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MEMORANDUM OF AGREEMENT
BETWEEN
THE GATEWAY CITIES COUNCIL OF GOVERNMENTS
AND
THE CITY OF LONG BEACH

REGARDING THE ADMINISTRATION AND COST SHARING FOR THE DEVELOPMENT
OF THE COORDINATED IMPLEMENTATION PLAN FOR THE LOS ANGELES RIVER
AND TRIBUTARIES METALS TMDL (REACH 1 AND COMPTON CREEK)

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 Gateway Cities Council of Governments, a California joint powers authority ("GCCOG"), and the City of Long Beach, a California municipal corporation ("City"); (hereinafter "Party" or "Parties") with respect to the following:

RECITALS

WHEREAS, the mission of the GCCOG includes environmental planning and providing technically sound science and analyses to its member cities and agencies; and

WHEREAS, seven of the GCCOG's member cities are located within Reach 1 of the Los Angeles River and Compton Creek watersheds and the GCCOG has established effective working relationships with the adjacent Councils of Governments; and

WHEREAS, the GCCOG has previously entered into interagency agreements, successfully partnering with various cities, SCAG, and CALTRANS to undertake projects and studies of regional significance; and

WHEREAS, the GCCOG is currently administering the Coordinated Monitoring Plan and the Special Studies for the Metals TMDL for the Los Angeles River; and

WHEREAS, the Regional Water Quality Control Board, Los Angeles Region ("Regional Board") adopted the Los Angeles River and Tributaries Metals Total Maximum Daily Load ("TMDL" or "Los Angeles River Metals TMDL") in September of 2007, with the intent of improving water quality in the Los Angeles River and its tributaries; and

WHEREAS, the Parties recognize that the TMDL is not self-enforcing, but could be legally enforceable once incorporated into the National Pollutant Discharge Elimination System Permit for Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges; and

WHEREAS, this TMDL regulates the discharge of runoff from, nine cities and the County unincorporated areas tributary to Reach 1 of the Los Angeles River and CALTRANS, herein referred to as collectively the "Regulated Entities" or singularly a "Regulated Entity", requiring a high degree of organization and cooperation from the local watershed agencies; and

WHEREAS, this TMDL requires the preparation of a Coordinated Implementation Plan ("CIP") by the Regulated Entities that is designed to reduce the amount of metals pollutants in the Los Angeles River and its tributaries, in addition to proving compliance with the TMDL waste load allocations for both wet and dry weather; and

WHEREAS, the County of Los Angeles and the City of Los Angeles will be independently preparing separate CIPs; and

WHEREAS, a Los Angeles River Metals TMDL Reach 1 Technical Committee, consisting of representatives from the Regulated Entities, has been established with the purpose of preparing and submitting the CIP to the Regional Board; and

WHEREAS, the Regulated Entities agree to prepare a draft CIP by January 11, 2010 and a final CIP by July 11, 2010, and to adopt and provide initial funding of this Agreement; and

WHEREAS, the CIP requires administrative services that the Regulated Entities desire the GCCOG to perform, including contracting for the development of both the draft and final CIP and other related activities; and

WHEREAS, the GCCOG has agreed to provide such administrative services to the Regulated Entities to facilitate the successful development of the CIP; and

WHEREAS, the Regulated Entities have agreed to share in fully funding the costs of the CIP, including those costs incurred by the GCCOG in administering this Agreement, based on the cost allocation formula contained in Exhibit A and the estimated Implementation Plan in Exhibit B of this Agreement; and

WHEREAS, the GCCOG and the Regulated Entities agree to employ consultants as needed to prepare the CIP, and the Regulated Entities are willing to pay the consultants for their services through the GCCOG; and

WHEREAS, GCCOG will execute similar cost-sharing agreements with all other participating Regulated Entities before this agreement becomes enforceable, unless stated otherwise elsewhere in this Agreement.

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 provide a mechanism whereby the Regulated Entities cooperatively fund the development of the CIP and provide funding to the GCCOG, such that the GCCOG can administer the necessary professional services contracts to develop the CIP on behalf of the Regulated Entities.

Section 3. Cooperation. The Parties shall fully cooperate with one another to attain the purposes of this Agreement.

Section 4. Voluntary Nature. Individual Regulated Entities have the option of requesting approval from the Regional Board to prepare a separate Implementation Plan. This Agreement is voluntarily entered into for the development of the CIP and will be applicable to only those Regulated Entities signatory to this Agreement.

Section 5. Term. The term of this Agreement shall remain and continue in effect until completion of the CIP and acceptance of the CIP by the Regional Board.

Section 6. Coordinated Implementation Plan. The Los Angeles River Metals TMDL CIP shall include: implementation methods, an implementation schedule, proposed milestones, and any applicable revisions to the TMDL effectiveness monitoring plan.

Section 7. Assessment for Proportional Costs of the CIP. The City agrees to provide funds to the GCCOG in the amount shown in Exhibit A and the estimated development costs in Exhibit B. The GCCOG will invoice the City as set forth in Section 9 below, based on allocated CIP costs, which includes an estimated \$10,000 for administrative costs incurred by the GCCOG in the performance of its duties under this Agreement. The GCCOG administrative costs include compensation for staff time, audit expenses, and costs incurred in administrating agreements. Any overpayment or underpayment of the CIP costs shall be credited or billed to the City upon acceptance of the CIP by the Los Angeles Regional Water Quality Control Board. Should any city decide not to participate in the CIP, each remaining city's costs will be proportionally increased based upon on the land areas as shown on Exhibit A.

Section 8. Role of the GCCOG. The GCCOG shall enter into substantially and materially similar agreements with each of the Regulated Entities to effectuate the CIP, invoice and collect from the Regulated Entities the estimated amounts identified in Exhibit A.

Section 9. Invoice and Payment.

- a) The GCCOG shall invoice each Regulated Entity. The first invoice will be fifty (50) per cent of the estimated final cost of the completion of the CIP. Payment of this 50 percent is due upon signing of this agreement with the understanding that all Regulated Entities will execute the agreement not later than July 30, 2009. The second, third and fourth invoices for twenty (20), twenty (20) and ten (10) per cent respectively of the estimated cost shall be sent to the Regulated Entities by the GCCOG on or about October 15, 2009, January 15, 2010 and June 1, 2010 respectively
- b) Late Payment Penalty – As of October 15, 2009, 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 from 1 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. The rates shall, nevertheless, not exceed the maximum allowed by law.

- c) Delinquent Payments – A Regulated Entity’s payment is considered to be delinquent 60 days after being invoiced by the GCCOG. The following procedure may be implemented to attain payments from the delinquent Regulated Entity or Entities per instructions from the Technical Committee: 1) verbally contact/meet with the manager from the delinquent Regulated Entity or Entities, 2) submit a formal letter to the delinquent Regulated Entity or Entities from the GCCOG attorney, and 3) notify the Regional Board that the delinquent Regulated Entity or Entities are no longer a participating member of the CIP. If a Regulated Entity or Entities remain delinquent after the above procedures, then any delinquent amount(s) will be distributed in the following invoice amongst all remaining Regulated Entities proportionate to each Entity’s area as it relates to the overall remaining total Regulated Entities area, excluding the delinquent Regulated Entity or Entities and all references to the delinquent Regulated Entity will be removed from the CIP. The Technical Committee will revise Exhibit A to show the recalculated costs for each participating Regulated Entity; these revised exhibits will be sent to the GCCOG and included with the invoices to the Regulated Entities.
- d) Interest Accrual – Any interest accrued on the funds collected per this Agreement during the term of this Agreement shall be redeposited into the appropriate account and used for development of the CIP. The GCCOG shall report on an annual basis to the Technical Committee the amount of interest accrued by the CIP account(s).

Section 10. Independent Contractor.

- a) The GCCOG is and shall at all times remain a wholly independent contractor for performance of the obligations described in this Agreement. The GCCOG officers, employees and agents performing such obligations shall at all times be under the GCCOG’s exclusive control. The Regulated Entities shall not have control over the conduct of the GCCOG or any of its officers, employees or agents, except as set forth in this Agreement. The GCCOG, and its officers, employees, or agents are not and shall not be deemed to be employees of the Regulated Entities.
- b) No employee benefits shall be available to the GCCOG in connection with the performance of its obligations under this Agreement. The GCCOG is solely responsible for the payment of salaries, wages, other compensation, employment taxes, worker’s compensation, or similar taxes for its employees for performing obligations hereunder.
- c) The Regulated Entities will retain control of the consultant(s)’ work product and the schedule for submitting the CIP to the Regional Board. The GCCOG will use reasonable efforts to work with the Regulated Entities to ensure that the draft CIP is submitted by January 11, 2010 and the final CIP is submitted by July 11, 2010.

However, the Regulated Entities recognize that the draft CIP is due by January 11, 2010 and that this deadline might not be met despite the best efforts of the GCCOG and the Regulated Entities.

Section 11. Indemnification.

To the fullest extent permitted by law, the City and the GCCOG agree to save, 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 the fault of the other. Following a determination of the percentage of fault 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 Agreement for the percentage of liability determined. The GCCOG will be held harmless from any Regional Board Notice of Violations or third-party litigation resulting from failure of the Regulated Entities to meet the compliance deadlines in the Los Angeles River Metals TMDL for submission of the draft and final CIP.

Section 12. Termination of Agreement.

Either Party may terminate this Agreement for any reason, in whole or part, by giving the other Party thirty (30) days written notice thereof. The City shall be responsible for the allocated costs of CIP activities incurred up to the date of the termination. GCCOG shall notify in writing all Regulated Entities within fourteen (14) days of receiving written notice from any Regulated Entity that intends to terminate this Agreement. The remaining Regulated Entities shall be responsible for increasing their cost contribution proportionally based upon the land area as shown in Exhibit A.

Section 13. Miscellaneous.

- a) Notices. All notices which any Party is required or desires 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 GCCOG:

**Gordon Stefenhagen
President
16401 Paramount Blvd
Paramount CA 90723**

To City of Long Beach:

**Patrick H. West
City Manager
333 W. Ocean Blvd., 13th Floor
Long Beach, CA 90802**

- b) Separate Accounting and Auditing. The GCCOG agrees to establish a separate account to track the revenues from the Regulated Entities and the expenses from of the CIP. Quarterly financial statements and the annual audit will be made available to all of the participating Regulated Entities.
- c) 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.
- d) Amendment. The terms and provisions of this Agreement may not be amended, modified or waived, except by an instrument in writing signed by the Parties.
- e) 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.
- f) 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.
- g) 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.
- h) 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.
- i) 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).
- j) 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 both Parties to this Agreement.
- k) Legal Representation. 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.

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- 1) Agency Authorization. Each of the persons signing below on behalf of a Party represents and warrants that he or she is authorized to sign this Agreement on behalf of such Party.

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

DATE: 10.12.09

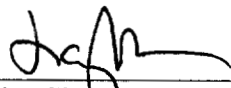
CITY OF LONG BEACH

 Assistant City Manager

Patrick H. West

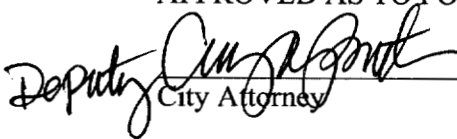
**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

ATTEST:



City Clerk

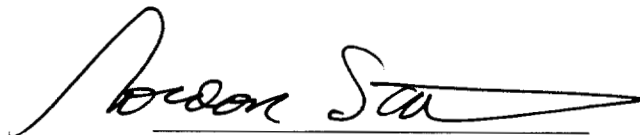
APPROVED AS TO FORM:



Deputy City Attorney


DATE: 11-17-09
COUNCIL OF GOVERNMENTS

GATEWAY CITIES



GORDON STEFENHAGEN, PRESIDENT

ATTEST:



Richard Powers, Secretary

EXHIBIT A

LOS ANGELES RIVER METALS TMDL
COORDINATED IMPLEMENTATION PLAN
COST ALLOCATION FORMULA

(showing cost allocation for every \$100,000 in costs)

Agency Name	Acres in Jurisdictional Group¹	Percent of Jurisdictional Group Acreage	Share Per \$100,000	Cost Share Percentage
Carson	125.59	1.37%	\$3,318.15	3.32%
Caltrans	389.50	4.25%	\$5,621.09	5.62%
Compton	3,839.73	41.88%	\$35,728.62	35.73%
Huntington Park	815.24	8.89%	\$9,336.15	9.34%
Long Beach	1,186.13	12.94%	\$12,572.66	12.57%
Lynwood	664.98	7.25%	\$8,024.98	8.02%
Signal Hill	229.79	2.51%	\$4,227.42	4.23%
South Gate	1,613.83	17.60%	\$16,304.91	16.30%
Vernon	302.97	3.30%	\$4,866.02	4.87%
Total:	9,167.76	100.00%	\$100,000.00	100.00%

The percent area is calculated by excluding the areas for LA County and the City of Los Angeles.

The amounts shown are estimates only. Actual costs will be based on the cost sharing formula, the number of participating regulated entities and are contingent upon accurate acreage information and final contracting cost from consultant(s) and GCCOG.

EXHIBIT B
SCOPE OF WORK

1. Characterization of Current and Historic Metal Pollutant Loads

Review existing sampling results from sources including:

- a. WER Study – Cities of Burbank and Los Angeles
- b. Trends and Status - City of Los Angeles
- c. Mass emissions station – County of Los Angeles
- d. Coordinated Monitoring Program – Los Angeles River Technical Committee

2. Characterization and Evaluation of Potential Pollutant Sources

Review and investigation sources and contributions of metal pollutants

- a. Lands use characterization information (City of Los Angeles' existing GIS watershed data)
- b. Specific sources (i.e: copper sulfate exposed galvanized metal, irrigation, etc.)
- c. Aerial deposition - various scientific studies
- d. Industrial sites - state's GIASP program
- e. Construction sites - state's GCASP program

3. Source Control Pollutant Reduction Strategies

Investigate the impact of municipal source control measures to meet compliance goals

- a. Street sweeping,
- b. Public Outreach,
- c. Water Conservation, etc.

4. Treatment Pollutant Reduction Strategies

Investigation of the effectiveness of treatment controls

- a. Existing Treatment controls (infiltration, capture and reuse, filtration, etc.)
- b. Evaluation of the effectiveness of various treatment system and locations
- c. Recommendations for regional or sub-regional treatment systems

5. Compliance Monitoring

Evaluation and determination of the need, location and design of additional (Tier 3) monitoring stations

6. Report Preparation and Schedule

Draft Report submitted to the Regional Board on or before January 11, 2010
Final Report incorporating Regional Board comments submitted by July 11, 2010

Cost: **Not to Exceed \$200,000**