

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,
THE COUNTY OF LOS ANGELES, AND
THE CITIES OF ARCADIA, AZUSA, BRADBURY, DUARTE, MONROVIA
AND SIERRA MADRE

REGARDING THE ADMINISTRATION AND COST SHARING FOR DEVELOPMENT
OF THE ENHANCED WATERSHED MANAGEMENT PROGRAM (EWMP) FOR THE
RIO HONDO/SAN GABRIEL RIVER WATER QUALITY GROUP'S WATERSHED

This Memorandum of Understanding (MOU), made and entered into as of the date of the last signature set forth below by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT (LACFCD), a political subdivision of the State of California, the COUNTY OF LOS ANGELES (LA COUNTY), a political subdivision of the State of California, and the CITIES OF ARCADIA, AZUSA, BRADBURY, DUARTE, MONROVIA, AND SIERRA MADRE. 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 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, LA COUNTY, 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 PARTIES have agreed to collaborate on the compliance of certain elements of the MS4 Permit and have agreed to a cost sharing formula set forth in Table 2 of Exhibit A, which is attached and made part of this MOU; 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 this MOU; and

WHEREAS, the PARTIES collaboratively prepared a final Scope of Work and Request for Proposal to obtain a Consultant to assist the PARTIES in complying with certain elements of the MS4 Permit, as specified in the Scope of Work, which is incorporated into this MOU by reference; and

WHEREAS, the PARTIES propose for the Consultant to prepare and deliver a Final Work Plan, Draft Enhanced Watershed Management Program (EWMP) plan, Coordinated Integrated Monitoring Plan (CIMP), Final EWMP plan, and Environmental Review as appropriate to the EWMP and CIMP (collectively, PLANS) in compliance with certain elements of the MS4 Permit, at a total cost of approximately \$790,537; 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 funding in accordance with the cost allocation in Table 2 of Exhibit A; and

WHEREAS, the PARTIES have agreed to establish an Oversight Committee (comprised of City Managers and/or designated staff from each PARTY) to provide technical oversight and project management for the development of the PLANS, and

WHEREAS, the CITY OF ARCADIA will act on behalf of the PARTIES in the administration of the Consultant services agreements for the preparation of the PLANS .

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the PARTIES, and of the promises contained in this MOU, the PARTIES agree as follows:

- (1) Recitals: The recitals set forth above are incorporated into this MOU.
- (2) Purpose: The purpose of this MOU is to cooperatively fund the preparation of the PLANS and the submittal of the PLANS to the Regional Board.
- (3) Voluntary: This MOU is voluntarily entered into for the purpose of preparing the PLANS and submitting the PLANS to the Regional Board.
- (4) Terms: This MOU shall become effective the last date of execution by all Parties hereto ("Effective Date"), and shall remain in effect until the CITY OF ARCADIA has provided written notice of completion of the Scope of Work described herein, and payment by all Parties of their allocated pro-rata share hereunder. .
- (5) Responsibilities of the CITY OF ARCADIA:
 - a. The CITY OF ARCADIA shall act as the contract manager on behalf of, and for the benefit of, PARTIES, and as such agrees to invoice the PARTIES for their pro-rata share of the cost for the preparation and delivery of the PLANS as described in Tables 2 and 3 of Exhibit A.
 1. Payments to Third Parties – The CITY OF ARCADIA shall have no obligation to pay vendors or consultants any funds other than those owed for its proportional share as set forth in Table 2 of Exhibit A, and those funds remitted to the CITY OF ARCADIA following invoice. In the event

the CITY OF ARCADIA elects to make a payment on behalf of a Delinquent Party, the Delinquent Party and/or the remaining Parties shall reimburse the CITY OF ARCADIA the funds expended making the payment as described below.

- b. The CITY OF ARCADIA shall solicit proposals for, award, and administer a Consultant contract(s) for the preparation and delivery of the PLANS in accordance with the Scope of Work.
- c. The CITY OF ARCADIA shall utilize the funds deposited by the PARTIES only for payment of the Consultant for the preparation and completion of the PLANS.
- d. The CITY OF ARCADIA shall provide the PARTIES with an electronic copy of the draft and final PLANS within 5 days of receipt from the Consultant.
- e. Upon execution of this MOU, each Party shall provide the name or names of those persons from within the Party's organization who is/are to be representing said Party on the Oversight Committee. Within thirty (30) days from the Effective Date, the CITY OF ARCADIA shall notice all parties hereto of the members of the contact information for the Oversight Committee.
- f. All draft and final Plans shall be reviewed by the Oversight Committee for further revision and/or completion. No PLAN OR PLANS shall be submitted to the Regional Board unless and until it/they have been approved, in writing, for submittal by all PARTIES hereto, excepting only a Party or Parties whose involvement in this MOU has been terminated.
- g. The CITY OF ARCADIA shall provide an accounting upon the early termination of this MOU pursuant to paragraph (6)t.1 or 60 days after the date the Regional Board gives final approval to the last outstanding portion of the PLANS. The CITY OF ARCADIA shall return the unused portion of all funds deposited with the CITY OF ARCADIA in accordance with the cost allocation formula set forth in Table 2 of Exhibit A.

(6) THE PARTIES FURTHER AGREE:

- a. The PARTIES shall make a full faith effort to cooperate with one another to achieve the purposes of this MOU by providing information about project opportunities, reviewing deliverables in a timely manner, and informing their respective administrators, agency heads, and/or governing bodies.
- b. The PARTIES shall fund the cost of the preparation and delivery of the PLANS and pay the CITY OF ARCADIA for the preparation and delivery of the PLANS based on the cost allocation set forth in Table 2 of Exhibit A within 60 days of receiving an invoice.

- c. Delinquent Payments – A PARTY's payment is considered delinquent 180 days after being invoiced by the CITY OF ARCADIA. The following procedures may be implemented to attain payments from the delinquent PARTY per instructions from the PARTIES: 1) verbally contact/meet with the manager from the delinquent PARTY or PARTIES; and 2) submit a formal letter to the delinquent PARTY OR PARTIES from the City of Arcadia's legal counsel. If the PARTY or PARTIES remain delinquent after the above procedures, then the CITY OF ARCADIA may notify the Regional Board that the delinquent PARTY OR PARTIES are no longer a participating member of the PLANS, and said PARTY or PARTIES shall then be deemed to have terminated its participation as a PARTY to this MOU ("EXCLUDED PARTY") and their name(s) may be removed from the PLANS. Any EXCLUDED PARTY'S delinquent amount(s) will be paid in accordance with the remaining PARTIES pro-rata share pursuant to Table 2 of Exhibit A, as adjusted to remove the EXCLUDED PARTY from the allocation. The CITY OF ARCADIA will revise Table 2 of Exhibit A to show the recalculated costs for each remaining participating PARTY; these revised exhibits will be included with the next invoice to the PARTIES. The PARTIES shall retain all contractual, legal, and equitable rights and causes of action to recover any delinquent amounts paid that were owed by an EXCLUDED PARTY or PARTIES who failed to make such payments.
- d. Interest Accrual - Any interest accrued on the funds collected per this MOU during the term of this MOU shall be refunded or credited toward any amount owed at the time of the final accounting. The CITY OF ARCADIA shall report to the PARTIES the amount of the interest accrued by the collected funds at the time of the final accounting.
- e. Excess Funds - Any collected funds not spent in any annual period shall be refunded or credited toward any amount owed at the time of the final accounting.
- f. Each PARTY shall allow reasonable access 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 purposes of this MOU, provided, however, that prior to entering any PARTY's facilities, the Consultant shall secure a permit of entry from the applicable PARTY.
- g. To the maximum extent permitted by law, the CITY OF ARCADIA shall require the Consultant(s) retained pursuant to this MOU to agree to indemnify, defend, and hold harmless each PARTY, its special districts, elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to demands, claims, actions, fees,

costs, and expenses (including attorney and expert fees), arising from or connected with the Consultant's performance of its agreement with the CITY OF ARCADIA. In addition, the CITY OF ARCADIA shall require the Consultant(s) to carry, maintain, and keep in full force and effect an insurance policy or policies, and each PARTY, its officers, employees, attorneys, and designated volunteers shall be named as additional insureds on the policy(ies) with respect to liabilities arising out of the Consultant's work. These requirements will also apply to any subcontractors hired by the Consultant(s).

- h. To the maximum extent permitted by law, 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 liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the respective acts of each PARTY under this MOU; provided, however, that no PARTY shall indemnify another PARTY for that PARTY's own negligence or willful misconduct.
- i. In light of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the PARTIES hereto, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, shall assume the full liability imposed upon it or any of its officers, agents, or employees, by law for injury caused by any act or omission occurring in the performance of this MOU to the same extent that 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.
- j. The PARTIES are, and shall at all times remain as to each other, wholly independent entities. No PARTY to this MOU shall have power to incur any debt, obligation, or liability on behalf of any other PARTY unless expressly provided to the contrary by this MOU. No employee, agent, or officer of a PARTY shall be deemed for any purpose whatsoever to be an agent, employee, or officer of another PARTY.
- k. Any notices, bills, invoices, or reports relating to this MOU, and any request, demand, statement, or other communication required or permitted hereunder shall be in writing and shall be delivered to the representatives of the

PARTIES at the addresses set forth in Exhibit B attached hereto and incorporated herein by reference.

- l. This MOU shall be binding upon, and shall be to the benefit of the respective successors, heirs, and assigns of each PARTY; provided, however, no PARTY may assign its respective rights or obligations under this MOU without the prior written consent of the other PARTIES.
- m. This MOU is governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.
- n. If any provision of this MOU shall be determined by any court to be invalid, illegal, or unenforceable to any extent, the remainder of this MOU shall not be affected, and this MOU shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this MOU.
- o. 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. Any ambiguities shall be resolved in a collaborative manner by the PARTIES and shall be rectified by amending this MOU as described in paragraph (6)r.
- p. Each of the persons signing below on behalf of a PARTY represents and warrants that he or she is authorized to sign this MOU on behalf of such PARTY.
- q. No PARTY shall have any financial obligation to any other PARTY to this MOU, except as herein expressly provided.
- r. The terms and provisions of this MOU may not be amended, modified, or waived, except by an instrument in writing signed by all PARTIES who have not terminated their interests herein or whose involvement has not terminated by reason of non-payment. This paragraph applies to any changes proposed as a result of the following circumstances: 1) changes to the MS4 Permit terms with regards to compliance through an EWMP or CIMP; or (2) changes in the number of parties to this MOU. This list is not intended to be exhaustive.
- s. This MOU may be signed in multiple counterparts with the same force and effect as if all original signatures appeared on one copy; and in the event this MOU is signed in counterparts, each counterpart shall be deemed an original and all of the counterparts shall be deemed to be one agreement.
- t. Early Termination or Withdrawal

1. This MOU may be terminated upon the express written agreement of all PARTIES. If this MOU is terminated, any remaining funds not due and payable or otherwise legally committed to a Consultant(s) shall be distributed to the remaining PARTIES (not including any EXCLUDED or WITHDRAWN PARTY or PARTIES) so that all such remaining PARTIES have paid no more than their pro-rata share (in accordance with the most current allocation set forth in Table 2 of Exhibit A). Completed work shall be owned by all PARTIES at the time of completion of the work who are not EXCLUDED or WITHDRAWN PARTIES. Similarly, rights to uncompleted work by the Consultant still under contract is to be owned by the PARTY or PARTIES who are not EXCLUDED or WITHDRAWN PARTIES at such time.

2. A PARTY may withdraw from this MOU (“WITHDRAWN PARTY”) upon 60 days written notice to the other PARTIES, subject to payment of any invoice received from the CITY OF ARCADIA prior to or during the 60-day notice period for its share of the cost of the work completed as of the date of its notice of withdrawal, calculated in accordance with the cost-sharing percentages set forth in Table 2 of Exhibit A. The effective withdrawal date shall be the sixtieth (60th) day after the CITY OF ARCADIA receives the withdrawing PARTY’s notice to withdraw from this MOU. The CITY OF ARCADIA shall refund to the WITHDRAWN PARTY any unused funds paid by the WITHDRAWN PARTY’s effective withdrawal date. All PARTIES understand, acknowledge, and agree that withdrawal from this MOU will terminate any responsibility, liability, or obligation of the WITHDRAWN PARTY under this MOU commencing on the effective withdrawal date and that the WITHDRAWN PARTY shall remain liable for its share of any loss, debt or liability incurred prior to the withdrawal date, and for any work which could not be suspended. Withdrawal from this MOU does not release any PARTY from the obligations set forth in MS4 Permit.

3. If a PARTY fails to substantially comply with any of the terms or conditions of this MOU, that PARTY shall forfeit its rights to work completed through this MOU, but no such forfeiture shall occur unless and until the defaulting PARTY has first been given notice of its default and a reasonable opportunity to cure the alleged default.

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

CITY OF ARCADIA

By 

Dominic Lazzaretto, City Manager

June 4, 2013

Date

ATTEST:

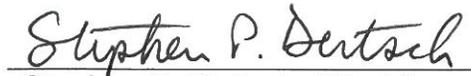
By 

Chief Deputy City Clerk

June 4, 2013

Date

APPROVED AS TO FORM:

By 

Stephen P. Deitsch, City Attorney

June 4, 2013

Date

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

By Matthew
Kov ✓ Chief Engineer

8/29/13
Date

APPROVED AS TO FORM:

John F. Krattli
County Counsel

By [Signature]
Associate

7/24/2013
Date

COUNTY OF LOS ANGELES

By 
for GAIL FARBER

8/29/13
Date

APPROVED AS TO FORM:

John F. Krattli
County Counsel

By 
Associate

7/24/2013
Date

CITY OF AZUSA

By Mayor Joseph R. Rocha
Mayor Joseph R. Rocha

Date

ATTEST:
By Jeffrey Cornejo, Jr.
City Clerk Jeffrey Cornejo, Jr.

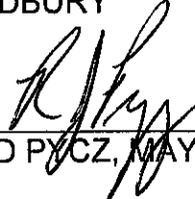
May 6, 2013
Date

APPROVED AS TO FORM:

By J. A. [Signature]
City Attorney

5/14/13
Date

CITY OF BRADBURY

By 
RICHARD PYCZ, MAYOR

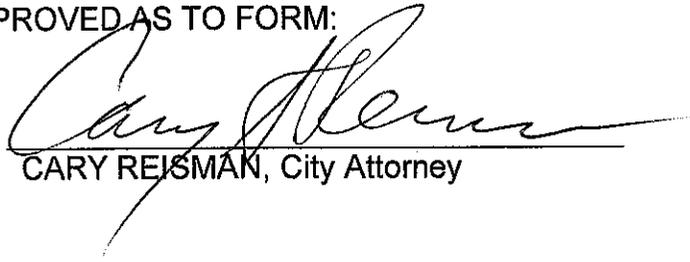
6-25-13
Date

ATTEST:

By 
CLAUDIA SALDANA, City Clerk

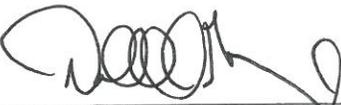
6-25-13
Date

APPROVED AS TO FORM:

By 
CARY REISMAN, City Attorney

6-25-13
Date

CITY OF DUARTE

By 
Darrell George, City Manager

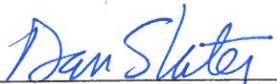
May 14, 2013
Date

ATTEST:

By 
Marla Akana, City Clerk

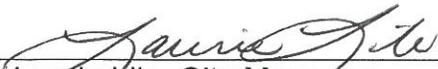
May 14, 2013
Date

APPROVED AS TO FORM:

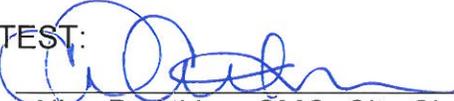
By 
Dan Slater, Attorney

May 14, 2013
Date

CITY OF MONROVIA

By 
Laurie Lile, City Manager

5-22-13
Date

ATTEST:
By 
Alice D. Atkins, CMC, City Clerk

5/22/2013
Date

APPROVED AS TO FORM:

By 
Craig A. Steele, City Attorney

5/21/2013
Date

By _____
Chief Engineer

APPROVED AS TO FORM:

John F. Krattli
County Counsel

By _____
Deputy

Date

CITY OF SIERRA MADRE

By 
NANCY WALSH, Mayor

May 14, 2013

Date

ATTEST:
By 
NANCY SHOLLENBERGER, City Clerk

May 14, 2013

Date

APPROVED AS TO FORM:

By 
TERESA HIGHSMITH, City Attorney

May 14, 2013

Date

EXHIBIT A

Rio Hondo/San Gabriel River Water Quality Group EWMP Funding Contributions

Table 1. Total Contract Costs

Work Scope	Cost
Project Management	\$111,231
EWMP Work Plan	\$146,234
CIMP	\$136,464
Final EWMP	\$ 394,816
Notice of Intent Review	\$1,792
Total Contract Cost	\$ 790,537.00

Table 2. Cost Allocation Formula

Party	Base Fee (10%)	Acres (Developed Land)	Percent of Area ⁽²⁾	Cost based on Acres (90%)	Total Cost
City of Arcadia	\$10,164.05	11	26.51%	\$169,727.34	\$179,891.39
City of Azusa	\$10,164.05	9.3	22.41%	\$143,496.75	\$153,660.80
City of Bradbury	\$10,164.05	1.9	4.58%	\$29,316.54	\$39,480.59
City of Duarte	\$10,164.05	3.6	8.67%	\$55,547.13	\$65,711.18
City of Monrovia	\$10,164.05	8	19.28%	\$123,438.07	\$133,602.11
City of Sierra Madre	\$10,164.05	2.8	6.75%	\$43,203.32	\$53,367.37
County of Los Angeles	\$10,164.05	4.9	11.81%	\$75,605.82	\$85,769.86
Los Angeles County Flood Control District(1)	\$79,053.70	-	-	-	\$79,053.70
Total	\$150,202.03	41.5	100%	\$640,334.97	\$790,537.00

(1) Los Angeles County Flood Control District's cost share equals 10% of total contracted costs; the remaining costs are then divided by the 10% base fee and land area (90%).

(2) - Based on percent of developed land in each Party area of the total watershed area (excludes Angeles National Forest land)

On or before June 30th of each year, the Oversight Committee shall review the Cost Allocation Formula and may adjust the formula as deemed necessary for such reasons including, but not limited to, revision in Contracted Costs, Scope of Work, scheduling of work, and/or costs related to environmental review.

Table 3. Invoicing Schedule

Invoice #	Invoice Date	Percent of Cost Share Allocation
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1	on or before July 2013	10% Base
2	July 2013	1/3 of land Area Allocation
3	July 2014	1/3 of land Area Allocation
4	July 2015	1/3 of land Area Allocation

On or before June 30th of each year, the Oversight Committee shall review the Invoicing Schedule may adjust the percent of Cost Share Allocations due each year as deemed necessary for such reasons including, but not limited to, revision in Contracted Costs, Scope of Work, scheduling of work, and/or costs related to environmental review.

EXHIBIT B

Rio Hondo/San Gabriel River Watershed Quality Group EWMP Responsible Agencies Representatives

1. City of Arcadia
240 W. Huntington Dr.
Arcadia, CA 91006
Representative: Vanessa Hevener
E-mail: VHevener@ci.arcadia.ca.us
Phone: (626) 305-5327

2. City of Azusa
213 E. Foothill Blvd.
Azusa, CA 91702-1395
Representative: Carl E. Hassel
E-mail: CHassel@ci.azusa.ca.us
Phone: (626) 812-5064

3. City of Bradbury
600 Winston Ave.
Bradbury, CA 91008
Representative: Michelle Keith
E-mail: MKeith@CityofBradbury.org
Phone: (626)358-3218 ext. 300

4. City of Duarte
1600 Huntington Drive
Duarte, CA 91010
Party Representative: Rafael Casillas
E-mail: RCasillas@accessduarte.com
Phone: (626)386-6833

5. City of Monrovia
415 S. Ivy Ave.
Monrovia, CA 91016
Representative: Heather Maloney
E-mail: HMaloney@ci.monrovia.ca.us
Phone: (626) 932-5577

6. (City of Sierra Madre
232 W. Sierra Madre Blvd
Sierra Madre, CA 91024
Representative: James Carlson
E-mail: JCarlson@cityofsierramadre.com

Phone: (626) 355-7135 ext. 803

7. County of Los Angeles
Department of Public Works
Watershed Management Division, 11th Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Representative: Gary Hildebrand
E-mail: GHILDEB@dpw.lacounty.gov
Phone: (626) 458-4300

8. Los Angeles County Flood Control District
Department of Public Works
Watershed Management Division, 11th Floor
900 South Fremont Avenue
Alhambra, CA 91803-1331
Representative: Gary Hildebrand
E-mail: GHILDEB@dpw.lacounty.gov
Phone: (626) 458-4300