

C-27

August 8, 2023

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Authorize the City Manager, or designee, to execute a Memorandum of Agreement, including subsequent amendments, with the South Bay Cities Council of Governments, for the implementation of the Coordinated Integrated Monitoring Program for the Dominguez Channel Watershed with other participating agencies under the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit, for an annual amount not to exceed \$25,000 for the initial year, and annually thereafter, escalated by 2 percent, for a three-year term. (Citywide)

DISCUSSION

The City of Long Beach (City) is subject to waste discharge requirements for its Municipal Separate Storm Sewer System (MS4) Permit under Order No. R4-2021-0105, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS004004. The 1972 Clean Water Act (CWA) established the NPDES Program to regulate discharge of pollutants to waters in the United States. The CWA requires water bodies that do not meet water quality standards be placed on an impaired water body list called the Section 303(d) list. For each water body on the list, the state is required to establish total maximum daily loads (TMDL) for each pollutant impairing the water quality standards and are the basis to establish control of the water quality.

The MS4 Permit enables agencies to collaborate through a Coordinated Integrated Monitoring Program (CIMP). The CIMP allows Long Beach to comply with Dominguez Channel Watershed monitoring requirements at a lower cost due to collaborative monitoring, reporting, and recordkeeping programs to comply with the MS4 Permit.

On December 11, 2015, the State Water Resources Control Board approved the CIMP for the Dominguez Channel Watershed with the City and other Permittees at the time. This Memorandum of Agreement (MOA) is a renewal for cost-sharing with other Permittees tributary to the Dominguez Channel Watershed for the term of July 1, 2023 to June 30, 2026. Permittees include the cities of Los Angeles, Carson, El Segundo, Hawthorne, Inglewood, Lawndale, Lomita, the Los Angeles County Flood Control District, and the County of Los Angeles.

This matter was reviewed by Deputy City Attorney Vanessa S. Ibarra on July 12, 2023, and by Budget Management Officer Nader Kaamoush on June 21, 2023.

TIMING CONSIDERATIONS

City Council action is requested on August 8, 2023, to ensure the MOA is in place expeditiously.

FISCAL IMPACT

The City's total annual cost for the MOA will not exceed \$25,000 for the initial year, and annually thereafter, escalated by 2 percent, for a three-year term. Sufficient appropriation to support the annual amount is budgeted in the General Fund Group in the Public Works Department. This recommendation has no staffing impact beyond the normal budgeted scope of duties and is consistent with existing City Council priorities. There is no local job impact associated with this recommendation.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



ERIC LOPEZ
DIRECTOR OF PUBLIC WORKS

APPROVED:



THOMAS B. MODICA
CITY MANAGER

Attachment: Memorandum of Agreement (MOA)

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

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 July 1, 2023, by and between the South Bay Cities Council of Governments (SBCCOG), a California Joint Powers Authority, and the City of Long Beach, a municipal corporation ("Permit Holder").

RECITALS

1. For the purposes of this Agreement, the term "PERMITTEES" shall mean the Cities of Los Angeles, Carson, El Segundo, Hawthorne, Inglewood, Lawndale, Lomita, 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 (MS4) as a large MS4 pursuant to 40 Code of Federal Regulations (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. R4-2021-0105 (MS4 Permit) on July 23, 2021.
4. The MS4 Permit became effective on September 11, 2021, and requires that LACFCD, the COUNTY, 85 incorporated cities within the coastal watersheds of Los Angeles County, Ventura County Watershed Protection District, County of Ventura, and 10 incorporated cities within Ventura County comply with the prescribed elements of the 2021 MS4 Permit and are subject to waste discharge requirements for their MS4 discharges originating from within their jurisdictional boundaries composed of stormwater and non-stormwater.
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.
12. For purposes of this Agreement the term “Consultant” shall refer to the CITY.
13. On July 1, 2016, Regional Board approved the CIMP; and the revised CIMP was submitted to the Regional Board by the PERMITTEES on March 13, 2023 and is pending approval.
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 the Annual Report 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 be binding on SBCCOG and the Permit Holder.

Section 6. Term. This MOA shall commence on July 1, 2023 and shall expire on June 30, 2026, unless terminated earlier pursuant to this MOA. Should the PARTIES mutually agree, the Agreement may be extended in one-year increments via an amendment to the Agreement.

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 twenty-five thousand (\$25,000) dollars ("Annual Payment Amount") annually on a fiscal year basis to the SBCCOG in exchange

for monitoring data collected as part of CIMP Implementation and the Permit Holder's name on the Annual Report submitted in accordance with the CIMP.

(b) Beginning at the commencement of the second MOA year (2024-2025), and annually thereafter, the Annual Payment Amount will be escalated by 2%.

(c) The SBCCOG will retain a fee of 10% of the Annual Payment Amount for their services. The remaining amount will be credited towards the PERMITTEES' cost of implementing the CIMP.

(d) The Permit Holder's first payment is due upon execution of this MOA and shall cover the 2023-2024 fiscal year. For each successive year, commencing with the 2024-2025 fiscal year, the SBCCOG shall submit annual invoices to the Permit Holder no later than the May 15th prior to the new fiscal year.

(e) 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.

(f) 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, SBCCOG shall not terminate pursuant to this Section 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.

(g) 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 and Consultants 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 thirty (30) days 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, 2024, Permit Holder is responsible for the Annual Payment Amounts for both FY 2024-2025 and FY 2023-2024. If the Permit Holder withdraws on February 25, 2024, the Permit Holder is responsible for its Annual Payment Amount only for FY 2023-2024, not for FY 2024-2025). 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 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 Director
2355 Crenshaw Blvd., #125
Torrance, CA 90501

To the Permit Holder:

Mrs. Melissa You
Project Management Officer – Stormwater Management Division
City of Long Beach
411 W. Ocean Blvd., 5th Floor
Long Beach, CA 90802

(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 than 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 provision(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

John Cruikshank
SBCCOG Chair

DATE: _____

PERMIT HOLDER
City of Long Beach

Thomas B. Modica,
City Manager