

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF REDONDO BEACH, THE CITY OF HERMOSA BEACH, THE CITY OF
MANHATTAN BEACH, THE CITY OF TORRANCE, AND THE LOS ANGELES COUNTY
FLOOD CONTROL DISTRICT

REGARDING THE ADMINISTRATION AND COST SHARING FOR DEVELOPMENT OF THE
ENHANCED WATERSHED MANAGEMENT PROGRAM AND THE COORDINATED
INTEGRATED MONITORING PROGRAM FOR THE SANTA MONICA BAY WATERSHED
AND THE DOMINGUEZ CHANNEL WATERSHED

This Memorandum of Understanding (MOU), is made and entered into as of the date set forth below by and between the CITY OF REDONDO BEACH, a body corporate and politic, THE CITY OF HERMOSA BEACH, a body corporate and politic, THE CITY OF MANHATTAN BEACH, a body and politic, THE CITY OF TORRANCE, a municipal corporation, and THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT (LACFCD), a body corporate and politic. Collectively, these entities shall be known herein as "PARTIES" or individually as "PARTY."

WITNESSETH

WHEREAS, the 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 Municipal Separate Storm Sewer System (MS4 Permit); and

WHEREAS, the MS4 Permit became effective on December 28, 2012 and requires that the LACFCD, the County of Los Angeles, and 84 of the 88 cities (excluding Avalon, Long Beach, Palmdale, and Lancaster) within the County of Los Angeles comply with the prescribed elements of the MS4 Permit; and

WHEREAS, the City of Redondo Beach, the City of Hermosa Beach, the City of Manhattan Beach, the City of Torrance, and the LACFCD have agreed to collaborate on the compliance of certain elements of the MS4 Permit; and

WHEREAS, the PARTIES collaboratively prepared a final Scope of Work and Request for Proposal to obtain a Consultant to assist the PARTIES with compliance with certain elements of the MS4 Permit; and

WHEREAS, the PARTIES propose for the Consultant to prepare and deliver Phase I plans including a Draft and Final Enhanced Watershed Management Program (EWMP) Work Plan and a Draft and Final Coordinated Integrated Monitoring Plan (CIMP), and Phase II plans including a Draft and Final EWMP plan (collectively, PLANS) in compliance with certain elements of the MS4 Permit, at a total cost not to exceed \$760,000; and

WHEREAS, the PARTIES have determined that hiring a Consultant to prepare and deliver the PLANS will be beneficial to the PARTIES and they desire to participate and will provide Phase I funding in accordance with the cost allocation in Exhibit A; and

WHEREAS, the PARTIES have determined that the cost of completing Phase II plans will be negotiated with the Consultant at the completion of Phase I and that the PARTIES desire to participate and will provide Phase II funding in accordance with a mutually agreed Phase II cost Allocation Schedule to be established as an Amendment to this MOU; and

WHEREAS, the CITY OF REDONDO BEACH will act on behalf of the PARTIES in the preparation of the PLANS; and

WHEREAS, the PARTIES agree that 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 herein contained, it is hereby agreed as follows:

Section 1. Recitals: The recitals set forth above are fully incorporated as part of this MOU.

Section 2. Purpose: The purpose of this MOU is to cooperatively fund the preparation and submittal of the PLANS to the Regional Board.

Section 3. Cooperation: The PARTIES shall fully cooperate with one another to attain the purpose of this MOU.

Section 4. Voluntary: This is a voluntary MOU entered into for the purpose of preparing and submitting the PLANS to the Regional Board.

Section 5. Terms: This MOU shall become effective on the date of the final execution by the PARTIES or December 28, 2013, whichever comes first, and shall remain in effect until (1) the Regional Board has given final approval to the last outstanding portion of the PLANS, (2) the City of Redondo Beach has provided the PARTIES with an accounting as set forth in section 7(d), and (3) the PARTIES have paid all outstanding invoices.

Section 6. Assessment for Proportional Cost for PLANS. The PARTIES agree to pay the City of Redondo Beach for preparation and delivery of the Phase I PLANS in the amounts shown in Table (1a) and Table (1b) of Exhibit A, based on the cost allocation formula shown in Table (2) of Exhibit A, attached hereto and made part of this MOU by this reference. The City of Redondo Beach will annually invoice the PARTIES upon execution of this MOU as shown in Table (3) of Exhibit A, based on the allocated cost for developing the PLANS and the project administration and management costs at a percentage not to exceed 10% of the allocated costs for development of the PLANS. At the end of each fiscal year, the City of Redondo Beach will provide the PARTIES with a Statement with the actual expenditures. Unexpended funds at the termination of this MOU will be reimbursed to the PARTIES. The PARTIES agree to pay the City of Redondo Beach for preparation and delivery of the Phase II PLANS. The cost of preparing Phase II PLANS will be negotiated with the Consultant at the conclusion of Phase I and will be allocated to the PARTIES by way of amendment to this MOU consistent with the cost allocation formula show in Table (2) of Exhibit A.

Section 7. City of Redondo Beach Agrees:

- a. To solicit proposals for, award and administer a Consultant contract for the preparation and delivery of the PLANS. The CITY OF REDONDO BEACH shall

require the Consultant, its contractors and subcontractors, to provide liability insurance pursuant to CITY OF REDONDO BEACH standards. The CITY OF REDONDO BEACH shall be compensated for the administration and management of the Consultant contract as described in Exhibit A.

- b. To utilize the funds deposited by the PARTIES only for the administration of the Consultant contract, project management, and the preparation and completion of the PLANS.
- c. To provide the PARTIES with one (1) electronic copy and one (1) hard copy of the completed PLANS within seven business days after receipt from the Consultant.
- d. To provide an accounting upon the early termination of this MOU pursuant to section 11(a) or 60 days after the date the Regional Board gives final approval to the last outstanding portion of the PLANS. The CITY OF REDONDO BEACH shall return any unused portion of all funds deposited with the CITY OF REDONDO BEACH using the cost allocated formulas used in Exhibit A.
- e. To notify the PARTIES if the actual cost of the preparation of the PLANS will exceed the cost estimates shown on Exhibit A and obtain approval of the increase from the PARTIES prior to executing extra work, or work associated with a changed Scope of Work. Upon approval of the cost increase by the PARTIES, the CITY OF REDONDO BEACH will invoice the PARTIES per the cost allocation formulas on Exhibit A.
- f. To not submit any PLANS to the Regional Board unless and until the PLANS have been approved, in writing, for submittal by all PARTIES to this MOU.

Section 8. 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 city administration and council.
- b. To fund the cost of the preparation and delivery of the PLANS and to pay the CITY OF REDONDO BEACH for the preparation and delivery of the PLANS based on the cost allocation shown on Exhibit A.
- c. To grant reasonable access rights and entry to the Consultant, on an as-needed basis during the term of this MOU to the PARTY'S storm drains, channels, catch basins, and similar properties (FACILITIES) to achieve the purpose of this MOU. Prior to exercising said right of entry, the CITY OF REDONDO BEACH or its Consultant shall provide written notice to the PARTIES at least 72 hours in advance. For the purpose of this provision, written notice shall include notice delivered via e-mail that has been delivered to the PARTIES' representative identified in Exhibit B.

Section 9. Invoice and Payment

- a. Payment: The PARTIES shall reimburse the CITY OF REDONDO BEACH for their proportional share cost preparation and delivery of PLANS and project administration and management cost as shown in Table (1b) and Table (1c) of Exhibit A within thirty (30) days of receipt of the invoice from the CITY OF REDONDO BEACH.
- b. Invoice: The CITY OF REDONDO BEACH will invoice PARTIES as shown in Table (3) of Exhibit A.
- c. Late Payment Penalty: Any payment that is late shall be subject to interest on the original amount due from the date that the payment first became due. The interest rate shall be equal to the Prime Rate in effect when the payment first became due plus one percent for any payment that is made up to 30 days after the due date. The

Prime Rate in effect when the payment first became due plus five (5) percent shall apply for any payment that is made from 31 to 60 days after the due date. The Prime Rate in effect when the payment first became due plus ten (10) percent shall apply for any payment that is made more than 60 days after the due date. Regardless of the penalty rates stated above, the rates due shall not exceed the maximum allowed by law.

Section 10. Indemnification

- a. To the fullest extent permitted by law, the CITY OF HERMOSA BEACH, the CITY OF MANHATTAN BEACH, the CITY OF TORRANCE, the LACFCD and the CITY OF REDONDO BEACH agree to indemnify, defend, and hold harmless each other from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorney fees, court costs, and any other costs of any nature without restriction incurred in relation to, as a consequence of, or arising out of, the performance of this Agreement, and attributable to each PARTY'S own fault. Following a determination of the percentage of fault of each PARTY, and or liability by agreement between the PARTIES or a court of competent jurisdiction, the PARTY responsible for liability to the other will indemnify the other PARTY to this MOU for the percentage of liability determined.
- 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 of omission occurring in the performance of this MOU to the same extent that such liability would be imposed in the absence of Section 895.2 of said code. To achieve the above stated purpose, each of the PARTIES 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 11. Termination

- a. This MOU may be terminated upon the express written agreement of all PARTIES. If this MOU is terminated, 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 all PARTIES. 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 comply with any of the terms or conditions of this MOU, that PARTY shall have rights to work completed under the MOU up to the time of that PARTY'S non-compliance, but shall forfeit its rights to work completed after the point of non-compliance. 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 12. 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 Representative of the PARTY at the address set forth in Exhibit B. 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 email or fax. A notice shall be deemed to have been received on (1) the date of delivery, if delivered by hand during regular business hours, or by confirmed facsimile or by email; or (2) 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 purpose 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 they are authorized to sign this MOU on behalf of such Party.
- c. Relationship to PARTIES. The PARTIES are and shall remain at all times as to each other, wholly independent entities. No PARTY to this MOU shall have power to incur any debt, obligations, or liability on behalf of another 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 inure to the benefit of each PARTY to this MOU and their respective heirs, administrators, representatives, successors and assigns.
- 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 the PARTIES.
- f. Waiver. Waiver by any PARTY to this MOU of any term, condition, or covenant of this MOU shall not constitute a waiver of any other term, condition, or covenant. Waiver by any PARTY to any breach of the provisions of this MOU shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this MOU.
- g. Assignment Prohibited. No PARTY may assign its respective rights or obligations under this MOU without the prior written consent of the other PARTIES.
- h. Law to Govern; Venue. This MOU 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.
- i. No Presumption in Drafting. The PARTIES to this MOU agree that the general rule that an MOU is to be interpreted against the PARTY drafting it, or causing it to be prepared, shall not apply.
- j. Entire Agreement. This MOU constitutes the entire agreement of the PARTIES with respect to the subject matter hereof and supersedes all prior contemporaneous agreements, whether written or oral, with respect hereto.
- k. Severability. If any term, provision, condition or covenant of this MOU is declared or determined by any court or competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this MOU shall be not be affected thereby

and this MOU shall be read and constructed without the invalid, void, or unenforceable provision(s).

- I. Counterparts. This MOU 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 MOU.
- m. All PARTIES have been represented by counsel in the preparation and negotiation of this MOU. Accordingly, this MOU shall be construed according to its fair language.

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

[SIGNATURES FOLLOW ON NEXT PAGE]

CITY OF REDONDO BEACH

Date: 12-17-13

By: 
Steve Aspel, Mayor

ATTEST:

By: 
Eleanor Manzano, City Clerk


APPROVED AS TO FORM

By: 
for Mike Webb, City Attorney

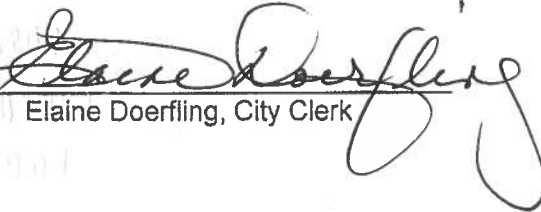


CITY OF HERMOSA BEACH

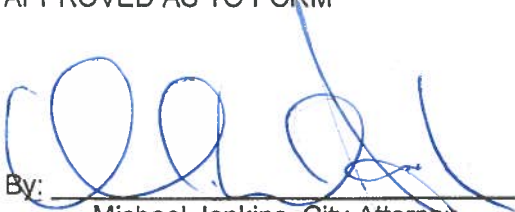
Date: 11/26/13

By: 
Michael DiVirgilio, Mayor

ATTEST:

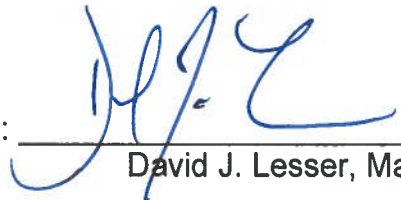
By: 
Elaine Doerfling, City Clerk

APPROVED AS TO FORM


By: 
Michael Jenkins, City Attorney

CITY OF MANHATTAN BEACH

Date: 12-11-13

By: 
David J. Lesser, Mayor

ATTEST:

By:  12-11-13
Liza Tamura, City Clerk

APPROVED AS TO FORM

By: 
Omar Sandoval, Special Counsel

CITY OF TORRANCE

Date: Dec 23, 2013

By: Frank Scotto
Frank Scotto, Mayor

ATTEST:

By: Sue Herbers
Sue Herbers, City Clerk

APPROVED AS TO FORM

By: John Fellows
John Fellows, City Attorney

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

Date: 12/3/13

By: 
Gail Farber, Chief Engineer

APPROVED AS TO FORM:

John F. Krattli
County Counsel

By: 
Senior Associate

Date: 11/21/13

EXHIBIT A
 BEACH CITIES
 EWMP/CIMP GROUP
 PHASE I
 Funding Contributions

TABLE 1a. TOTAL COST

Item		Total Cost
Contract Cost	(a)	\$278,414
RB Contract Management Fee (10%)	(b)	\$27,841
Sub-Total Cost	(a) + (b) = (c)	\$306,255
LACFCD Allocation (10%) [1]	(c) x 10% = (d)	\$30,626
TOTAL COST TO BE DISTRIBUTED	(c) - (d) = (e)	\$275,630
Santa Monica Watershed [2]		\$137,815
Dominguez Channel Watershed [2]		\$137,815

Notes

- [1] The Los Angeles County Flood Control District (LACFCD) has committed to contributing 10% of the Total Cost for their share in the development of the plans.
- [2] Using tributary land areas, the two watersheds were estimated to have an even split.
- [3] Adjustments were made to Redondo Beach and Manhattan Beach to subtract the acreage of the Wylie Sump.
- [4] Adjustments were made to Redondo Beach and Torrance to subtract the acreage of Machado Lake.
- [5] Adjustment was made to Torrance to subtract the acreage of the Ocean and Bishop Montgomery basins.

TABLE 1b. DISTRIBUTION OF TOTAL COST AMONG PARTICIPATING AGENCIES

Combined Santa Monica Bay and Dominguez Channel Watershed 5					
Agency	Acres	Adjusted Acres	Percent of Area	Distributed Total Cost	
City of Redondo Beach	3,831.11	3,756.87	19%	\$68,907	
City of Hermosa Beach	831.51	811.46	4%	\$15,160	
City of Manhattan Beach	2,428.44	2,390.09	12%	\$42,585	
City of Torrance	13,370.55	7,892.07	65%	\$148,978	
LACFCD	N/A	N/A		\$30,626	
TOTAL	20,461.61	14,850.49	100%	\$306,255	

Table 2. Cost Allocation Formula

$\text{AGENCY Cost} = \text{Total EWMP\&CIMP Cost} \times \text{Agency Percent of Area}$
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Table 3. Invoice Schedule

Agency	Agency Cost		Deposit Schedule
	Total Cost		Jan 1, 2014
City of Redondo Beach	\$ 68,907	\$	68,907
City of Hermosa Beach	\$ 15,160	\$	15,160
City of Manhattan Beach	\$ 42,585	\$	42,585
City of Torrance	\$ 148,978	\$	148,978
LACFCD	\$ 30,626	\$	30,626
TOTAL	\$ 306,255	\$	306,255

EXHIBIT B

**BEACH CITIES WMG
EWMP/CIMP GROUP
Responsible Agencies Representative**

1. City of Redondo Beach
Department of Public Works, Engineering Division
415 Diamond Street
Redondo Beach, CA 90266

Elaine Jeng, P.E.
E-mail: elaine.jeng@redondo.org
Phone: (310) 318-0661 x2279
Fax: (310) 374-4828

2. City of Hermosa Beach
Department of Public Works
1315 Valley Drive
Hermosa Beach, CA 90254

Frank Senteno, P.E.
E-mail: fsenteno@hermosabch.org
Phone: (310) 318--0238
Fax: (310) 937-5015

3. City of Manhattan Beach
Department of Public Works
1400 Highland Avenue
Manhattan Beach, CA 90266

Raul Saenz
E-mail: rsaenz@citymb.info
Phone: (310) 802-5315
Fax: (310) 802-5314

4. City of Torrance
Department of Public Works
20500 Madronna Avenue
Torrance, CA 90503

John C. Dettle, P.E.
E-mail: jdettle@TorranceCA.gov
Phone: (310) 618-3059
Fax: (310) 781-6902

5. Los Angeles County Flood Control District
Department of Public Works
Watershed Management Division, 11th Floor
900 South Fremont Avenue

Alhambra, CA 91803

Gary Hildebrand

E-mail: ghildeb@dpw.lacounty.gov

Phone: (626) 458-4300

Fax: (626) 457-1526