

# South Bay Cities Council of Governments

September 12, 2016

TO: SBCCOG Steering Committee

FROM: Jacki Bacharach, Executive Director

SUBJECT: Dominguez Channel – Authorization for Chair to Sign Industry Agreements

## BACKGROUND

The Dominguez Channel Watershed Management Area Group (Dominguez WMA Group) has signed an MOU with the South Bay COG to serve as the contract administrator for its Coordinated Integrated Monitoring Program (CIMP).

The Dominguez WMA Group has interest from numerous Individual General Permittees (IGPs) and the City of Long Beach to cost share monitoring costs. The Dominguez WMA Group's share will be reduced depending on number of IGPs to join. The SBCCOG also receives \$615 for each IGP that joins.

There is a standard agreement that has been prepared for the SBCCOG to enter into with the Individual General Permittees. This agreement which is attached has been reviewed and approved by SBCCOG Legal Counsel Mike Jenkins. IGPs will not be given the opportunity to change the agreement.

Since IGPs will be joining the Dominguez WMA Group throughout the year, it would be most expeditious if the contracts could be signed by the SBCCOG Chair when they are ready instead of waiting for a board meeting.

## RECOMMENDATION

The Steering Committee approves the attached agreement between the SBCCOG and IGPs who would like to join the Dominguez Channel Watershed Management Area Group and authorizes the chair to sign agreements for the SBCCOG when they are executed by an IGP.

MEMORANDUM OF AGREEMENT  
BETWEEN THE SOUTH BAY CITIES COUNCIL OF GOVERNMENTS AND  
[INSERT NAME OF INDIVIDUAL NPDES PERMIT HOLDER]

FOR COST SHARING FOR THE IMPLEMENTATION OF THE COORDINATED  
INTEGRATED MONITORING PROGRAM (CIMP) FOR THE DOMINGUEZ CHANNEL  
WATERSHED MANAGEMENT AREA

This Agreement is made and entered into as of \_\_\_\_\_, 2016, by and between the South Bay Cities Council of Governments (SBCCOG), a California Joint Powers Authority, and [INSERT NAME OF INDIVIDUAL NPDES PERMIT HOLDER], a California Corporation ("Permit Holder").

RECITALS

1. For the purposes of this Agreement, the term "PERMITTEES" shall mean the Cities of Los Angeles, El Segundo, Hawthorne, Inglewood, Lomita, Lawndale, Carson and the Los Angeles County Flood Control District (LACFCD) and the County of Los Angeles (County).
2. The U.S. Environmental Protection Agency (USEPA) and the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) have classified the Greater Los Angeles County Municipal Separate Storm Sewer System Permit (MS4) as a large MS4 pursuant to 40 CFR section 122.26(b)(4) and a major facility pursuant to 40 CFR section 122.2.
3. The Regional Board adopted National Pollutant Discharge Elimination System MS4 Permit Municipal Separate Storm Sewer System Permit Order No. R4-2012-0175 (MS4 Permit).
4. The MS4 Permit became effective on December 28, 2012, and requires that the LACFCD, the COUNTY, and 84 of the 88 cities (excluding Avalon, Long Beach, Palmdale, and Lancaster) within the County comply with the prescribed elements of the MS4 Permit.
5. The MS4 Permit identified the PERMITTEES as MS4 PERMITTEES that are responsible for compliance with the MS4 Permit requirements pertaining to the PERMITTEES collective jurisdictional area in the Dominguez Channel Watershed Management Area.
6. The PERMITTEES elected voluntarily to collaborate on the development of a Coordinated Integrated Monitoring Program (CIMP) in accordance with the MS4 Permit for a portion of the Dominguez Channel Watershed Management Area as identified in Exhibit A of this Memorandum of Agreement (MOA) to comply with all applicable monitoring requirements of the MS4 Permit.

7. The United States Environmental Protection Agency established the Total Maximum Daily Loads (“TMDL”) for Toxic Pollutants on March 23, 2012, with the intent of protecting and improving water quality in the Dominguez Channel and the Greater Los Angeles and Long Beach Harbor Waters (“Harbor Toxic Pollutants TMDL”).
8. The Harbor Toxic Pollutants TMDL regulates certain discharges from National Pollutant Discharge Elimination System (“NPDES”) permit holders, requiring organization and cooperation among the PERMITTEES.
9. The PERMITTEES manage, drain or convey storm water into at least a portion of the Dominguez Channel, Greater Los Angeles and Long Beach Harbor Waters (including Consolidated Slip).
10. The PERMITTEES desire to facilitate the achievement of the objectives of the Harbor Toxic Pollutants TMDL by preparation and implementation of the CIMP.
11. The PERMITTEES prepared the CIMP, and the SBCCOG has also retained the City of Los Angeles (CITY) to conduct the monitoring and reporting required by the CIMP (CIMP Implementation).
12. For purposes of this Agreement the term “Consultant” shall refer to the CITY.
13. On December 11, 2015 Regional Board approved the CIMP.
14. The mission of the SBCCOG is to allow its members to act collaboratively and focus on improving the environment. As part of its mission and to help its members implement the CIMP for the Dominguez Channel Watershed Management Area, the SBCCOG entered into an MOA with the PERMITTEES to administer the monitoring contract with the CITY and invoice the PERMITTEES for the monitoring services.
15. Individual NPDES permit holders that are not PERMITTEES have indicated a desire to participate in the CIMP implementation for individual permit compliance.
16. The PERMITTEES authorized the SBCCOG to enter into individual separate MOAs with such individual NPDES permit holders (Permit Holders) (which shall not have voting rights in any group relating to the PERMITTEES) for CIMP Implementation cost sharing purposes only.
17. The Permit Holder desires to obtain monitoring data collected as part of the CIMP Implementation, to have its name included on monitoring reports submitted in accordance with the CIMP Implementation and to share in the costs of CIMP implementation.

18. The role of the SBCCOG is to invoice and collect funds from the Permit Holder to cover its portion of the costs for CIMP Implementation.

19. The Permit Holder and the SBCCOG are collectively referred to as the "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 MOA is for the Permit Holder to cost share in the CIMP Implementation.

Section 3. Cooperation. The PARTIES shall fully cooperate with one another to achieve the purposes of this MOA.

Section 4. Voluntary Nature. The PARTIES voluntarily enter into this MOA.

Section 5. Binding Effect. This MOA shall become binding on SBCCOG and the Permit Holder.

Section 6. Term. This MOA shall commence on \_\_\_\_\_, 2016 and shall expire on June 30, 2018, unless terminated earlier pursuant to this MOA.

Section 7. Role of the SBCCOG.

(a) The SBCCOG shall invoice and collect funds from the Permit Holder to cover a portion of the costs of hiring and paying the CITY to implement the CIMP.

(b) The SBCCOG shall administer the CITY'S contract for implementation of the CIMP by contracting with and paying the CITY.

Section 8. Financial Terms.

(a) The Permit Holder shall pay twelve thousand three hundred (\$12,300) dollars ("Annual Payment Amount") annually on a fiscal year basis to the SBCCOG in exchange for the monitoring data collected as part of the CIMP implementation and inclusion of the Permit Holder's name on monitoring reports submitted in accordance with the CIMP.

(b) The SBCCOG will retain a fee of 5% (\$615) for their services. The remaining amount (\$11,685) will be credited towards the PERMITTEES cost of implementing the CIMP.

(c) The Permit Holder's first payment is due upon execution of this

MOA and shall cover the 2015-2016 fiscal year. For each successive year, commencing with the 2016-2017 fiscal year, the SBCCOG shall submit annual invoices to the Permit Holder in an amount not to exceed twelve thousand three hundred (\$12,300) dollars no later than the April 15<sup>th</sup> prior to the new fiscal year.

(d) Upon receiving an invoice from the SBCCOG, the Permit Holder shall pay its invoice to the SBCCOG within thirty (30) days of the invoice's date.

(e) The Permit Holder will be delinquent if its invoiced payment is not received by the SBCCOG within forty-five (45) days after the invoice's date. The SBCCOG will follow the procedure listed below: 1) verbally contact the representative of the Permit Holder; and 2) submit a formal letter from the SBCCOG Executive Officer to the Permit Holder at the address listed in Section 12 of the MOA. If payment is not received within sixty (60) days of the invoice date, the SBCCOG may terminate this MOA. However, no such termination may be ordered unless the SBCCOG first provides the Permit Holder with thirty (30) days written notice of its intent to terminate the MOA. The terminated Permit Holder shall remain obligated to SBCCOG for its delinquent payments and any other obligations incurred prior to the date of termination. If the SBCCOG terminates this MOA due to the Permit Holder being delinquent in its payment, Permit Holder shall no longer be entitled to the monitoring data collected as part of the CIMP, and Permit Holder's name shall not be included in monitoring reports submitted in accordance with the CIMP.

(f) Any delinquent payments by the Permit Holder shall accrue compound interest at the average rate of interest paid by the Local Agency Investment Fund during the time that the payment is delinquent, provided that the interest shall not exceed any limit imposed by law.

#### Section 9. Independent Contractor.

(a) The SBCCOG is, and shall at all times remain, a wholly independent contractor for performance of the obligations described in this MOA. The SBCCOG's officers, officials, employees and agents shall at all times during the term of this MOA be under the exclusive control of the SBCCOG. The Permit Holder cannot control the conduct of the SBCCOG or any of its officers, officials, employees or agents. The SBCCOG and its officers, officials, employees, and agents shall not be deemed to be employees of the Permit Holder.

(b) The SBCCOG is solely responsible for the payment of salaries, wages, other compensation, employment taxes, workers' compensation, or similar taxes for its employees performing services hereunder.

#### Section 10. Indemnification and Insurance.

(a) The Permit Holder shall defend, indemnify and hold harmless the SBCCOG and the PERMITTEES and their officers, employees, and other representatives and agents from and against any and all liabilities, actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and

attorney's fees, for injury to or death of person(s), for damage to property (including property owned by the SBCCOG and any Permittee) for negligent or intentional acts, errors and omissions committed by the Permit Holder or its officers, employees, and agents, arising out of or related to that Permit Holder's performance under this MOA, except for such loss as may be caused by SBCCOG's negligence or that of its officers, employees, or other representatives and agents other than the Consultant.

(b) SBCCOG makes no guarantee or warranty that the reports prepared by SBCCOG, PERMITTEES or its Consultant shall be approved by the relevant governmental authorities. SBCCOG shall have no liability to the Permit Holder for the negligent or intentional acts or omissions of Consultant. The Permit Holder's sole recourse for any negligent or intentional act or omission of the Consultant shall be against the Consultant and its insurance.

#### Section 11. Termination.

(a) The Permit Holder may withdraw from this MOA for any reason, or no reason, by giving the SBCCOG prior written notice thereof. The withdrawing Permit Holder shall be responsible for its Annual Payment Amount through the end of the current fiscal year during which Permit Holder withdraws. Moreover, unless the withdrawing Permit Holder provides written notice of withdrawal to the SBCCOG by the March 1st immediately prior to the new fiscal year, the Permit Holder shall also be responsible for its Annual Payment Amount through the end of the new fiscal year (e.g., If the Permit Holder withdraws on March 2, 2017, Permit Holder is responsible for the Annual Payment Amounts for both FY 2017-2018 and FY 2016-2017. If the Permit Holder withdraws on February 25, 2017, the Permit Holder is responsible for its Annual Payment Amount only for FY 2016-2017, not for FY 2017-2018). If the Permit Holder terminates the MOA, the Permit Holder shall remain liable for any loss, debt, or liability otherwise incurred through the end of the fiscal years for which it is responsible for Annual Payments.

(b) The SBCCOG may terminate this MOA upon not less than thirty (30) days written notice to the Permit Holder. Any remaining funds not due and payable or otherwise legally committed to Consultant shall be returned to the Permit Holder.

#### Section 12. Miscellaneous.

(a) Permit Holder has been accepted as a participant in the CIMP Implementation and shall not be entitled to appoint a representative or to vote or participate in any way in decisions assigned to PERMITTEES. Participant status entitles Permit Holder only to the monitoring data collected as part of the CIMP Implementation and to have its name included on all reports submitted in accordance with the CIMP for any fiscal year in which the participant has paid its Annual Payment Amount.

(b) Notices. All Notices which the PARTIES require or desire to give hereunder shall be in writing and shall be deemed given when delivered personally or

three (3) days after mailing by registered or certified mail (return receipt requested) to the following address or as such other addresses as the PARTIES may from time to time designate by written notice in the aforesaid manner:

To SBCCOG:

Jacki Bacharach  
SBCCOG Executive Officer  
20285 S. Western Ave., #100  
Torrance, CA 90501

To the Permit Holder:

Mr/Ms. [Insert contact name here]  
Title  
Company Name  
Street Address  
City, California Zip Code

(c) Amendment. The terms and provisions of this MOA may not be amended, modified or waived, except by a written instrument signed by all PARTIES and approved by all PARTIES as substantially similar to this MOA.

(d) Waiver. Waiver by either the SBCCOG or the Permit Holder of any term, condition, or covenant of this MOA shall not constitute a waiver of any other term, condition, or covenant. Waiver, by the SBCCOG or the Permit Holder, to any breach of the provisions of this MOA shall not constitute a waiver of any other provision or a waiver of any subsequent breach of any provision of this MOA.

(e) Law to Govern: Venue. This MOA shall be interpreted, construed, and governed according to the laws of the State of California. In the event of litigation between the PARTIES, venue shall lie exclusively in the County of Los Angeles.

(f) No Presumption in Drafting. The PARTIES to this MOA agree that the general rule that an MOA is to be interpreted against the PARTIES drafting it, or causing it to be prepared, shall not apply.

(g) Severability. If any term, provision, condition or covenant of this MOA is declared or determined by any court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this MOA shall not be affected thereby and this MOA shall be read and construed without the invalid, void, or unenforceable provisions(s).

(h) Entire Agreement. This MOA 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.

(i) Counterparts. This MOA 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 MOA.

(j) Legal Representation. All PARTIES have been represented by counsel in the preparation and negotiation of this MOA. Accordingly, this MOA shall be construed according to its fair language.

(k) Authority to Execute this Agreement. The person or persons executing this MOA on behalf of Permit Holder warrants and represents that he or she has the authority to execute this MOA on behalf of the Permit Holder and has the authority to bind Permit Holder.

IN WITNESS WHEREOF, the PARTIES hereto have caused this MOA to be executed on their behalf, respectively, as follows:

DATE: \_\_\_\_\_

SOUTH BAY CITIES COUNCIL OF  
GOVERNMENTS

\_\_\_\_\_  
INSERT NAME  
SBCCOG Chair

DATE: \_\_\_\_\_

PERMIT HOLDER  
[insert name of company]

\_\_\_\_\_  
[contact Name],  
[insert title]