and Caltrans as the responsible agencies for meeting TMDL requirements, including implementation of or continued participation in required monitoring programs.

On March 16, 2010, the County of Los Angeles Board of Supervisors adopted a Resolution that authorized the Chief Executive Officer or his designee to execute an MOA between the County, the LACFCD, and Cities, to implement the CMP for the MdrH Toxics TMDL. This MOA became effective on July 8, 2010, was amended on February 4, 2011, to add Caltrans as a party, then expired on July 8, 2013. The LACFCD was the contract administrator for implementing the CMP under that MOA, and its services were cost-shared by the responsible agencies.

The current National Pollutant Discharge Elimination System (NPDES) Permit for municipal stormwater and urban runoff discharge within the County, Order R4-2012-0175, became effective on December 28, 2012. The MdrH Toxics TMDL was incorporated into this NPDES Permit, and the LACFCD was added as a responsible Permittee. The County and the LACFCD are currently working with other NPDES Permittees to ensure that the County and the LACFCD meet all monitoring requirements of the NPDES Permit through the development of new comprehensive monitoring plans. Until the Regional Board approves such a plan for the Marina del Rey Harbors watershed, the responsible agencies must continue to implement the MdrH Toxics TMDL CMP.

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

The Countywide Strategic Plan directs the provisions of Operational Effectiveness/Fiscal Sustainability (Goal 1). The MOA supports the capacity to sustain essential services through proactive and prudent fiscal policies and stewardship by the development of cooperative partnerships with local agencies to effectively leverage our resources using a collaborative effort. Also, implementation of the CMP fulfills the requirements under the MdrH Toxics TMDL to assess the quality of stormwater and urban runoff and will ultimately improve the quality of life for communities.

### **FISCAL IMPACT/FINANCING**

As shown on Exhibit A of the enclosed MOA, the net County cost for Fiscal Years 2013-14, 2014-15, and 2015-16 will not exceed \$398,848.90, \$637,017.41, and \$626,174.27, respectively. These costs include implementing the CMP, monitoring, contract administration, an annual inflationary increase, and a 10 percent contingency. Under the previous MOA, the LACFCD provided contract administration to implement the CMP on behalf of the responsible agencies. Under this MOA, the County, as the primary jurisdiction in the TMDL, will provide contract administration services on behalf of the responsible agencies. The LACFCD will transfer to the County \$119,497.51 in unused deposits collected under the previous MOA. At the request of all parties, unused deposits will be applied as credit towards the first invoice authorized under this MOA. The County cost for the first two year's monitoring of this MOA was included in the Fiscal Years 2013-14 and 2014-15 Unincorporated Area Stormwater Budget, which is part of the Department of Public Works General Fund Budget. Funding for Fiscal Year 2015-16 will be requested through the annual budget process.

The County will be reimbursed for contract administration and CMP implementation under this MOA. Invoices shall be annually issued in January of the corresponding fiscal year during the term of the MOA. However, the first invoice shall be issued upon MOA execution of all parties to reimburse the County for contract administration and monitoring conducted since July 8, 2013.

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

The MdrH Toxics TMDL was adopted on October 6, 2005, and became effective on March 22, 2006. Pursuant to the MdrH Toxics TMDL, the responsible agencies jointly submitted a CMP to the Regional Board. The Regional Board subsequently approved the CMP and further directed the responsible agencies to implement the CMP.

In order to implement the CMP, the responsible agencies combined their resources and executed a cooperative cost-sharing MOA on July 8, 2010, to allow the LACFCD to act on behalf of the County and Cities to implement the MdrH Toxics TMDL CMP. A subsequent amendment executed on February 4, 2011, added Caltrans as a party to the MOA. Each responsible agency signed a joint MOA with the LACFCD based on its effective jurisdictional land area within the contributing watershed. This MOA expired on July 8, 2013. Since then, the County has continued to implement the CMP to ensure all responsible agencies are in compliance with the MdrH Toxics TMDL.

The new NPDES Permit for municipal stormwater and urban runoff discharge within the County became effective on December 28, 2012. The MdrH Toxics TMDL was incorporated into the NPDES Permit. As a result, the County and Cities are mandated to demonstrate compliance with the MdrH Toxics TMDL through continued participation in the CMP, and are subject to enforcement if the water quality standards established by the TMDL are not met.

To continue implementing the existing MdrH Toxics TMDL CMP, the responsible agencies have agreed to execute a new MOA. The County will administer the contract to implement the CMP on behalf of the Cities and Caltrans, and shall be reimbursed at the rate agreed upon within the new MOA.

The 2012 Permit named the LACFCD as a responsible Permittee to the MdrH Toxics TMDL, and the recently adopted but not yet effective Amended MdrH Toxics TMDL also names the LACFCD as jointly responsible with the County, Cities, and Caltrans. The LACFCD will be required to participate in MdrH Toxics TMDL monitoring activities once the Regional Board approves the comprehensive monitoring plan that addresses all TMDLs in the MdrH watershed.

The County, LACFCD, Cities, and Caltrans and their respective counsels have approved the MOA as to form. Upon the Board's delegation of authority, the MOA, in a form substantially similar to the enclosed, will be subsequently reviewed and approved as to form by County Counsel prior to execution by the Director of Public Works and Chief Engineer of the LACFCD, or her designee.

## **ENVIRONMENTAL DOCUMENTATION**

The proposed activities are statutorily exempt from CEQA. The proposed MOA, which includes funding for revisions to and continued implementation of the MdrH Toxics TMDL CMP, may involve feasibility and planning studies for possible future actions, which have not been approved, adopted, or funded, and, therefore, are exempt under Section 15262 of the CEQA Guidelines. Further, the proposed activities do not include the adoption of a plan that will have a legally binding effect on later activities.

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

Approval of the recommended actions will benefit the County by sharing in the cost of implementing the MdrH Toxics TMDL CMP. There will be no negative impact on current County or LACFCD services.

**CONCLUSION**

Please return two adopted copies of this letter to the Chief Executive Office (Community and Municipal Services Cluster) and one copy to the Department of Public Works, Watershed Management Division.

Respectfully submitted,



GAIL FARBER

Director

GF/GH:ba

Enclosures

c: Executive Office  
County Counsel  
Auditor-Controller  
Caltrans  
City of Culver City  
City of Los Angeles

**MARINA DEL REY HARBOR TOXIC POLLUTANTS  
TOTAL MAXIMUM DAILY LOAD  
COORDINATED MONITORING PLAN AND SPECIAL STUDIES  
CALTRANS AGREEMENT NO. 07-5003  
E-FIS 0714901670 (EA 910204)**

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE COUNTY OF LOS ANGELES, LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, THE CITIES OF CULVER CITY AND LOS ANGELES, AND THE STATE OF CALIFORNIA THROUGH ITS DEPARTMENT OF TRANSPORTATION**

**REGARDING THE ADMINISTRATION AND COST SHARING FOR IMPLEMENTING THE COORDINATED MONITORING PLAN FOR THE MARINA DEL REY HARBOR TOXIC POLLUTANTS TMDL**

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 COUNTY OF LOS ANGELES ("COUNTY"), a political subdivision of the State of California; the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT ("LACFCD"), a body corporate and politic; the CITIES OF CULVER CITY AND LOS ANGELES ("CITIES"), municipal corporations; and the STATE OF CALIFORNIA, through its Department of Transportation ("CALTRANS"); collectively referred to herein as the "PARTIES" or individually as "PARTY", with respect to the following:

RECITALS

WHEREAS, the Regional Water Quality Control Board, Los Angeles Region ("REGIONAL BOARD") adopted the Marina del Rey Harbor Toxic Pollutants Total Maximum Daily Load ("MdrH Toxics TMDL") on October 6, 2005, by Resolution No. R2005-012; and

WHEREAS, the MdrH Toxics TMDL became effective on March 22, 2006; and

WHEREAS, the MdrH Toxics TMDL has been incorporated into the 2012 National Pollutant Discharge Elimination System Permit for Municipal Storm Water and Urban Runoff Dischargers within the County of Los Angeles and the incorporated Cities therein except the City of Long Beach ("NPDES Permit"), by Order R4-2012-0175 on December 28, 2012; and

WHEREAS, the MdrH Toxics TMDL addresses impairment of beneficial uses due to elevated concentrations of chlordane, copper, lead, and zinc in the Marina del Rey Harbor sediments, and total polychlorinated biphenyls (PCBs) in fish tissue, and is intended to restore the water bodies to their beneficial uses; and

WHEREAS, the MdrH Toxics TMDL identifies the COUNTY, City of Los Angeles, City of Culver City, and CALTRANS, herein collectively referred to as "Regulated Entities" or individually as "Regulated Entity", as jointly responsible for meeting the requirements of the MdrH Toxics TMDLs; and

WHEREAS, Resolution No. R2005-012 identified the COUNTY as the primary jurisdiction ("Primary Agency") for the Marina del Rey Harbor watershed; and

WHEREAS, the MdrH Toxics TMDL requires that the Regulated Entities prepare and implement a Coordinated Monitoring Plan ("CMP"), which includes both ambient monitoring and effectiveness monitoring in the Marina del Rey Harbor and Watershed; and

WHEREAS, the CMP entitled "Marina del Rey Harbor Toxic Pollutants TMDL Coordinated Monitoring Plan" was submitted to the REGIONAL BOARD by the Regulated Entities on March 22, 2007, and was approved by REGIONAL BOARD on March 3, 2009; and

WHEREAS, the CMP was revised on August 31, 2009, herein referred to as "Revised CMP", and approved by the REGIONAL BOARD on October 28, 2009; and

WHEREAS, the Revised CMP is hereby made part of this Agreement by reference; and

WHEREAS, the Regulated Entities have agreed to cooperatively continue sharing and fully funding the estimated costs of the implementation of the CMP contained in Table 2a of Exhibit A, based on the cost allocation formula contained in Table 1 of Exhibit A of this Agreement; and

WHEREAS, the COUNTY will act on behalf of the Regulated Entities to implement the monitoring requirements of the CMP ("Monitoring Services"), for which it will be paid a project administration and management fee as set forth in Exhibit B; and

WHEREAS, the prior agreement for cost-sharing of monitoring for the MdrH Toxics TMDL expired on July 8, 2013; and

WHEREAS, the LACFCD, under the expired agreement, acted on behalf of the Regulated Entities to implement the Monitoring Services; and

WHEREAS, the Regulated Entities desire to enter into a new agreement for the period of July 8, 2013 through July 7, 2016 to continue the existing Monitoring Services now performed by the COUNTY; and

WHEREAS, the Regulated Entities desire to transfer the surplus funds from the prior agreement, currently held by the LACFCD, towards future annual invoices issued for the cost of work performed under this Agreement; and

WHEREAS, the Regulated Entities desire to have the LACFCD transfer these surplus funds to the COUNTY, to be used as credits towards future invoices and agreements; and

WHEREAS, the LACFCD will therefore be a PARTY to this Agreement for the limited purpose of transferring funds to the COUNTY that the LACFCD collected under the prior agreement. The Regulated Entities agree to this transfer in lieu of the requirement in the prior agreement that "Any costs not expended will be reimbursed to the Parties by the LACFCD "; and

WHEREAS, the NPDES Permit identified the LACFCD as a responsible permittee under the MdrH Toxics TMDL; and

WHEREAS, the MdrH Toxics TMDL Reopener also designated the LACFCD as a Responsible Entity; and

WHEREAS, the NPDES Permit requires permittees to continue with the existing monitoring programs until the Coordinated Integrated Monitoring Plan ("CIMP") is approved; and

WHEREAS, the MdrH Toxics TMDL will be included in the Marina del Rey Watershed Group's CIMP; and

WHEREAS, the Marina del Rey Watershed Group currently includes all PARTIES to this Agreement; and

WHEREAS, once the CIMP is approved by the REGIONAL BOARD, all PARTIES agree to implement the MdrH Toxics TMDL portion of the CIMP under this MOA until a Memorandum of Understanding (MOU) is executed for the CIMP.

WHEREAS, once the CIMP is approved by the REGIONAL BOARD, the LACFCD may participate in Marina del Rey Toxics TMDL monitoring by way of an amendment to this Agreement or under a new agreement, with consensus from all PARTIES.

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 of the Revised CMP and to coordinate the payment and performance 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 Revised CMP.

Section 5. Term. This Agreement shall become effective on the date of the last signature by a PARTY and it shall remain in effect until July 7, 2016.

Section 6. Continuation of Monitoring. The Regulated Entities agree that substantiated costs incurred by the COUNTY for Monitoring Services performed between July 8, 2013, through July 7, 2016 shall be cost-shared by the PARTIES. The estimated costs and not-to-exceed invoicing amounts for the period of July 8, 2013 through July 7, 2016 as contained in Exhibit A are based on the Monitoring Services and project administration and management that commenced on July 8, 2013.

Section 7. Role of the PARTIES.

- a) Payment. The Regulated Entities agree, subject to annual budget authority, to pay the COUNTY for the Monitoring Services not exceeding the amounts shown in Tables 2a and 2b of Exhibit A, based on the cost allocation formula in Table 1 of Exhibit A, attached hereto and made a part of this Agreement by this reference. Exhibit B of this Agreement details the estimated annual cost for the Monitoring Services.
- b) CALTRANS' funding encumbered under this Agreement is evidenced by the signature of its District Budget Manager certifying as to funds in the maximum sum of Thirty-Six Thousand Six Hundred and Ninety-Two and 83/100 Dollars (\$36,692.83), as indicated in Table 2c of Exhibit A having been allocated and represents CALTRANS' share of the work costs, including 10% contingency. Any cost to be invoiced above this sum will require an amendment to this Agreement.
- c) Documentation. The Regulated Entities agree to provide all requested information and documentation to the COUNTY that is deemed necessary to perform the Monitoring Services at no cost to the COUNTY.
- d) Grant of Access Rights.
  - 1) During the term of this Agreement, the Cities of Los Angeles and Culver City ("CITIES") grant the COUNTY or the COUNTY's Consultant the right of access and entry to the CITIES' storm drains, channels, catch basins, creeks, beaches, existing monitoring stations, and similar properties subject to this Agreement ("FACILITIES") to achieve the purposes of this Agreement. Prior to exercising said right of entry, the COUNTY or the COUNTY's Consultant shall provide written notice to the CITIES at least 72 hours in advance. For the purposes of this provision, written notice shall include notice delivered via e-mail to the CITIES' representative

identified on Exhibit D. However, should the Regulated Entities or their Consultant require access to LACFCD's FACILITIES, the Regulated Entities or their Consultant shall obtain right of access and entry under a Permit from, or a separate agreement with, the LACFCD.

- 2) Any non-CALTRANS PARTY or its Consultants intending to enter onto a CALTRANS right of way shall first make a written request to CALTRANS, identifying the site location, extent of access by persons (and equipment, if any), dates and times of entry, as well as an explanation of the purpose of that entry. CALTRANS shall thereafter determine, within ten (10) working days, if that entry will be allowed without a formal Encroachment Permit issued by the District Permit Engineer as an authorized presence of non-CALTRANS PARTIES or its Consultants not interfering with or threatening the safety of the traveling public or the integrity of the CALTRANS infrastructure. In such case, CALTRANS shall condition that right of entry on the accompaniment of a CALTRANS representative who shall be empowered to restrict or limit the access of those permittees, as deemed necessary, at the sole discretion of CALTRANS. Where adverse impacts to traffic or the traveled way can be anticipated by CALTRANS, CALTRANS may require the requesting PARTY or its Consultants to submit a formal Encroachment Permit application, to be filed and completed together with Traffic Control Plans when necessary (which must be prepared by or under the supervision of a traffic engineer licensed in the State of California) with the District Permit Engineer. An Encroachment Permit may require as much as six (6) weeks to be issued depending upon the extent of coordination and development of traffic controls required for that access. CALTRANS will endeavor, in good faith, to satisfy all requests for access as promptly as possible.

#### Section 9. Role of the COUNTY.

- a) Monitoring Services. The COUNTY will perform the Monitoring Services at the locations indicated in the Revised CMP, and any subsequent changes as agreed upon by the Regulated Entities and approved by the REGIONAL BOARD.
- b) Reporting. The COUNTY will submit annual monitoring reports to the REGIONAL BOARD as described in the Revised CMP and distribute copies of the annual reports to the Regulated Entities prior to submittal to the REGIONAL BOARD for review and approval. In addition, the COUNTY will submit to the Regulated Entities the data used to prepare the annual reports. The data will be transmitted electronically in a Microsoft Excel format that contains the table structure and syntax agreed upon by the Regulated Entities.

- c) Invoicing. The COUNTY will annually invoice the Regulated Entities in amounts not exceeding the invoice amounts shown in Tables 2a and 2b of Exhibit A. The total estimated costs for Monitoring Services have been adjusted to include a 5% project administration and management fee and 3% inflation as shown in Exhibit B.

Section 10. Invoice and Payment.

- a) Annual Payment. The Regulated Entities shall pay the COUNTY, subject to annual budget authority, for their proportional share of the estimated cost for Monitoring Services and project administration and management not exceeding the invoice amounts as shown in Exhibit A, within forty-five (45) days of receipt of the invoice from the COUNTY. The cost estimates presented in Exhibits A and B have been agreed upon by the COUNTY and the Regulated Entities, and are subject to changes in the CMP pursuant to new REGIONAL BOARD requirements, unforeseen challenges in the field, and/or the LACFCD's participation. Any such changes proposed to the Regulated Entities' proportional share are subject to funding appropriation and will require written agreement of the Regulated Entities.
- b) Invoice. The COUNTY will invoice the Regulated Entities in amounts not exceeding the invoice amounts shown in Tables 2a and 2b of Exhibit A. The annual payments for the period of August 2013 through July 2016 will be invoiced in January of each year, except for the first invoice, which will be issued upon the execution by all PARTIES of this Agreement.
- c) Contingency. The COUNTY will notify the Regulated Entities if actual expenditures for Monitoring Services are anticipated to exceed the cost estimates contained in Exhibits A and B and obtain approval of such expenditures from all Regulated Entities. Upon approval of substantiated additional expenditures, the Regulated Entities agree to pay the COUNTY for their proportional share of these additional expenditures at an amount not to exceed 10% of the estimated cost for Monitoring Services as shown in Table 2a of Exhibit A. This 10% contingency will not be invoiced, unless actual expenditures exceed the cost estimates for Monitoring Services. Expenditures that exceed the 10% contingency will require an amendment to this Agreement.
- d) Reimbursement. As requested by the Regulated Entities, once the LACFCD transfers the surplus funds from the previously expired agreement to the COUNTY, the COUNTY shall credit any surplus funds from the expired agreement towards the first annual invoice issued for the cost of work performed under this Agreement. The Regulated Entities' credits for the amounts are shown in Table 1 of Exhibit C, and shall be subtracted from the first annual invoice as shown in Table 2b of Exhibit A.

- e) Reconciliation of this Agreement. Unused portion of funds at the termination of this Agreement will be reimbursed to the Regulated Entities using the cost allocation formula in Table 1 of Exhibit A. The COUNTY will provide the Regulated Entities with a statement of actual expenditures within 90 days of the end of each program year. The final actual amount will be determined at the completion of the Monitoring Services provided by the County under this agreement, and reimbursements will be issued thereafter. Subject to agreement by the COUNTY, any funds which are to be reimbursed to a Regulated Entity may be reimbursed through credits towards future invoices and agreements, if requested in writing by that Regulated Entity.

Section 11. 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 injury, damage or liability, including but not limited to demands, claims, suits, actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability, fees, costs, and expenses (including reasonable attorney's and expert witness fees), arising from or connected with the respective acts of each PARTY and/or its agents, arising from or related to any work, authority or jurisdiction conferred upon each PARTY under this Agreement; provided, however, that no PARTY shall indemnify another PARTY for that PARTY's own negligence or willful misconduct.
- b) Notwithstanding 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 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.
- c) In the event of third-party loss caused by negligence, wrongful act or omission by more than one PARTY, each PARTY shall bear financial responsibility in proportion to its percentage of fault as may be mutually agreed or judicially determined. The provisions of Civil Code Section 2778 regarding interpretation of indemnity agreements are hereby incorporated.

Section 12. Termination of Agreement. Any PARTY may terminate this Agreement for any reason, in whole or part, by giving the other PARTIES and the REGIONAL BOARD thirty (30) days written notice thereof. Each Regulated Entity shall be responsible for its proportional share of the costs of Monitoring Services incurred up to the date of the termination. Each Regulated Entity shall also be responsible for the payment of its own fines, penalties or costs incurred as a result of the non-performance of the CMP.

Should CALTRANS terminate, CALTRANS shall be responsible for the allocated costs of CMP Implementation activities incurred up to the date of the termination. CALTRANS' maximum liability for costs shall be limited to the maximum sum of Thirty-Six Thousand Six Hundred and Ninety-Two and 83/100 Dollars (\$36,692.83) as indicated in Table 2c of Exhibit A, and incurred by COUNTY up to the date of the termination.

The COUNTY shall notify in writing all PARTIES within fourteen (14) days of receiving written notice from any PARTY that intends to terminate this Agreement. If one of the Regulated Entities selects to withdraw from cost sharing of Monitoring Services before the end of the term of this Agreement, it is agreed that the remaining cost share will be distributed among the other Regulated Entities based on the existing cost allocation formula, subject to amendment of this Agreement agreed upon by the remaining Regulated Entities.

Section 13. 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 D. PARTIES shall promptly notify each other of any change of contact information, including personnel changes, provided in Exhibit D. 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 (3rd) business day following mailing by registered or certified mail (return receipt requested) to the addresses set forth in Exhibit D.
- b) Administration. For the purposes of this Agreement, the PARTIES hereby designate as their respective PARTY Representatives, the persons named in Exhibit D. 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 PARTIES.
- 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) Legal Review. 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 13(e).
- m) All obligations of CALTRANS under the terms of this Agreement are subject to the appropriation of the resources by the Legislature and the allocation of resources by the California Transportation Commission. This Agreement has been written before ascertaining the availability of federal or state legislative appropriation of funds, for the mutual benefit of the Parties in order to avoid program and fiscal delays that would occur if the Agreement was executed after that determination was made. If the United States Government or the California State Legislature does not appropriate sufficient funds for CALTRANS to participate in this Agreement, this Agreement may be amended in writing by the Parties to reflect any agreed upon reduction in the percentage of funds contributed by CALTRANS to continue its participation in this Agreement. CALTRANS, however, has the option to withdraw from this Agreement in the event sufficient funds are not appropriated for CALTRANS. Should CALTRANS exercise its option to withdraw from this Agreement, CALTRANS shall remain responsible for its share of liability, if any, incurred while participating in this Agreement.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed by their duly authorized representatives and affixed as of the date of signature of the PARTIES:

**LOS ANGELES COUNTY  
FLOOD CONTROL DISTRICT**

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

LOS ANGELES COUNTY  
FLOOD CONTROL DISTRICT,  
a body corporate and politic

By: \_\_\_\_\_  
Gail Farber  
Chief Engineer

APPROVED AS TO FORM:

JOHN F. KRATTLI  
County Counsel

By: \_\_\_\_\_  
Senior Associate

COUNTY OF LOS ANGELES

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

COUNTY OF LOS ANGELES,  
a political subdivision of the  
State of California

By: \_\_\_\_\_  
Gail Farber  
Director of Public Works

APPROVED AS TO FORM:

JOHN F. KRATTLI  
County Counsel

By: \_\_\_\_\_  
Senior Associate

CITY OF LOS ANGELES

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

By: \_\_\_\_\_  
Kevin James, President  
Board of Public Works

ATTEST:

By: \_\_\_\_\_  
Holly L. Wolcott  
Interim City Clerk

APPROVED AS TO FORM:

Michael N. Feuer  
City Attorney

By: \_\_\_\_\_  
Laurie Rittenberg  
Assistant City Attorney

DRAFT

CITY OF CULVER CITY

Dated: \_\_\_\_\_

By \_\_\_\_\_

John Nachbar  
City Manager

APPROVED AS TO CONTENT:

By \_\_\_\_\_

Charles Herbertson,  
Public Works Director

APPROVED AS TO FINANCING:

By \_\_\_\_\_

Jeff Muir  
Chief Financial Officer

APPROVED AS TO FORM:

By \_\_\_\_\_

Carol Schwab  
City Attorney

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

Malcolm Dougherty  
Director

By: \_\_\_\_\_  
Carrie L. Bowen  
District Director (Acting)

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

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
Attorney

CERTIFIED AS TO FUNDS:

\_\_\_\_\_  
District Budget Manager

CERTIFIED AS TO FINANCIAL TERMS AND CONDITIONS:

\_\_\_\_\_  
Accounting Administrator

**EXHIBIT A**

**Total Estimated Cost-Sharing for the Implementation of the Marina del Rey Harbor Toxic Pollutants TMDL CMP**

**Table 1. Cost Allocation Formula**

Party	Jurisdictional Area		% of Area <sup>(2)</sup>
	Acres <sup>(1)</sup>	Square Miles	
County of Los Angeles	816	1.275	44.0
City of Los Angeles	983	1.536	53.0
City of Culver City	37	0.058	2.0
Caltrans	19	0.030	1.0
<b>Total</b>	<b>1855</b>	<b>2.899</b>	<b>100</b>

<sup>(1)</sup> Land distribution data as defined by the MdRH Toxics TMDL CMP.

<sup>(2)</sup> Proportionality of cost-sharing is based on each Regulated Entity's % land area within the watershed boundary.

**Table 2a. Proportional Share of Regulated Entities and Invoicing by the COUNTY**

Agency	August 2013-July 2014		August 2014-July 2015		August 2015-July 2016	
	Invoice Amount <sup>(1)</sup>	Contingency (10%)	Invoice Amount <sup>(1)</sup>	Contingency (10%)	Invoice Amount <sup>(1)</sup>	Contingency (10%)
County of Los Angeles	\$362,589.91	\$36,258.99	\$579,106.74	\$57,910.67	\$569,249.33	\$56,924.93
City of Los Angeles	\$436,796.42	\$43,679.64	\$697,624.90	\$69,762.49	\$685,750.12	\$68,575.01
City of Culver City	\$16,440.96	\$1,644.10	\$26,258.52	\$2,625.85	\$25,811.55	\$2,581.16
Caltrans	\$8,442.66	\$844.27	\$13,484.10	\$1,348.41	\$13,254.58	\$1,325.46
<b>Total</b>	<b>\$824,269.95</b>	<b>\$82,427.00</b>	<b>\$1,316,474.26</b>	<b>\$131,647.43</b>	<b>\$1,294,065.58</b>	<b>\$129,406.56</b>

<sup>(1)</sup> Total estimated cost, without optional tasks, from Exhibit B, Table 1 multiplied by percentage area from Exhibit A, Table 1, and excluding the 10% contingency.

**Table 2b. Proportional Share of Regulated Entities Reflecting Credits and Invoicing by the COUNTY**

Agency	August 2013-July 2014			
	Original Invoice Amount <sup>(1)</sup>	Contingency (10%) <sup>(2)</sup>	Surplus from expired MOA Credited to Agencies	Invoice Amount Reflecting Credits <sup>(4)</sup>
County of Los Angeles	\$362,589.91	\$36,258.99	N/A <sup>(3)</sup>	\$362,589.91
City of Los Angeles	\$436,796.42	\$43,679.64	\$113,192.56	\$323,603.86
City of Culver City	\$16,440.96	\$1,644.10	\$4,298.31	\$12,142.65
Caltrans	\$8,442.66	\$844.27	\$2,006.64	\$6,436.02
<b>Total</b>	<b>\$824,269.95</b>	<b>\$82,427.00</b>	<b>\$119,497.51</b>	<b>\$704,772.44</b>

<sup>(1)</sup> Total estimated cost, without optional tasks, from Exhibit B, Table 1 multiplied by percentage area from Exhibit A, Table 1, and excluding the 10% contingency.

<sup>(2)</sup> Contingency calculated based on 10% of Original Invoice Amount.

<sup>(3)</sup> County of Los Angeles paid its share directly to the consultant; no surplus to credit from Los Angeles County Flood Control District.

<sup>(4)</sup> Revised invoice amount reflecting credits of surplus from expired MOA, excluding contingency.

**Table 2c. Total Proportional Share of Regulated Entities for Three Program Years Including Contingency**

Agency	August 2013- July 2014	August 2014- July 2015	August 2015- July 2016	MOA Total Amount w/ 10% Contingency
	Amount w/ 10% Contingency Minus Credit <sup>(1)</sup>	Amount w/ 10% Contingency <sup>(1)</sup>	Amount w/ 10% Contingency <sup>(1)</sup>	
County of Los Angeles	\$398,848.90 <sup>(2)</sup>	\$637,017.41	\$626,174.27	\$1,662,040.58
City of Los Angeles	\$367,283.50	\$767,387.40	\$754,325.13	\$1,888,996.03
City of Culver City	\$13,786.75	\$28,884.37	\$28,392.71	\$71,063.82
Caltrans	\$7,280.29	\$14,832.51	\$14,580.04	\$36,692.83
<b>Total</b>	<b>\$787,199.15</b>	<b>\$1,448,121.69</b>	<b>\$1,423,472.14</b>	<b>\$3,658,793.26</b>

<sup>(1)</sup> Total estimated cost, without optional tasks, from Exhibit B, Table 1 multiplied by percentage area from Exhibit A, Table 1, including the 10% contingency minus prior MOA credits.

<sup>(2)</sup> County of Los Angeles paid its share directly to the consultant; no surplus to credit from Los Angeles County Flood Control District.

## EXHIBIT B

**Marina del Rey Harbor Toxic Pollutants TMDL CMP  
August 2013 - July 2016 Monitoring Services  
Estimated Annual Cost**

**Table 1 Monitoring Program Costs**

Monitoring Program	August 2013 - July 2014	August 2014 - July 2015 <sup>(1)</sup>	August 2015 - July 2016 <sup>(2)</sup>
	Estimated Cost	Estimated Cost	Estimated Cost
Dry-Weather Monitoring	\$379,649	\$695,054	\$695,054
Stormwater Monitoring	\$187,185	\$443,675	\$422,955
Meetings & Reports	\$90,643	\$78,538	\$78,538
Pilot Study	\$127,517	N/A	N/A
<b>Monitoring Cost</b>	<b>\$785,019<sup>(3)</sup></b>	<b>\$1,217,267</b>	<b>\$1,196,547</b>
3% Inflation	N/A	\$36,518	\$35,896
<b>Monitoring Costs w/ Inflation</b>	<b>\$785,019</b>	<b>\$1,253,785</b>	<b>\$1,232,443</b>
Project Administration & Management Costs (5%)	\$39,247	\$62,689	\$61,622
<b>Monitoring Program Annual Cost</b>	<b>\$824,270</b>	<b>\$1,316,474</b>	<b>\$1,294,066</b>
10% Contingency	\$82,427.00	\$131,647	\$129,407
<b>Monitoring Program Annual Cost w/ Contingency</b>	<b>\$906,697</b>	<b>\$1,448,122</b>	<b>\$1,423,472</b>

<sup>(1)</sup> Estimated cost based on Effectiveness Monitoring prescribed by the current CMP

<sup>(2)</sup> Estimated cost based on 2014-15 Monitoring Costs plus 3% inflation

<sup>(3)</sup> Added \$25 to take into account rounding in order to match NTPs/fee proposals.

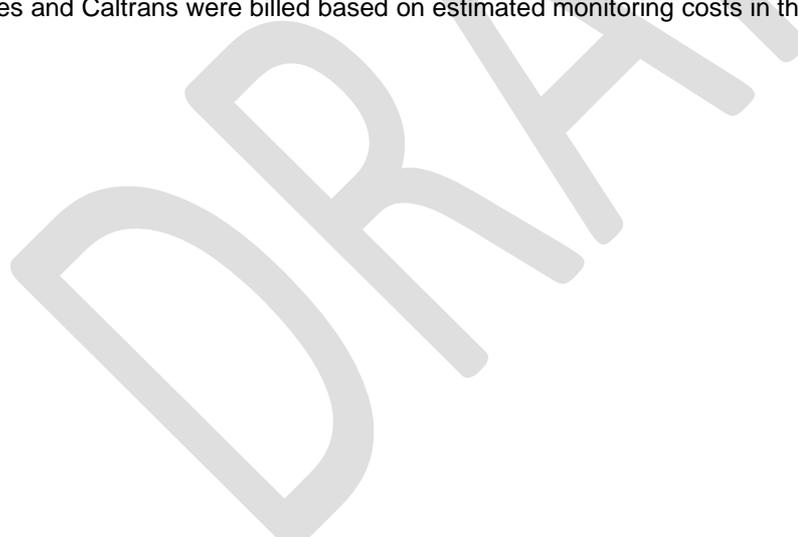
**EXHIBIT C  
Marina del Rey Harbor Toxic Pollutants TMDL CMP  
Credits**

**Table 1 Expired Agreement’s Surplus– Amount of Funds Deposited to LACFCD  
But Not Spent<sup>(1)</sup>**

Agency	Program Years 1 & 2	Program Year 3					Amount to Credit Agency in 1 <sup>st</sup> Invoice
	Amount to Credit Agency	Paid by Agency <sup>(2)</sup>	Actual Contract Cost	Actual 5% Contract Management Cost	Actual Total Cost	Amount to Credit Agency	
City of Los Angeles <sup>(1)</sup>	\$24,187.92	\$393,381.50	\$289,882.73	\$14,494.14	\$304,376.86	\$89,004.64	\$113,192.56
City of Culver City <sup>(1)</sup>	\$910.43	\$14,844.59	\$10,911.15	\$545.56	\$11,456.71	\$3,387.88	\$4,298.31
Caltrans(1)	\$467.52	\$7,422.29	\$5,603.02	\$280.15	\$5,883.17	\$1,539.12	\$2,006.64
<b>Total</b>	<b>\$25,565.87</b>	<b>\$415,648.38</b>	<b>\$306,396.90</b>	<b>\$15,319.85</b>	<b>\$321,716.74</b>	<b>\$93,931.64</b>	<b>\$119,497.51</b>

<sup>(1)</sup> County of Los Angeles paid its share directly to the consultant; no surplus to credit from Los Angeles County Flood Control District.

<sup>(2)</sup> Cities and Caltrans were billed based on estimated monitoring costs in the MOA.



**EXHIBIT D**  
**Marina del Rey Harbor Toxic Pollutants TMDL CMP**  
**Representatives**

**Primary Agency:**

1. County of Los Angeles  
Department of Public Works  
Watershed Management Division, 11<sup>th</sup> floor  
900 South Fremont Avenue  
Alhambra, CA 91803-1331  
Elaine Kunitake, P.E., Data Management Section  
ekunitake@dpw.lacounty.gov  
Phone No.: (626) 458-7153  
Fax: (626) 457-1526

**Responsible Agencies:**

1. City of Los Angeles  
Watershed Protection Division  
1149 South Broadway.  
Los Angeles, CA 90015  
Mail Stop: 1149-756  
Hubertus Cox, PhD, P.E., TMDL Implementation Section  
Hubertus.Cox@lacity.org  
Phone No.: (213) 485-3984  
Fax: (213) 485-3939
2. City of Culver City  
9770 Culver Blvd., 2<sup>nd</sup> Floor  
Culver City, CA 90232-0507  
Charles D. Herbertson, Director of Public Works/City Engineer  
charles.herbertson@culvercity.org  
Phone No.: (310) 253-5630  
Fax: (310) 253-5626
3. California Department of Transportation, District 7  
Design Division  
100 South Main Street, Suite 100, MS 13  
Los Angeles, California 90012-3602  
Robert Wu, Storm Water Unit  
robert.wu@dot.ca.gov  
Phone No.: (213) 897-8636  
Fax: (213) 897-0205

**Party:**

1. Los Angeles County Flood Control District  
Department of Public Works  
Watershed Management Division, 11<sup>th</sup> floor  
900 South Fremont Avenue  
Alhambra, CA 91803-1331  
Elaine Kunitake, P.E., Data Management Section  
ekunitake@dpw.lacounty.gov  
Phone No.: (626) 458-7153  
Fax: (626) 457-1526

RW/:

DRAFT